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Date: 03/10/98 Time: 09:23 AM No. Pages (Including Cover): 3  
To: Nancy Ovuka Company: Federal Trade Commission  
Main Telephone: 202-326-2609 Facsimile #: [REDACTED]  
From: [REDACTED]  
Subject: E-Fax:  
Message:

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For purposes of analysis, assume that all relevant "size-of-person" and "size-of-transaction" tests are met.

1. Several "controlled" entities of A, including A1, issue credit cards (including bank credit cards and private label credit cards) to consumers. A1 owns 100% of the accounts of a certain bank card portfolio (the "Accounts") and a 25% interest in the receivables relating to such portfolio (the "Receivables").
2. Several "controlled" entities of B, including B1, issue credit cards (including bank credit cards and private label credit cards) to consumers. B1 and B2 (also a "controlled" entity of B), collectively own a 75% interest in the Receivables.
3. C1, a "controlled" entity of C, and D1, a "controlled" entity of D, intend to enter into a transaction whereby C1 and D1 will purchase the following:
  - A. C1 will acquire from A1  $\frac{1}{4}$  of the Accounts;
  - B. C1 will acquire from A1, B1, and B2,  $\frac{1}{4}$  of the Receivables;
  - C. D1 will acquire from A1  $\frac{1}{4}$  of the Accounts, and
  - D. D1 will acquire from A1, B1, and B2,  $\frac{1}{4}$  of the Receivables.
4. Following the sale of the Accounts and Receivables to C1 and D1:
  - A. Other "controlled" entities of A will still issue bank credit cards and private label credit cards to consumers; and
  - B. B1 will still issue private label credit cards to consumers, and other "controlled" entities of B will still issue bank credit cards and private label credit cards to consumers.
5. Since the "person" of which each of A and B are included will still extend consumer credit after the sale of the Accounts and Receivables to C1 and D1, the foregoing transactions should not be subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, because the foregoing transaction would be deemed to be conducted in the ordinary course of all of the parties' respective businesses.

LLC  
802.9

March 11, 1998

VIA FACSIMILE

Ms. Nancy Ovuka  
Premerger Notification Office  
H-303  
Federal Trade Commission  
Washington, DC 20580

Re: Section 802.9 exemption

Dear Ms. Ovuka:

I represent [redacted] LLC ([redacted]) and [redacted] ([redacted]). I appreciate the opportunity to speak with you and obtain the FTC's advice about compliance with the Hart-Scott-Rodino Antitrust Improvements Act. This letter memorializes our prior discussions and the FTC's advice.

I. Background Facts

A. [redacted] LLC, [redacted] is a [redacted] corporation that operates 56 stores in eleven western states. [redacted] LLC is the sole shareholder of [redacted]. [redacted] has two classes of membership interests: Governance Units and Financial Units. Both Units have the same rights to receive profits and distributions upon liquidation. Members with Governance Units have the power to appoint and remove [redacted] Managers and also have the right to cast votes on certain matters. A Manager must own at least one Governance Unit, and therefore, no outsider or third party can serve as a Manager of [redacted]. The Governance and Financial Units are owned as follows:

	<u>Gov. Units</u>	<u>Fin. Units</u>	<u>Total</u>	<u>%</u>
[redacted]	100	475	575	28.75
[redacted]	-0-	525	525	26.25
[redacted]	-0-	525	525	26.25
[redacted]	-0-	375	375	18.75
Totals			2,000	100%

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The Managers of [REDACTED] and [REDACTED] control all [REDACTED] management decisions. In addition, as holders of all of the Governance Units, [REDACTED] and [REDACTED] are the only Members who can appoint or replace a Manager. Members who hold only Financial Units may vote on certain extraordinary transactions, such as the dissolution of [REDACTED] [REDACTED], as Managers and sole holders of the Governance Units, have powers similar to general partners in a limited partnership. However, the Managers must act by majority vote of all Managers.

The Managers may delegate authority to a single Manager. However, [REDACTED] operating agreement specifically provides that so long as [REDACTED] is employed by [REDACTED] (the surviving corporation of the merger), no [REDACTED] management responsibilities may be delegated to her alone. Similarly, [REDACTED] operating agreement specifically provides that so long as [REDACTED] is a consultant for [REDACTED], no [REDACTED] management responsibilities may be delegated to him alone. Because there are only two Managers, both must agree to act.

At this time, [REDACTED] owns no other assets other than the [REDACTED] stock.

B. Proposed Transaction Enclosed is a chart that briefly summarizes the proposed merger transaction. [REDACTED] will form [REDACTED] [REDACTED]. [REDACTED] will merge into [REDACTED], with [REDACTED] surviving the merger. At the same time, [REDACTED] will receive 2,143,013 shares of [REDACTED] common stock in exchange for all of the [REDACTED] stock. The [REDACTED] common stock to be received by [REDACTED] is worth approximately \$43.5 million (based on its current market price).

As of January 30, 1998, [REDACTED] had 2,904,745 shares of Class A common stock outstanding (which stock has 10 votes per share), and 45,575,415 shares of Common Stock outstanding. If [REDACTED] receives 2,143,013 shares of Common Stock, it will own approximately 4.5% of the outstanding [REDACTED] Common Stock (using the 45,575,415 figure, plus the 2,143,013 new shares issued to [REDACTED]). This does not include the nonregistered Class A common stock with the super-voting powers.

C. Involvement of the [REDACTED] with [REDACTED] [REDACTED] now serves as the president of [REDACTED]. After the merger, [REDACTED] will serve as a consultant for [REDACTED]'s for a year. He will not be a director, officer or employee of [REDACTED], and will not have any management authority with respect to those corporations after the merger. However, [REDACTED] may serve as president of [REDACTED] and will be an employee with some management authority over [REDACTED] the [REDACTED] subsidiary.

There is a possibility that [REDACTED] will provide consulting services to [REDACTED] during the transition period because of his knowledge of [REDACTED]'s computer systems. [REDACTED] is currently employed by [REDACTED] and could continue to be employed by [REDACTED] after the merger, although we understand that no final decisions have been made by [REDACTED] would not

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be an officer or director of the surviving corporation, and would not have any management authority. Furthermore, neither [REDACTED] nor [REDACTED] is a Manager of [REDACTED]

II. Issue

During our telephone conversations, we discussed the availability of the §802.9 exemption for [REDACTED]. Because of the amounts involved in this merger, [REDACTED] would be an acquiring person of the [REDACTED]'s stock, but for the exemption. However, I understand the FTC agrees that if (1) [REDACTED] (during the time she is employed by [REDACTED]), acting alone, does not have the authority over [REDACTED] that a general partner would have over a limited partnership, and (2) [REDACTED] (during the time he is a consultant for [REDACTED]), acting alone, does not have the authority over [REDACTED] that a general partner would have over a limited partnership, then the 802.9 exemption would be available to [REDACTED]

I understand that this means that in completing the HSR filing, [REDACTED] would only file as an "acquired person", and not as "both" an acquired and acquiring person. Perhaps most importantly, this would relieve [REDACTED] from the obligation to pay the HSR filing fee.

Please confirm my understanding of the availability of the §802.9 (solely for investment) exemption for [REDACTED] based on the facts outlined above. Thank you for your assistance and the FTC's advice on this matter.

Very truly yours,

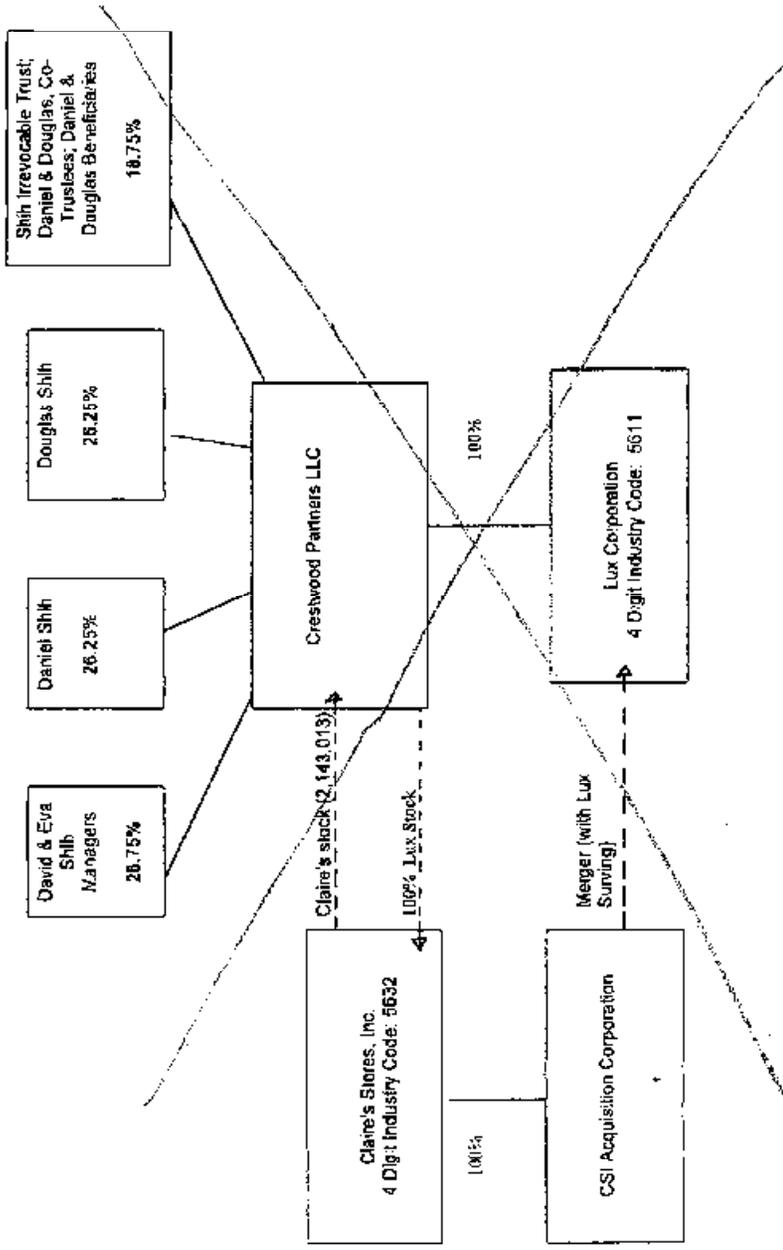
[REDACTED]

Cc:

[REDACTED]

# ELLIS, LI & MCKINSTRY PLLC

ATTORNEYS AT LAW



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