

14(C)(1); 804.160/

[REDACTED]

[REDACTED]

[REDACTED]

material may be  
the confidentiality provision  
Section 7A (b) of the Clayton Act  
which restricts release under the  
Freedom of Information Act  
which restricts  
Freedom of Information Act

July 10, 1991

John M. Sipple, Jr., Esquire  
Chief  
Premerger Notification office  
Federal Trade Commission  
Room 303  
6th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Exemption under the Hart-Scott-Rodino  
Antitrust Improvements Act of 1976

Dear John:

In accordance with our telephone conversation of June 28, 1991, I am writing to confirm your oral advice, based on information furnished during their conversation, that the transaction described below (the "Transaction") is exempt from the premerger notification requirements under the Hart-Scott-Rodino Act of 1976, as amended (the "Act").

The Transaction

Financial Institution A is a [REDACTED] bank with total assets of approximately [REDACTED] at December 31, 1990. Institution A owns a subsidiary which operates a mortgage servicing business. As of June 1, 1991, Institution A was servicing mortgage accounts with total outstanding balances of approximately [REDACTED]. Institution A services a variety of mortgages including FNMA, FHLMC, GNMA, conventional and jumbo residential mortgages and commercial mortgages, in a majority of the states of the United States.

Institution A sold Institution B, an entity which also owns and operates a mortgage servicing subsidiary, approximately [REDACTED] of servicing rights on [REDACTED]. The purchase price was approximately [REDACTED]. The servicing rights sold included GNMA and FNMA type of accounts representing mortgages on properties in a large number of states. The servicing rights sold amounted to less than 25% of Institution A's portfolio of servicing rights. Institution A

14

John M. Sipple, Jr., Esquire  
July 10, 1991  
Page 2

will continue to service mortgages in most states and will continue to purchase and sell mortgage servicing rights as market conditions warrant.

### The Mortgage Servicing Market

Commencing with the growth of the secondary mortgage market in the 1980's and the increased competitiveness in the market, the business of mortgage lending has evolved into distinct lines of business. Different entities emphasize one or more of originating, servicing, or financing home loans. There are active markets in loans, mortgage-backed securities, and mortgage servicing.

Because there are significant economies of scale in servicing, many entities elect to limit their participation to servicing loans they originate while others specialize in servicing loans owned by others (often through securitization).

The market for servicing rights has grown from \$150 billion in 1987 to \$200 billion in 1989. There are more than one hundred brokers servicing the market with an electronic sales network and thousands of market participants. Bulk sales are routinely closed within 48 hours and sales of individual purchased mortgage servicing rights ("PMRS's") are closed immediately.

As of the end of 1990, the servicers of the largest 25 mortgage portfolios administered over \$533 billion in portfolios ranging from \$12.0 billion to \$66.1 billion. The amount serviced by them, on average, increased by 9.34% during the last six months of the year with individual changes ranging from a decline of 7.34% to an increase of 242.40%. Because the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and the Regulations of the FDIC limit the amount of PMSR's which can be held by thrift and banking institutions as a function of their capital, there has been an unusual degree of activity in the market in the past two years. That situation has been compounded by the Resolution Trust Corporation's effort to sell \$250 billion in servicing rights in large transactions. As a result, there has been an opportunity to acquire servicing rights on favorable terms.

The market for servicing generally is sensitive to interest rates since, as interest rates drop, mortgage loans tend to prepay, the value of the stream of money represented by the servicing fee declines. Because of the volatility in interest rates in recent years, mortgage servicing tends to be similarly volatile and the market is very sensitive to any event which

[REDACTED]

John M. Sipple, Jr., Esquire  
July 10, 1991  
Page 3

would delay execution of sales. Because of value fluctuations, it is not unusual to have institutions purchasing and selling servicing portfolios in the same way one would deal in other interest sensitive obligations.

Discussion

Based on the foregoing, I believe that the Transaction does not represent the sale of a "business" or of "substantially all of the assets of . . . an operating division" of a business within the meaning of 16 C.F.R. § 802.1(b). I believe the Transaction constitutes a transfer of assets "in the ordinary course of business" and therefore is exempt under Section 7A(C)(1) of the Act from the premerger notification requirements under the Act.

I understand from our telephone conversation that, based on the facts of the Transaction as set forth in this letter, the Premerger Notification Office staff concurs with the foregoing interpretation of the Act. Relying on your oral advice, we advised our client to complete the Transaction without filing and the client did so on [REDACTED]

If you have any questions regarding this matter or need any additional information, please call me.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]