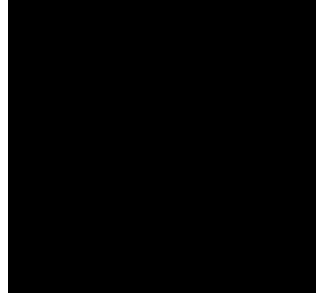
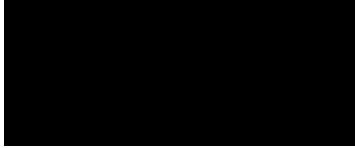


7A(c)(1)



January 8, 2009

By Email

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: HSR Filing Exemption Applicable to Sale of Mortgage Servicing Rights

Dear Mike:

This letter is to confirm the guidance and interpretation that you provided to us yesterday regarding the applicability to a proposed 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 16 C.F.R. § 802.1. The relevant facts regarding the proposed transaction and our analysis that we discussed are summarized below.

Facts:

Assume size of persons and size of transaction tests are met.

The Parties:

Company A is a large diversified financial services corporation that has, among other subsidiaries, indirect wholly-owned subsidiaries Sub X and Sub Y.

Both Sub X, Sub Y, and other subsidiaries of Company A own portfolios of mortgage servicing rights ("MSRs"), and have acquired or sold MSRs in the past. The MSRs that are currently held by Sub X represent no more than 6% (depending on how measured) of the MSRs held by Company A through its various subsidiaries on a consolidated basis.

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Company B specializes in the servicing of mortgage loans. Company B has bought MSR's in the past as part of its ordinary course of business. Indeed, because Company B does not own or originate any mortgage loans, acquisition is the only way for Company B to obtain MSR's.

The Transaction:

Company A has decided to re-organized its mortgage servicing operations with respect to Sub X. Accordingly, it will: (a) sell some of the MSR's held by Sub X to certain third party investors; (b) transfer some of the MSR's held by Sub X to Sub Y; and (3) sell some of the Sub X MSR's to Company B. The sale by Sub X of MSR's to Company B will be for an amount in excess of \$63.1 million. No other assets, such as offices, equipment, or employment relationships will be included in the sale. At the conclusion of these transactions, Sub X will remain in existence but will no longer hold MSR's. Company A will remain in the business of servicing mortgage loans through Sub Y and other of its subsidiaries after the transaction.

Question at Issue:

Is the sale of MSR's by Sub X to Company B exempt as an ordinary course transaction?

HSR Rules:

The "ordinary course of business" exemption provided by 15 U.S.C. § 18a (c)(1) and 16 C.F.R. § 802.1 applies to acquisitions of "goods and realty," which the PNO has interpreted to include the acquisition of loan servicing portfolios. [*See, e.g.*, Letter to Richard Smith dated March 17, 1998, ("[T]he sale of mortgage servicing rights would be treated by the Staff as the sale of 'goods' for the purposes of the ordinary course of business exemption.")] The 16 C.F.R. § 802.1 exemption applies so long as the acquiring person does not acquire "all or substantially all of the assets of an operating unit," defined as assets that are "operated as a business undertaking in a particular location or for a particular product or service."

The ABA Premerger Notification Practice Manual (Fourth), 2007, at p. 13, notes that the PNO has taken the position that unlike other ordinary course of business acquisitions, the PNO allows the ordinary course exemption for the sales of certain types of financial portfolios, even if the portfolio represents all of the assets of a subsidiary of the acquired person.

Conclusion:

Because Company A will remain in the business of servicing mortgages, and is not disposing of all of its MSR's (indeed it is retaining 94% of them), the transaction as described is exempt under 16 C.F.R. § 802.1(a) as in the ordinary course of business. This is true even

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though Sub X, the entity in which Company A holds the MSRs that will be acquired by Company B, will itself no longer hold MSRs after the transaction is complete.

Based on the foregoing analysis and the conclusion that the transaction contemplated by the mortgage servicing rights acquisition is not reportable under the Act, the parties do not intend to make an HSR filing. We understand that the Premerger Notification Office Staff concurs with this interpretation of the Act and Rules.

If this description of our conversation and the PNO's position is not consistent with either your understanding or our telephone conversation yesterday, or if you have questions, please do not hesitate to contact me.

Very truly yours,



AGREE -
B. Michael Verne
1/12/09