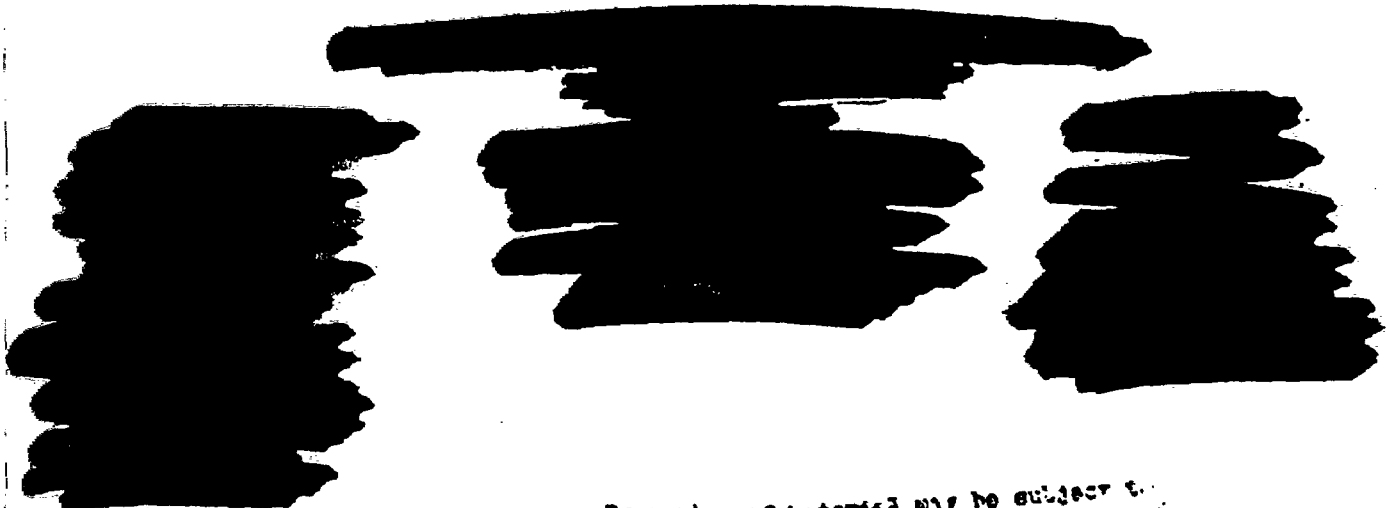


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December 15, 1987 may be subject to
in confidentiality provisions of
Section 24 of the Chapter Act
which prohibits release under the
Freedom of Information Act

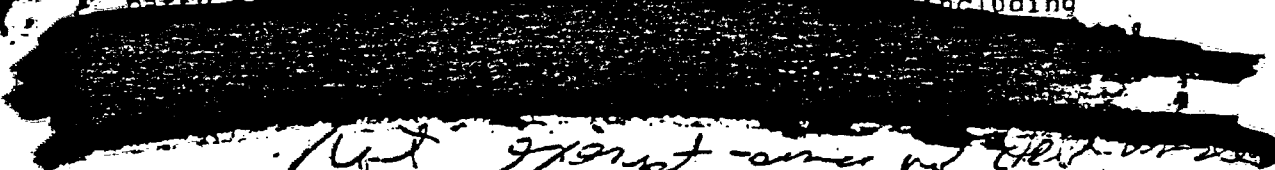
HAND DELIVERED

Mr. Patrick Sharpe
Compliance Specialist
Premerger Notification Office of
Bureau of Competition
Federal Trade Commission
Room 303
6th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Mr. Sharpe:

Per our conversation of December 15, 1987, I am writing to request an interpretation of the exemption provisions to the report and wait requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). Specifically, we are seeking the opinion of the FTC staff as to whether the acquisition by a mortgage company of mortgage servicing rights and related assets is exempt from the Act under 15 U.S.C. §18a(c).

1. The Transaction--The seller is a federally chartered stock savings bank with assets well in excess of \$100 million. It currently conducts mortgage servicing operations out of two separate facilities. The seller does not own the underlying mortgages. Instead, it performs mortgage servicing functions for a fee pursuant to mortgage servicing agreements with third parties, including



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December 24, 1987

authorities and private institutional investors. The seller services approximately 100,000 single family mortgages that have an aggregate outstanding principal balance of approximately \$5 billion.

The seller has determined that it wishes to sell one of its mortgage servicing facilities, along with the approximately \$2.3 billion mortgage servicing portfolio that is handled out of that facility. A substantial number of single family mortgages will continue to be serviced by the seller after the transaction is consummated. The seller intends to sell the portfolio, along with substantially all of the physical assets in the facility in question, for a purchase price of approximately \$35 million. The portion of the purchase price allocable to physical assets will be less than \$1 million. The buyer will also enter into a sublease agreement with the seller for a portion of the space currently occupied by the seller.

The buyer is a mortgage company with assets of approximately \$300 million. It currently services mortgage loans with an aggregate outstanding principal balance of approximately \$12 billion.

The subject transaction involves servicing rights in connection with loans that are security for GNMA, FNMA and FHLMC mortgage-backed securities and participation certificates, as well as loans owned by FNMA, FHLMC and private investors. Approximately 50 percent of the subject loans are insured by the Federal Housing Administration or guaranteed by the Veterans Administration. The transaction will require prior approval of GNMA, FNMA and FHLMC.

2. The Act--The Act provides that certain enumerated categories of transactions are exempted from its report and wait requirements. 15 U.S.C. §18a(c). Among the exempted categories of transactions are those involving mortgages, deeds of trust and other obligations that are not voting securities. 15 U.S.C. §18a(c)(2). Although the Federal Trade Commission has construed this provision to exempt the acquisition of a mortgage loan portfolio and related assets, we are unaware of any FTC or judicial decisions that have considered the application of 15 U.S.C. §18a(c)(2) to a portfolio or mortgage servicing rights and related assets. See FTC, Premerger Notification Practice Manual, Interpretation No.18 (1985). For the reasons set forth below, we urge that the FTC treat mortgage servicing rights in the same manner as it treats mortgage loans, and exempt transactions involving mortgage servicing rights from the purview of the Act.

3. Mortgage Servicing Rights--Mortgage servicing rights are one of several rights that arise in connection with the origination of a mortgage loan. The originator (or subsequent assignee) of a mortgage loan has the right to determine whether it will conduct the administrative services in connection with that loan (e.g., collection and disbursement of loan payments; maintenance of escrow accounts for payment of taxes and insurance; collection and foreclosure activity; management of foreclosed properties; and maintenance of records) or whether it will engage a third party to perform those functions for a fee. The quality of loan servicing afforded to a loan portfolio bears directly on the performance -- and value -- of the loan in the portfolio; i.e., loans that are poorly serviced tend to experience a significantly higher default rate than those that are serviced vigilantly. Accordingly, the mortgage owner views the servicing rights as a critical element of its mortgage ownership rights.

Historically, mortgage lenders serviced the loans they originated. However, with the growth of the mortgage banking industry and the evolution of a sophisticated secondary mortgage market, it has become more cost-effective for many lenders to retain other parties for purposes of performing the increasingly complex servicing functions. This has resulted in the development of an active market for servicing rights. Because servicing rights represent the right to earn a stream of income (typically stated as a percentage of interest payments collected), the owner of mortgage servicing rights can sell those rights, subject to the mortgage holder's consent, to another servicer. The instant transaction involves the sale of mortgage servicing rights from one servicer to another servicer. As is typical in mortgage servicing rights transactions, the purchase price in the instant transaction is based upon a stated percentage of the aggregate outstanding principal balance of the mortgages in the portfolio.

Because mortgage servicing rights are a subset of the rights held by a mortgage owner, it would appear that such rights would be treated in the same manner as mortgages for purposes of the Act. The rights arise in connection with the origination of mortgages, and comprise a critical element of the value of mortgages. All transactions of portfolios of "whole loans" (unsecuritized loans for which the servicing rights have not been transferred) necessarily include the transfer of servicing rights from the seller to the buyer. In light of the fact that the FTC has previously ruled that mortgage portfolio and related asset transfers are exempt transactions, there does not appear to be any basis for reaching a contrary result with respect to a transfer of a

[REDACTED]

Mr. Patrick Sharpe

-4-

December 24, 1987

component of mortgage rights.* / FTC, Premerger Notification Practice Manual, Interpretation No. 18 (1985).

I would greatly appreciate your prompt response to the issue identified above. Please contact me at [REDACTED] if any further information is necessary before the FTC can render an interpretation.

Thank you for your assistance with this matter.

Sincerely,

[REDACTED]

* / In addition to the exemption for mortgages and similar obligations, the Act indicates that the acquisition of goods and realty transferred in the ordinary course of business is exempt from the report and wait requirements. See 15 U.S.C. §18a(c)(1). In previous interpretations of this provision, the FTC has indicated that this exemption may extend to the acquisition of certain leases, promissory notes and accounts receivables. See FTC, Premerger Notification Practice Manual, Interpretation Nos. 9, 16, 17 (1985).

[REDACTED]