

7A(c)(2)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, July 13, 2011 11:42 AM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Hart-Scott-Rodino Exemption Guidance

Mr. Verne:

My name is [REDACTED] and my law firm represents the prospective purchaser of a loan portfolio of approximately \$250 million in automobile loans. It is our understanding that the loans represent substantially all of the remaining assets of the seller, which is in the process of a voluntary liquidation. The seller and purchaser are not affiliated and neither the seller nor the purchaser is a "bank" under the Banker Merger Act.

It appears to us that the transaction falls under an exemption from the filing and waiting period requirements of 15 USC §18a by virtue of 15 USC §18a(c)(2), which exempts from the requirements of Section 18a "acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities." However, several informal FTC opinions seem to provide that the FTC has taken the position that if the acquisition of loans is a bulk transfer not in the ordinary course of business or is made in connection with the exit by the seller from a line of business, then it is not "in the ordinary course of business," and, therefore, the exemption of subsection (c)(2) does not apply.

These informal opinions seem to confuse the exemption in subsection (c)(2) with the exemption set forth in subsection (c)(1), which exempts the "acquisitions of goods or realty transferred in the ordinary course of business." Subsection (c)(2) does not contain the "ordinary course of business" qualification and appears to cover all acquisitions of "obligations which are not voting securities," which would include automobile loans, whether or not the sale is in the ordinary course of the seller's business.

Several sources directed us to you as someone who would be able to give us guidance as to the position of the FTC on this issue. If you require more information, or if we should contact someone else at the FTC for guidance, please contact the undersigned.

Thank you for your assistance.

Best regards,

[REDACTED]

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It's not because the auto loans comprise substantially all of the remaining assets of the seller that disqualifies the acquisition from 7A(c)(2) – although it does disqualify it from 7A(c)(1) – it's because we have taken the position that only loans that are secured by real property qualify for 7A(c)(2)

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