

7A(c)(a); 7A(c)(1)

FEDERAL TRADE  
COMMISSION  
PREMERGER NOTIFICATION  
OFFICE

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Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
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Washington, D.C. 20580

This material may be subject to the  
confidentiality provisions of section  
7A(H) of The Clayton Act which restricts  
release under The Freedom of Information  
Act.

Dear Mr. Smith:

This request for an informal interpretation of Clayton Act §7A(c)(1) and (2) and HSR rule 802.1 involves our client's sale of a 70% participation in a loan portfolio.

Our client, a large insurance company, has loan portfolios in the billions of dollars. Approximately three years ago, it stopped making agricultural finance loans ("Agri-Finance loans"), that is, loans to farmers secured by real estate mortgages. At present our client's Agri-Finance loan portfolio is approximately \$300 million. Our client continues to make agricultural business loans ("Agri-Business loans"), that is, loans to agriculture related borrowers made on credit-based analyses of borrowers' financials and requiring borrowers to give financial covenants. At present our client's Agri-Business loan portfolio is over \$2 billion. The distinction between Agri-Finance loans and Agri-Business loans is somewhat fuzzy because many of the latter involve real estate as security as do all of the former. Although, as indicated above, our client does not currently make Agri-Finance loans, it may resume that type of lending in the future.

Our client's personnel who handle receipt of payments, accounting, and issuance of financial reports do so for both types of agricultural loans. At present our client has only two field service people exclusively handling Agri-Finance loans. They call on farmers to check collateral and, on a

farmer's request, talk about pre-payments, waivers with regard to sale of collateral, refinancing, and the hike.

In the contemplated transaction, our client will sell a 70% participation interest in its Agri-Finance loan portfolio for about \$210 million to a lender engaged nationwide in making loans to farmers. None of our client's Agri-Business loan portfolio is being sold. Our client will continue to handle payments, accounting, and financial reporting for the entire Agri-Finance loan portfolio. Our client's two field service employees are retiring at this time. The buyer's personnel will perform field servicing of the entire Agri-Finance loan portfolio subject to our client's approval.

Our client believes that the transaction described above is exempt under Clayton Act §7(c) from HSR reporting as a sale "of bonds, mortgages, deeds of trust, or other obligations which are not voting securities" and as a sale "in the ordinary course of business" in which our client will not be selling "all or substantially all the assets of an operating unit" within the meaning of §802.1 (a) of the HSR regulations. Because the bulk of the work performed in processing Agri-Finance loans is by client personnel who also work on Agri-Business loans, our client has no personnel engaged in originating Agri-Finance loans, and the distinction between the two types of loans is somewhat artificial, our client does not consider Agri-Finance loans to be an operating unit. Also, because these office personnel will continue with our client and because our client will retain a 30% participation in the Agri-Finance loan portfolio, it does not consider that it is selling all or substantially all of the assets of an operating unit even if there were one.

We would greatly appreciate receiving your informal interpretation of the statute and rules as applied to this transaction. Thank you.

Sincerely yours

[Redacted signature block]

9/25/98 - Advised writer that sale agreement to constitute the transfer of a 70% interest in mortgage loan portfolio, as such, would be exempt without any "operating unit" and is under 7A(c)(7) (see ABA letter #3267). If the sale is of a non-mortgage loan portfolio then it must not constitute an operating unit, which it doesn't appear to be.  
R.B. Smith