

7A(c)(2)

Verne, B. Michael

From: [REDACTED]
Sent: Monday, October 04, 2004 2:42 PM
To: Verne, B. Michael
Subject: RE: My HSR Compliance Inquiry

Michael,

I have a quick follow-up question pertaining to the transaction regarding which you previously provided me with the advice set forth in the e-mail below.

The assets acquired in the transaction will include (a) mortgage servicing rights without the right to purchase the underlying mortgages and (b) mortgage servicing rights coupled with the right to purchase the underlying mortgages in the future, although the underlying mortgages are not being purchased in the current acquisition.

Section 7A(c)(2) of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), provides that acquisitions of mortgage loans are exempt from the requirements of the Act. However, the Premerger Notification Office has taken the position that mortgage servicing rights that are not coupled to mortgages/mortgage loans are not exempt from the requirements of the Act (See, for example, Informal Staff Opinions 9908010 and 9206006).

Based on the positions taken in Informal Staff Opinions 9908010 and 9206006, the mortgage servicing rights in (a) above clearly are subject to the Act, and I will include the consideration being paid for them for purposes of calculating the acquisition price. However, I was wondering if there is any precedent for treating the acquisition of mortgage servicing rights coupled with the right to purchase the underlying mortgages in the future as an exempt mortgage for purposes of Section 7A (c)(2)? I suspect that the answer is no because no mortgages are being acquired in the current acquisition, but I wanted to confirm.

7A(c)(2) DOES NOT EXEMPT THIS TRANSACTION.

B. Michael
10/4/04

Thanks,



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-----Original Message-----