

7A(c)(1)

September 2, 2004

VIA FACSIMILE & FEDERAL EXPRESS

B. Michael Verne  
U.S. Federal Trade Commission  
Premerger Notification Office  
600 Pennsylvania Avenue, N.W.  
Room 301  
Washington, D.C. 20580

Re: Hart-Scott-Rodino Act ("HSR Act")/Bank  
Holding Company Act Exemptions

2004 SEP 2 11:51  
FEDERAL TRADE COMMISSION

Dear Mike:

Thank you for taking the time to speak with me yesterday. I am writing to confirm the HSR Act advice we discussed.

Our client ("Buyer") is a bank holding company registered under the Bank Holding Company Act ("BHC Act"), and it has executed an agreement to acquire (in a merger transaction) all the outstanding voting securities of another bank holding company registered under the BHC Act ("Seller"). Seller does not engage in so-called "4(k) activities" under 12 U.S.C. § 1843(k), nor has it registered as a "financial holding company" under the provisions of the Gramm-Leach-Bliley Act of 1999. On August 6, 2004, Buyer filed applications with the appropriate Federal Reserve Bank pursuant to both Section 3 of the BHC Act, 12 U.S.C. § 1842 (to acquire Seller's banking subsidiaries) and Section 4(c)(8) of the BHC Act, 12 U.S.C. § 1843 (to acquire Seller's non-banking subsidiaries).

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Since those filings were made, the staff of the Board of Governors of the Federal Reserve System has determined that approval of Buyer's Section 4(c)(8) application is not required in order for Buyer to acquire Seller's non-banking subsidiaries. The basis for the staff's conclusion was two-fold: First, one of the Seller's non-banking subsidiaries is merely a vehicle for the issuance of trust-preferred securities. The subsidiary's purpose is to sell these trust-preferred securities to investors and then lend the proceeds to Seller. As such, its activities are exempt from review under the BHC Act. See 12 U.S.C. § 1843(c)(1)(C). Second, the remainder of the Seller's non-banking operations are equity investments in other companies, none of which accounts for 5% or more of those companies' outstanding voting securities. As such, those investments may also be acquired by Buyer without prior Federal Reserve approval. See 12 U.S.C. § 1843(c)(6). Based on the staff's conclusion, Buyer withdrew its Section 4(c)(8) application on August 26, 2004.

The transaction continues to require bank agency approval under Section 3 of the BHC Act, 12 U.S.C. § 1842, and no portion of Seller's operations or businesses is subject to subject to Section 4(k) of the BHC Act, 12 U.S.C. § 1843(k). We therefore concluded that the transaction remains exempt from the notification requirements of the HSR Act pursuant to 15 U.S.C. § 18a(c)(7), regardless of the value of Seller's non-banking subsidiaries. You indicated that this conclusion is correct.

I hope this letter accurately summarizes the advice we discussed during our telephone conversation yesterday. If my summary of our conversation is incorrect in any way, please let me know as soon as possible. Thanks again for your time.

Very truly yours,

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AGREE.

B. Michael Verne

9/3/04