

7A(c)(1); 7A(c)(2)

[REDACTED]

October 23, 2001

Ms. Nancy M. Ovuka
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Reportability of Proposed Sale of Portfolio of Manufactured Housing Loans

Dear Ms. Ovuka:

In follow-up to our telephone discussions, I am writing to obtain the guidance of the Premerger Notification Office staff regarding the reportability of a proposed transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the Commission's implementing Rules. Specifically, the question has arisen as to whether the proposed transaction would qualify for exemption pursuant to Section 7A(c)(1) and/or Section 7A(c)(2) of the Act. The relevant facts regarding the proposed transaction we have discussed are briefly summarized herein.

The proposed transaction concerns the acquisition of certain manufactured housing installment loans by a company engaged in the business of originating and servicing such loans from another company in the same business. The Seller proposes to transfer and assign to the Purchaser all of Seller's rights and obligations under the installment loans in exchange for cash consideration of approximately \$800 million (subject to adjustment), based on a discounted purchase price formula set forth in the agreement. The total principal and interest balance on the loans being acquired is approximately \$980 million. Each of these loans was originated by the Seller (either directly or indirectly pursuant to arrangements with manufactured home dealers, manufactured home manufacturers or manufactured home loan brokers) to finance the purchase of manufactured home products sold to individual homeowners. The loans consist of installment loan agreements evidencing an obligor's obligation to pay the indebtedness provided for therein and evidencing the respective security interests in a manufactured home and, in some cases, in the real estate upon which the manufactured home is located.

As noted above, we have discussed two possible exemptions. First, we have discussed whether the proposed transaction is exempt as an acquisition "in the ordinary course of business" pursuant to §7A(c)(1) and Rule §802.1. Second, we have discussed whether the proposed transaction is exempt as an acquisition of "mortgages" pursuant to §7A(c)(2).

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Ms. Nancy Ovuka
October 23, 2001
Page 2

Section 7A(c)(1)

With respect to §7A(c)(1) and Rule §802.1(a), we understand that a key factor in determining applicability of the exemption is "whether the seller, as result of the sale, will cease to sell particular products or provide particular services from a specific location or will exit the business of selling particular products or providing particular services." 61 Fed. Reg. 13670 (1996). Here, it is important to note that, following the proposed sale, the Seller will continue to own and service an inventory of approximately \$400 million in similar manufactured housing loans (nearly one-third of its total existing portfolio of such loans). In addition to this substantial retained portfolio of manufactured housing loans, the Seller also expects to continue to originate similar new loans, although on a much smaller scale (several million dollars in new loans per month) than it has previously. It is also important to point out that of the \$400 million in retained manufactured housing loans, approximately \$300 million consist of loans which were originated pursuant to a single program with a single manufacturer. The manufacturer will not allow the loans issued pursuant to such program nor the program itself to be transferred to the Purchaser. The majority of new loans to be originated in the future will be pursuant to this program which is scheduled to terminate in March, 2002. Essentially, upon completion of this acquisition, the Seller will have substantially reduced its business of originating and servicing manufactured housing loans. The Seller will also, however, continue other loan products, such as commercial finance and inventory finance, within the same business unit of the company.

While the Seller has not previously engaged in many outright purchase or sale transactions in these particular loan products, the Seller did purchase approximately a \$90 million portfolio of manufactured home loans from another major financing company in 1998, and has occasionally bought smaller portfolios of such loans from various local banks and retail dealers. In addition, the Seller has engaged from time to time in large asset-backed securitization transactions in these products. The securitization transactions, which are typical in this industry, were each \$1-2 billion in size, representing as much as 90% of the Seller's manufactured loan portfolio at the time of the transactions. In most cases, the securitization transactions have been structured as "true sales" in the sense that investors were afforded protection against bankruptcy-related clawbacks. Such securitization transactions are more common than outright sales of manufactured housing loans because of the absence of an active secondary market in these products, due in part to the inapplicability of various federal mortgage loan requirements.

The Purchaser is also an originator and servicer of manufactured housing installment loans and has previously made bulk purchases of manufactured housing installment loans from third party financial institutions and loan originators in its ordinary course of business and intends to continue to do so in the future. The Purchaser also intends to continue to originate new manufactured housing installment loans and to continue to service its substantial portfolio of manufactured

Ms. Nancy Ovuka
October 23, 2001
Page 3

housing installment loans. The Purchaser has also engaged from time to time in several large asset-backed securitization transactions in these products.

Based on the foregoing facts, we believe that the acquisition of this portfolio of loans could be considered to be a transfer and purchase in the ordinary course of business. The proposed transaction could be viewed as the acquisition of substantially less than all of the assets of an "operating unit," as that term is defined in the Rules, and the Seller will not completely exit the business of selling and servicing these particular loan products. The proposed sale is also comparable to some of the large securitization transactions described above, which are typical in this industry and raise no substantive antitrust concerns. *See also* Interpretation No. 21 & ABA Commentary (accounts receivable may be transferred in the ordinary course of business under §7A(c)(1)).

Section 7A(c)(2)

As noted above, all of the loans being acquired are for manufactured housing. In some cases, generally where the homeowner owns or leases the land on which the manufactured home is situated, the installment loan obligation is secured by a mortgage on real estate, and the manufactured home is considered or classified as part of the real estate under the laws of the jurisdiction in which it is located. In other cases, the homeowner's obligation to pay the indebtedness is subject to a security interest in the manufactured home only, which security interest is perfected through noting the secured party's lien on the certificate of title and/or traditional UCC chattel type filings in accordance with applicable state law. While the exact percentage breakdown of these two categories has not been determined, the contracts secured by the manufactured home only (which lien is perfected through a lien notation on the certificate of title or by UCC filing) comprise a majority of the portfolio; they clearly meet the Act's size-of-transaction test, and likely exceed the \$500 million threshold.

The first category of loans described above would clearly seem exempt under §7A(c)(2) as real estate mortgages. However, the result is less certain with respect to the second category (i.e., installment loans secured by manufactured homes only, which security interest is perfected by lien notation on the respective certificate of title or pursuant to UCC filings). In certain other transactions, we understand that the Premerger Office has concluded that such assets would not normally qualify for the §7A(c)(2) exemption. On the other hand, these manufactured housing loans are treated as real estate loans for certain other statutory purposes, such as the Home Mortgage Disclosure Act, and the homes ordinarily would be considered a type of residential property for purposes of other HSR exemptions (cf. Rule §802.2(d)), regardless of whether the land on which a particular home is situated forms part of the security for the loan. In either case, the portfolio of loan obligations arguably is of a type intended to be included within the §7A(c)(2) exemption.

Ms. Nancy Ovuka
October 23, 2001
Page 4

We very much appreciate the attention you have already given to this matter, and we understand that you will be conferring with Ms. Marian R. Bruno, Chief, and other staff of the Premerger Notification Office before discussing your conclusions with us. We look forward to conferring with you again at your earliest opportunity. I can be reached at my direct telephone number listed above, and [redacted] for the Purchaser, can be reached at [redacted]

Very truly yours,

[redacted signature block]
cc: [redacted]

10/25/01

Agree the transaction is exempt under (c)(1) and (c)(2).

MY concurs

[redacted]