

[REDACTED]

ATTORNEYS AT LAW

[REDACTED]

7A(c)(1)

[REDACTED]

November 4, 2002

VIA E-MAIL TRANSMISSION

Alice M. Villavicencio  
Premerger Notification Office  
Bureau of Competition  
Room 303  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Request for Informal Advice under the Hart-Scott-Rodino Antitrust  
Improvements Act of 1976

Dear Ms. Villavicencio:

This letter is written on behalf of our client ("Buyer"), to request confirmation from the staff of the Premerger Notification Office concerning informal advice conveyed to me during our telephone conversations held on October 16, 2002. The conversations related to whether a Notification and Report Form under Section 7A of the Clayton Act (the "Act") (15 U.S.C. § 18a) would be required with respect to an acquisition consisting primarily of a mortgage loan portfolio of Small Business Administration ("SBA") loans made by the selling entity ("Seller;" and the "Transaction").

Both the Buyer and the Seller are business corporations licensed by the SBA to make loans under the SBA Section 7(a) loan guarantee program. While the Transaction will require the approval of the SBA, the transaction does not require the prior approval of, or any prior notice to, any federal or state banking regulators which would allow the Transaction to be exempted under the provisions of Sections 7A(c)(7) or (8) of the Act. In addition, it is not anticipated the Seller will continue to engage in the business of originating SBA loans after the consummation of the Transaction and it is not known whether the Seller will engage in any other line of business after the consummation of the Transaction. Therefore, we do not currently anticipate the transaction would qualify for an exemption under Section 7A(c)(1) of the Act as the acquisition of goods transferred in the ordinary course of business.

Correct

[REDACTED]

The assets to be acquired in the transaction primarily consist of the items set forth below.

SBA mortgage loans and related rights<sup>1</sup>

Servicing rights<sup>2</sup>

Tangible personal property associated  
with Seller's business

Office and equipment leases and certain contracts

Under the SBA Section 7(a) loan guarantee program, the SBA guarantees a portion of each loan. Once an SBA lender fully funds a Section 7(a) loan, it sells the guaranteed portion of the loan in the secondary market and retains the unguaranteed portion. The loans to be acquired in the transaction are the unguaranteed portion of loans that have been fully funded as of the Transaction closing date and both the guaranteed and unguaranteed portions of the loans that have not been fully funded as of the Transaction closing date.

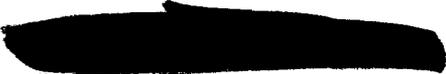
All of the SBA loans to be acquired in the Transaction are business (as opposed to consumer) loans, and the principal collateral for substantially all of the loans is a mortgage or similar instrument on the borrower's business real property, although the loans generally also are secured by the borrower's other business assets. As we discussed, Section 7A(c)(2) of the Act exempts from the Act's coverage "acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities." You agreed with me that the SBA mortgage loans to be acquired by Buyer were exempt from the Act's coverage. You also stated that the servicing rights with respect to those SBA mortgage loans which the Buyer is acquiring – both the guaranteed portion and the unguaranteed portion of the loans not fully funded as of the Transaction closing date and the unguaranteed portion of loans fully funded as of the Transaction closing date – are sufficiently connected with the mortgage loans being acquired to treat such servicing rights as also exempt under Section 7A(c)(2) of the Act.

The estimated portion of the purchase price associated with the exempt SBA mortgage loans and associated servicing rights represents over 95% of the total estimated purchase price. The remaining portion of the total estimated purchase price, after deducting the portion of the purchase price associated with the exempt SBA mortgage loans and associated servicing rights, is well below the applicable "size of the transaction test" contained in Section 7A(a)(2)(B). Therefore, you agreed with me that a filing of the Notification and Report Form under the Act would not be required with respect to the Transaction.

*Because the servicing will be provided by the 3rd parties.*

<sup>1</sup> Includes both outstanding principal and accrued but unpaid interest on the loans.

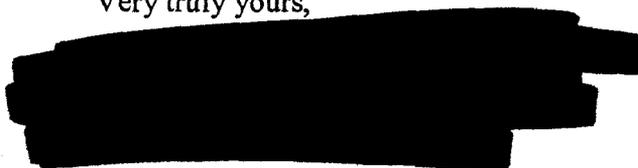
<sup>2</sup> The servicing rights represent the right to receive servicing fees under SBA regulations for the servicing of the purchased loans and for the servicing of the previously sold guaranteed portions of such loans.



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If you agree that the contents of this letter accurately reflect our telephone conversations of October 16, 2002, I would kindly appreciate your calling me to confirm the same. If you require any additional information or if I can be of assistance, please do not hesitate to contact me. Thank you in advance for your time and attention to this matter.

Very truly yours,

A large black rectangular redaction covering the signature area.

*11/7/02 - Called  
Writer. <sup>Agree</sup> No filing  
required. See notations.*

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