

Verne, B. Michael

From: [REDACTED]
Sent: Friday, December 06, 2013 10:12 AM
To: Verne, B. Michael
Subject: Request for HSR Guidance - Section 7A(c)(1), Rule 802.1 (a), (d)

We seek confirmation that the proposed transaction described below is exempt from the notification and waiting period requirements of the HSR Act by virtue of Section 7A(c)(1) of the Act and Section 802.1 of the FTC Pre-Merger Notification Rules, which covers transactions in the ordinary course of business and involving durable goods.

1. Seller (which includes its ultimate parent entity and controlled affiliates) is a diversified commercial lender that provides commercial financing, including equipment financing services to customers in several industries throughout the United States and elsewhere.
2. Seller proposes to sell to an investment trust controlled by Buyer, a diversified investment firm (i) all of its interests in a controlled affiliate of Seller that holds a portfolio of a particular type or class of transportation equipment, and associated leases and loan financing agreements; and (ii) a small portfolio of transportation equipment and associated leases of the same type (collectively, "Acquired Assets"), for a total cash purchase price that exceeds the threshold for consideration of size of persons under the HSR Act.
3. The Acquired Assets are a portfolio of a particular type or class transportation equipment and associated leases and loan financing agreements relating to the transportation equipment that are currently held by the controlled affiliate or other affiliates of Seller. Following the transaction, Seller intends to continue its business originating leases and loans relating to this type or class of transportation equipment without interruption. The Acquired Assets will be transferred subject to leases that will continue following the transfer.
4. Seller currently provides commercial financing and equipment financing to customers in a variety of other transportation areas, as well commercial financing in other non-transportation industries including energy and healthcare. Following the transaction, Seller will continue its business originating leases and loans relating to this class or type of transportation equipment without interruption.
5. The Acquired Assets are not currently operated by Seller as a business unit in a particular location that will be discontinued following the closing of the transaction. Buyer will acquire and hold the Acquired Assets solely for sale or leasing to entities that are not within Buyer.
6. Buyer will not acquire from Seller any personnel, operations, or other assets used in connection with ownership, sale, financing or leasing of transportation equipment held by Seller.
7. The proposed transaction is exempt under Rule 802.1(d)(1) regarding "durable goods" because Buyer will acquire and hold the Acquired Assets solely for sale, financing or leasing to third parties that are not within Buyer, and is exempt under Rule 802.1(d)(2) because Seller holds the Acquired Assets solely for sale, financing or leasing to third parties that are not within Seller.
8. The proposed transaction is not the acquisition of an "operating unit" as defined in Section 802.1(a), as the Acquired Assets are not operated by Seller as a business undertaking in a particular location or for particular products or services; rather, the equipment assets are under lease to third parties or are held solely for sale or leasing to third parties.
9. The proposed transaction is covered under the ordinary course of business exception because the Seller will continue to provide commercial financing, including equipment financing services in transportation and non-transportation industries, including originating leases and loans relating to the particular type or class of transportation equipment that is the subject of this proposed transaction.

AGREE
 Bm
 12/6/13