

7A(c)(4)

Verne, B. Michael

From: [Redacted]  
Sent: Tuesday, November 30, 2010 11:00 AM  
To: Verne, B. Michael  
Subject: Question re: FDIC Transaction

Mike,

I have a question regarding the purchase of certain assets and voting securities from the FDIC for which I could use some guidance.

My client wants to enter into an agreement with FDIC in its receivership capacity for a failed state bank (the "Bank") to acquire the residual interest in a credit card receivables trust (the "Residual Interest"). The holder of the Residual Interest is entitled to receive all collections from the trust that are not already allocated to the bondholders.

Specifically, my client would pay approximately \$90 million (subject to certain adjustments that are expected to bring the purchase price down to approximately \$70 million), to acquire the following assets from FDIC as receiver for the Bank:

(i) a 100% participation interest (evidenced by a trust certificate) in the Residual Interest, representing all of the Residual Interest (the "100% Participation Interest"); and

(ii) certain information rights relating to the credit card accounts and certain duties under the trust documents.

In addition, my client will be required by the FDIC to purchase all of the stock of the Bank's subsidiary (which originally held the Residual Interest but assigned the 100% Participation Interest in the Residual Interest to the Bank prior to closing in an unrelated transaction) (the "Subsidiary"). To be clear, while Subsidiary is still the nominal holder of the Residual Interest, it had assigned 100% of its rights in the Residual Interest to the Bank in the form of the 100% Participation Interest. Because the Subsidiary has no assets of value, we believe that Subsidiary's stock is worthless. So why acquire it? In essence, the client is being required by FDIC as part of the deal to acquire the Subsidiary stock from the Bank along with the asset of value (i.e., the 100% Participation Interest), so that FDIC can be free of any obligations or entanglements relating to the trust after closing.

The only asset of real value being purchased here is the 100% Participation Interest, which is being purchased directly from FDIC in its capacity as receiver.

I understand that it is the PNO's position that the FDIC is a federal agency and therefore cannot be an entity under Section 801.1(a)(2). Therefore, the Section 7A(c)(4) exemption would apply to any asset purchases from the FDIC. In this case, would you concur that my client's acquisition of the 100% Participation Interest and information rights from the FDIC as receiver be considered exempt from the Act?

If these asset acquisitions would not be considered exempt under 7A(c)(4) for some reason, would the acquisition of the Residual Interest nevertheless be considered exempt under 802.1 as a transaction in the ordinary course of business if the Bank continues to hold residual interests in other credit card receivables?

Thanks,

AGREE - DOS CONCERN

Bm

12/1/10

