

Verne, B. Michael

802.4

From: [REDACTED]
Sent: Friday, June 30, 2006 3:05 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: REIT Transaction

Mike,

Thanks very much for making the time to speak with [REDACTED] and me this morning to give us guidance concerning the HSR exemptions applicable to our transaction. We just wanted to send this confirmatory email to summarize our analysis and conclusions.

As we discussed, my client ("Buyer") is a non-REIT entity that proposes to acquire 100% of the LLC interests of [REDACTED] client ("Seller"), which is a real estate finance company specializing in high-yield commercial mortgage-backed securities ("CMBS"). The Seller owns 99.9% of a corporate REIT ("REIT"), through which it conducts most of its activities, consisting of: (1) direct investments in CMBS and related securitization certificates or interests; (2) minority equity interests in private equity investment funds (organized as LLCs) holding these same types of assets; and (3) a fund management business by which it manages funds in which it is co-invested in return for certain promote fees or other fee-based compensation. In addition, Seller conducts a CMBS/mortgage servicing business through a "taxable REIT subsidiary" ("TRS"). The purchase price will be roughly \$250 million.

In analyzing this transaction under Rule 802.4, we concluded as follows:

- (1) The direct investments in CMBS and related mortgage instruments are exempt under Section 7A(c)(2) of the HSR Act;
- (2) The value of the indirect minority investments in the funds holding similar assets are not counted toward the \$50 million (as adjusted) limitation in 802.4(a) (and, in any event, would be similarly exempt under 7A(c)(2) if they were included within the Seller);
- (3) The fund management business conducted as REIT-eligible activities by the Seller are exempt under the so-called "REIT exemption," see, eg, Premerger Notification Practice Manual, Interp. No. 197; and
- (4) The mortgage servicing operations included within the TRS are non-exempt assets, the aggregate fair market value of which must be counted toward the \$50 million (as adjusted) limit of Rule 802.4.

Since the only non-exempt assets are those included within the TRS, and the parties have obtained an independent appraisal determining that the fair market value of the TRS holdings is approximately \$15 million, we have concluded that the dollar limitation in Rule 802.4 will not be exceeded. Accordingly, based on this analysis, we have concluded that the above described transaction is not reportable under HSR.

Please let us know if the foregoing summary does not accurately describe our telephone conversation today on this topic. As always, your guidance has been greatly appreciated. We hope you have an enjoyable holiday weekend.

Best regards,

Agree -
B. Michael
6/30/06