

2021
7A(c)(1)

[REDACTED]

October 18, 1999

VIA FACSIMILE

Mr. Richard B. Smith
Premerger Notification Office
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Ordinary Course of Business Exemption

Dear Mr. Smith:

My client proposes to enter into the transaction described below, which I believe may be exempt from premerger notification requirements as a transaction in the ordinary course of business. After you have had an opportunity to review the description of the transaction and my comments, I would like to speak with you to confirm that the Staff agrees that the transaction is exempt.

The transaction involves the transfer of title for certain rights to service residential first-lien mortgages as well as a contract to obtain servicing services for residential mortgage servicing rights to which the seller ("Seller") will continue to hold title (i.e., "subservicing"). This transaction does not involve the transfer of the underlying mortgage notes. Seller is a wholly owned indirect subsidiary of a publicly traded financial services company. Seller, in the regular course of its businesses, originates mortgage loans, services those loans and sells most of the mortgage notes and mortgages. Buyer is a mortgage banking subsidiary of a national bank and regularly acquires first-lien mortgage servicing rights.

Seller has made the decision that it wants to sell the majority, but not all, of its first-lien servicing rights, as described above. In this transaction Seller will sell almost all of its current portfolio of residential first-lien mortgage servicing rights, will contract for servicing services for other securitized residential first-lien

[REDACTED]

mortgages for which Seller is the master servicer, and will contract to transfer to Buyer the servicing rights associated with residential first-lien mortgages that Seller will originate over a one- to two-year period (Seller's mortgage origination operations are not being sold). Seller will not cease servicing first-lien mortgages as a result of this transaction. Further, Seller does not anticipate that it will be selling any of its servicing rights related to revolving residential loans secured by first- and second-lien mortgages in the near future. Seller will continue to service both commercial and revolving residential mortgages and a small number of residential first-lien mortgages. Also, as the master servicer for certain securitized first-lien mortgage loans, Seller will continue to oversee the servicing of those mortgage loans by various primary servicers.

As a result of the transaction, Seller's mortgage servicing needs will decline and it plans to reassign about half of the approximately 100 staff members it has employed in first-lien mortgage servicing. The staff that will be reassigned are not in a separate organizational unit from the staff that will continue in their current mortgage servicing function. The current staff handles both residential first-lien mortgages as well as the revolving residential mortgage work that will remain following this transaction.

It is my understanding that the sale of mortgage servicing rights among financial institutions is generally considered to be a transaction eligible for treatment under the ordinary course of business exemption under Section 7A(v)(1) and Rule 802.1. The question seems to be whether the intention of the Seller's parent to almost completely cease servicing residential first-lien mortgage loans makes the ordinary course of business exemption inapplicable to this transaction.

However, it is my understanding that the staff has previously taken the position that simply ceasing to service certain types of mortgage loans will not, by itself, make a transaction ineligible for the ordinary course exemption where the institution will continue to service other types of mortgage loans. As noted above, Seller will continue to service both commercial and junior residential mortgage loans and a small number of

Richard B. Smith
October 18, 1999
Page 3

residential first-lien mortgages. In the language of Rule 802.1, the seller in such circumstances is not viewed as discontinuing a "business undertaking." The fact that the seller in question here will continue to hold title to a substantial volume of long-term residential first-lien mortgage servicing rights after this transaction and the fact that Seller's organizational structure does not treat residential first-lien mortgage servicing as a separate line of business should make it even less likely that Seller would be viewed as discontinuing a "business undertaking."

Based on this, I am hopeful that the Staff will agree that the transaction would be exempt under Section 7A(c)(1) and Rule 802.1. In order to confirm that the Staff concurs with this conclusion, I will plan to call and discuss the matter with you. If you would like to call with any questions or comments, please feel free to do so.

Thank you very much for your attention.

[REDACTED]

cc:

[REDACTED]

WRITER ASKED ME TO REVIEW THIS IN DICK SMITH'S ABSENCE.
THE ASSETS BEING SOLD DO NOT CONSTITUTE
AN OPERATING UNIT. EXEMPT AS ORDINARY
COURSE OF BUSINESS. P. SHAFER CONCURS.

Richard Viora
10/19/99