

802.4

August 11, 2005

Mr. Michael B. Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th Street & Pennsylvania Ave., NW
Washington, DC 20580

Re: Exemptions Applicable to Acquisition of Voting Stock Interest In Commercial
Real Estate Finance Company

Dear Mike:

I am writing to confirm the guidance and interpretations you have provided to us regarding the applicability to our proposed transaction of certain exemptions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "Act"), and the Commission's implementing regulations, in particular the "ordinary course of business" exemption contained in Section 7A(c)(1) of the Act and Rule §802.4. The relevant facts regarding the proposed transaction that we have discussed are briefly summarized below.

The proposed transaction consists of the acquisition of 60% of the outstanding voting securities of an issuer that is a large provider of financial services to the global commercial real estate industry. The issuer's business includes commercial mortgage lending, mortgage servicing, mortgage software services, asset management and investment advisory services. The seller currently owns 100% of the issuer's voting stock and will retain a 40% interest following consummation of this transaction. The purchase price being paid exceeds \$1 billion.

We have analyzed the reportability of this transaction under Rule §802.4, which exempts acquisitions of voting securities of issuers holding certain assets the direct acquisition of which would be exempt. As we have discussed, according to the last regularly prepared financial statements, the principal assets of the acquired issuer include: commercial real estate mortgages and mortgage-backed or mortgage-related securities, which are exempt under Section 7A(c)(2); equity investments in various commercial real estate-related entities, which to the extent included within the acquired issuer hold assets exempt under Rules 802.2 and/or 802.5, or in some cases, direct real estate interests covered by those exemptions; goodwill associated with commercial mortgage and real estate investment acquisitions; and cash and other investment securities. None of these assets would count toward the \$53.1 million non-exempt asset threshold of Rule 802.4.



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In addition to the foregoing, the acquired issuer holds mortgage servicing rights relating to third-party mortgages not held by the issuer, along with property, equipment, employees and systems/facilities relating to both the mortgage origination and mortgage servicing businesses. We understand that the PNO's position is that mortgage servicing rights related to third-party mortgages are not covered by the Section 7A(c)(2) mortgage exemption. In addition, the issuer provides various other services to third parties relating to commercial real estate finance, including asset management, investment advisory functions, and software and on-line investment services, all related to mortgages not held by the issuer.

We have concluded, however, that the commercial real estate mortgage servicing, asset management and related investment advisory services described above would qualify for exemption under Section 7A(c)(1) of the Act as acquisitions "transferred in the ordinary course of business." Our conclusion is based on the fact that the seller will continue as a leading financial services provider for the *residential* real estate industry, holding substantial mortgage-related assets and engaging in substantial business operations of a similar nature (albeit now on a somewhat smaller scale) related to residential real estate mortgages and related financial services. More specifically, the seller will continue to engage in mortgage lending, servicing of third-party mortgages, mortgage securitization, distressed asset resolution, investment management, investor services, analytical website tools, and other mortgage finance businesses, all relating to the residential real estate industry. Thus, the seller will not be exiting the mortgage loan and mortgage servicing business, nor related mortgage software, investment advisory and asset management functions, although the mortgage and related financial services will be provided to a different segment of the real estate finance industry.

Finally, as we have discussed, the transaction also includes the acquisition of bank assets included within the acquired issuer, which requires banking agency approval under 12 U.S.C. §1817(j). The acquisition of these assets is exempt pursuant to Rule §802.8(b)(1). Thus, these bank assets will also be deemed exempt for purposes of Rule 802.4.

Based on the foregoing analysis and facts described above, we have concluded that this transaction is not reportable under the Act, and accordingly the parties intend not to make any filings thereunder other than providing a copy of the bank approval filing under Rule 802.8. We understand that the Premerger Notification Office concurs with this interpretation of the Act and Rules.

Please let us know if you have any questions concerning this letter or require any additional information. As usual, we very much appreciate your attention to this matter. We would also appreciate your confirming by email or telephone that this letter accurately summarizes our telephone conversations and that you agree with our conclusions regarding the applicability of the exemptions described herein.

[Redacted]

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Sincerely,

[Redacted Signature]

cc: Nancy Ovuka

[Redacted]

[Redacted]

AGREE.
N. OVUKA CONCURS
B. Verne
8/31/05