

7A(c)(2)
802.4

Verne, B. Michael

From: [REDACTED]
Sent: Monday, April 28, 2008 11:43 AM
To: Verne, B. Michael
Subject: Scope of Mortgage Exemption

I would appreciate your assistance in properly applying the \$63.1 million filing threshold in the following situation.

Company A holds all of the membership interests in LLC, a mortgage loan company. Company A has agreed to sell all of the membership interests in LLC to Company B for a price in excess of \$63.1 million. The persons of which Company A and Company B are a part have assets in excess of \$10 million and \$100 million respectively, and their operations affect interstate commerce. The assets of the LLC include mortgages.

Pursuant to section 7A(c)(2) of the Hart Scott Rodino Act (the "Act"), the mortgages held by LLC are exempt from the requirements of the Act. Further, section 802.4 of the regulations provides that an acquisition of non-corporate interests whose assets (together with those of all entities it controls) consists of assets the acquisition of which is exempt under section 7A(c) of the Act is exempt if the acquired unincorporated entity (together with those of all the entities it controls) does not hold non-exempt assets with a fair market value in excess of \$50 million (as adjusted).

Informal Staff Opinion 0406002 of the Premerger Notification Office, dated June 2, 2004, stated in connection with a similar sale of a mortgage loan company that in determining the fair market value of the non-exempt assets of the mortgage loan company the acquirer "should exclude the mortgage loans, mortgage servicing rights associated with those loans and any other assets of [the mortgage company] that are associated with the mortgage loans." Further, "[f]or example, cash and goodwill associated with the mortgage loans and the mortgage loan business would be excluded."

Accordingly, in the situation described above, it is my understanding that in determining the fair market value of the non-exempt assets of the LLC, Company B should exclude not only the mortgage loans held by LLC but also the servicing rights associated with those loans and good will associated with the loans and the mortgage loan business. Please advise whether the foregoing understanding is correct.

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B
4/28/08

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