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[REDACTED]

November 21, 1990

VIA TELECOPY

Victor L. Cohen
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re Exempt Transaction

Dear Victor:

Attached is an outline of a transaction that involves the transfer of certain assets in the ordinary course. We believe that the events described in the attached outline are exempt from the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act.

We would appreciate your thoughts at your earliest convenience.

Sincerely,

[REDACTED]

[REDACTED]

Acquisition of credit card servicing rights relating to the authorization, clearing & settlement of transactions based on credit card sales is considered an acquisition of assets that is exempt as goods transferred in the ordinary course of business.

RS agrees

✓

This transaction involves the transfer of certain assets to a limited liability company ("LLC"). This outline has been prepared to facilitate the determination that neither: (a) the transfer of an undivided interest in certain assets of one LLC member to the other LLC member, and the subsequent contribution of such assets to the LLC; nor (b) the contribution of certain assets by one LLC member to the LLC and the subsequent purchase of member interests in the LLC by the non-contributing member, are subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

For purposes of this outline, assume that parties A and B (who are each their own "ultimate parent entities") meet the \$100 million "size-of-person" test.

Background

1. A1 (a "controlled" entity of A) and B1 (a "controlled" entity of B) are the sole members of an LLC (hereafter, "AB LLC"). Each of A1 and B1 hold 50% of the membership interests of AB LLC.
2. AB LLC is governed by a six person management committee. A1 appointed three persons; B1 appointed the other three persons.
 - a. These persons are officers, directors or employees of A or B or their respective "controlled" entities.
 - b. The management committee governs the day to day operations of AB LLC. The management committee has limited authority -- all "board of directors" type powers (e.g. sale of AB LLC, merger or consolidation of AB LLC, voluntary liquidation or dissolution of AB LLC, incurrence of indebtedness of more than \$25,000 by AB LLC, etc.) have been specifically retained by A1 and B1.

Contemplated Transaction

1. A1 and B1 desire to expand the business of AB LLC. To that end, certain assets held by A1 (the "Assets") will be transferred to AB LLC. A and B, through various mechanisms, regularly acquire and dispose of the types of assets that constitute the Assets. The Assets represent less than 2 percent of the assets of A which relates to A1 LLC's business. Depending upon the resolution of certain tax and accounting issues, the transfer of the Assets should occur in one of two ways:

- a. A1 will transfer to B1 an undivided 50% interest in the Assets in exchange for which B1 will pay to A1 an amount in excess of \$15 million in cash, and thereafter, A1 and B1 will contribute their undivided 50% interests in the Assets to AB LLC; or
A1 would contribute the Assets to AB LLC as a capital contribution. As a result of the contribution, A1 will be deemed to own greater than 50% of the

*TYPE OF ASSETS?
Contracts
payment to form an entity (merchandise)
that asset transaction*

*Assets sold to B1
potentially reportable
same as sold to LLC
if reportable, contribution
sold to LLC
potentially reportable by A1 & B1
since not in partnership process
- both control*

could (use it) for payment obtain authorization, B1 will + address of the

membership interests in AB LLC. To equalize A1's and B1's holdings in AB LLC, B1 will acquire from A1 membership interests in AB LLC so that following the acquisition of membership interests, A1 and B1 will hold 50% of the membership interests of AB LLC. In connection with B1's acquisition of certain of A1's membership interests in AB LLC, B1 will pay to A1 an amount in excess of \$15 million in cash.

