

[REDACTED]

[REDACTED]

The acquisition of mortgages is exempt under 7A(c)(2) + a mortgage is not an asset under 801-21. Therefore, its value need not be aggregated with other non-exempt assets under 801.13

801-21
801.13

PROPRIETARY AND CONFIDENTIAL

November 21, 1991

BY OVERNIGHT COURIER

+ a person would only file, if necessary, for the non-exempt assets.

Mr. Victor L. Cohen, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

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RE: Hart-Scott-Rodino Act Interpretation

Dear Mr. Cohen:

Thank you for your assistance in our phone conversations of today and yesterday in providing the Premerger Office's position regarding the Hart-Scott-Rodino Act ("Act") and the Commission's implementing rules ("Rules"). I am writing to confirm my understanding of that position.

As I explained, [REDACTED], a wholly-owned subsidiary of [REDACTED] itself a wholly-owned subsidiary of [REDACTED] Inc. (collectively [REDACTED], currently is negotiating an acquisition agreement for the purchase of certain home improvement loans from another financial services firm. The proposed transaction poses the question of the appropriate treatment of an acquisition of mortgage loans exempt under § 7A(c)(2) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18A(c)(2), when acquired in a package transaction with assets utilized to service the acquired mortgage loan portfolio.

Specifically, [REDACTED] is negotiating a transaction in which it would acquire a home-improvement mortgage loan portfolio ("mortgage portfolio") from a financial services entity that is exiting that business. The acquired firm desires to sell the entire mortgage portfolio (and related servicing assets) to [REDACTED]. It is probable, however, that the final purchase agreement will exclude certain specified mortgage loans from the portfolio package that [REDACTED] acquires.

In addition to the mortgage portfolio, [REDACTED] is negotiating to acquire from the acquired firm various assets employed to service the mortgage portfolio ("servicing assets"). These servicing assets consist primarily of furniture, fixtures, and office equipment. In addition, [REDACTED] plans to hire certain employees of the acquired firm to continue performing the servicing of the acquired mortgage portfolio. [REDACTED] also will lease from the acquired person computer equipment that the latter uses in servicing the mortgage portfolio, and will assume the lease of the premises where the servicing is performed.

Victor L. Cohen, Esquire
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The mortgage portfolio itself accounts for the dominant share of the transaction's fair market value. The final purchase agreement is expected to assign a separate price to the servicing assets. This price will be less than one percent of the overall purchase price. It is virtually certain that neither the fair market value nor any assigned purchase price of the servicing assets alone will be sufficient to trigger the \$ 15 Million size-of-transaction test under the Act and the Rules. On the other hand, if the transaction is otherwise reportable, that size-of-transaction test clearly would be met if the value of the (otherwise exempt) mortgage portfolio must be aggregated with the value of the servicing assets because the two are acquired in the same transaction.

You have informed me that, as the Premerger Office interprets the HSR Act and the Rules, the acquisition of the mortgage portfolio is exempt under §.7A(c)(2) of the Act. That provision exempts from the Act's reporting requirements "acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities." Further, under HSR Rule 801.21, such mortgages are not treated as "assets" of the acquired person. And under Rule 801.13 the mortgage portfolio will not be treated as an asset held by [REDACTED] as a result of the acquisition. Thus, the mortgage portfolio is not aggregated with the servicing assets in applying the size-of-transaction test of the Act and the Rules. The Premerger Office's position is that [REDACTED] acquisition of the servicing assets would be reportable only if their assigned purchase price or fair market value by itself met the \$ 15 Million size-of-transaction test. Consequently, under the above facts the entire package acquisition of the mortgage portfolio and servicing assets would not be reportable under the Act and the Rules.

If the transaction proceeds, [REDACTED] desires to make any required filing in the very near future in order to consummate by year end. I am therefore requesting yet another courtesy: I would greatly appreciate your calling me directly at [REDACTED] if my understanding of your Office's interpretation is incorrect.

I am grateful for your prompt and courteous assistance in helping [REDACTED] assure that it is in full compliance with all applicable premerger reporting obligations.

Sincerely,
[REDACTED]