

7A(c)(1)

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September 14, 2006

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Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street & Pennsylvania Ave., NW
Washington, DC 20580

Re: Exemptions Applicable to Dispositions of Mortgage Servicing Rights

Dear Michael:

This letter is written to confirm the guidance and interpretations that you have provided to us regarding the applicability to a proposed series of asset divestitures of certain exemptions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the Commission's implementing regulations thereunder, and in particular the "ordinary course of business" exemption contained in Section 7A(c)(1) of the Act and Rule § 802.1. The relevant facts regarding the proposed transaction and our analysis that we have discussed are summarized below.

FACTS

Parent is a publicly traded bank holding company that provides through its principal lines of business a broad range of financial services to consumers and businesses in selected markets in the United States and Canada. Parent operates its business through several subsidiaries, including certain direct and indirect wholly owned subsidiaries referred to in this letter as Sub A, Sub B, and Sub C. Sub A is a state chartered bank that operates primarily in Parent's home state. Sub A engages in typical banking depository, trust and lending activities, including the provision of first lien residential mortgage loans to consumers and the sale and servicing of such loans. Sub B is a non-bank operating subsidiary that, in conjunction with and as a line of business of Sub A, engages in the mortgage lending and servicing business. While Sub B focuses on second lien residential mortgage lending, it also engages in first lien residential mortgage lending in numerous states, and in the sale and servicing of such loans. Sub C has been engaged primarily

[REDACTED]


in first lien residential mortgage lending in numerous states, and in the sale and servicing of such loans.

While Parent has deemed it most efficient to conduct its regional banking, national conventional mortgage and national home equity lending operations through distinct subsidiaries, the subsidiaries have operated cooperatively as necessary. Notably, Sub A provides the principal source of mortgage acquisition funding for Sub B and Sub C; and Sub C regularly (approximately monthly) sells second mortgage loans on a servicing released basis to Sub B.

In connection with the financial services offered by Parent through its subsidiaries as described above, Parent holds mortgage servicing rights relating to third-party mortgages not held by the issuer, and certain assets that support its mortgage servicing operations. Currently, each of Sub A, Sub B, and Sub C owns mortgage servicing rights valued at approximately \$29.9 million, \$3.8 million, and \$285.6 million, respectively. Through the historic operation of its mortgaging servicing assets, Parent and its subsidiaries have participated in the robust national market for mortgage servicing rights, and have bought and sold mortgage servicing rights (including separate purchases and sales of servicing rights, and sales of whole mortgage loans accompanied by servicing rights on a "servicing released" basis) from and to other financial institutions on a periodic basis.

Parent recently entered into an agreement to sell Sub C's conventional first mortgage loan production assets in a transaction that will likely be exempt from reporting obligations under the Act because the value of the non-exempt assets sold in the transaction will likely not exceed \$56.7 million. (The vast majority of the assets sold in the transaction will be exempt under Section 7A(c)(2) of the Act.) (We do not purport to address that transaction in this letter.) In that transaction, Sub C will not sell any of its mortgage servicing rights, any of its assets that support its mortgage servicing operations (which assets include certain property, equipment, employees and systems) (the "**Servicing Operations Assets**"), nor any of its assets related to the origination and acquisition of loans provided to fund planned or in-progress construction (the "**Construction Loan Assets**").

Parent is now contemplating selling all of Sub C's mortgage servicing rights in a series of transactions (perhaps three or four) to separate, third-party financial institution purchasers. Parent and Sub C expect that all of these transactions will be structured in a manner very similar to the sales of mortgage servicing rights to financial institutions effected in prior years and on terms consistent with transfers of servicing rights in the general market. Parent further anticipates that each of the purchasers for the mortgage servicing rights will consider the purchase and sale transactions as "ordinary course" purchases. Moreover, because Parent and Sub C expect to sell the mortgage servicing rights to financial institutions with existing mortgage servicing operations, Sub C does not anticipate selling any of its Servicing Operations Assets to the purchasers. It may subsequently transfer its Servicing Operations Assets to a third party (in a separate transaction that we do not purport to address in this letter) or, if not, discontinue Sub C's servicing activities and transfer certain of the Servicing Operations Assets to Sub A or Sub B and liquidate others. Furthermore, in these transactions, Sub C will not be divesting any of its Construction Loan Assets. While in the series of transactions Parent expects to divest



approximately \$285.6 million in mortgage servicing rights, Parent is not exiting the mortgage servicing business. Through its operations in Sub A and Sub B, Parent will continue to compete in the mortgage servicing business, will and continue to hold approximately \$33.3 million in mortgage servicing rights, and will continued to create, purchase, and sell mortgage servicing rights from time to time.

ANALYSIS

We understand that mortgage servicing rights related to third-party mortgages are not covered by the exemption provided in Section 7A(c)(2) of the Act. However, it is our understanding that the Premerger Notification Office Staff does believe that sales of mortgage servicing rights between financial institutions that service those rights as part of their ongoing business can qualify under Section 7A(c)(1) of the Act and Rule § 802.1 as assets "transferred in the ordinary course of business." This exemption applies as long as (1) the divesting entity will remain in the business of servicing mortgage loans after the acquisition, and (2) the transaction does not constitute an acquisition of an operating unit within the meaning of Rule § 802.1(a). We believe that these conditions are satisfied in the contemplated series of transactions.

First, the divesting entity is not exiting the mortgage loan or mortgage servicing business, but will remain in the business of servicing mortgage loans following the proposed series of divestitures. Following each of the first few in the series of dispositions of mortgage serving rights, Sub C will continue to hold and operate mortgage servicing rights. Moreover, even following Sub C's final disposition of mortgage servicing rights, Parent, through its operations of Sub A and Sub B will remain in the business of servicing mortgage loans, albeit at a reduced level, and will continue to create, purchase, and sell mortgage servicing rights in the ordinary course of business.

Second, the proposed series of divestitures does not constitute an acquisition of an operating unit within the meaning of Rule § 802.1(a). In the series of mortgage servicing rights dispositions, no single purchaser will be acquiring substantially all of the assets of an operating unit. Each purchaser merely will be acquiring a portion of Sub C's existing portfolio of mortgage servicing rights. Moreover, even considering the series of proposed divestitures taken as a whole, Sub C will not be disposing of substantially all of its assets. Following the transactions, Sub C will continue to own and maintain the Construction Loan Assets and, at least for a short period of time, the Servicing Operations Assets. (As noted above, Sub C may subsequently transfer its Servicing Operations Assets to a third party (in a separate transaction that we do not purport to address in this letter) or, if not, discontinue Sub C's servicing activities and transfer certain of the Servicing Operations Assets to Sub A or Sub B and liquidate others.)

Based on the foregoing analysis and facts described above, we have concluded that none of the transactions contemplated by the series of mortgage servicing rights dispositions is reportable under the Act, and accordingly the parties do not intend to make any filings thereunder. We understand that the Premerger Notification Office Staff concurs with this interpretation of the Act and Rules.

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Michael B. Verne
September 14, 2006
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Please let us know if you have any questions concerning this letter or require any additional information. As usual, we very much appreciate your attention to this matter.

Sincerely,

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AGREE -
B. Verne
9/14/06

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