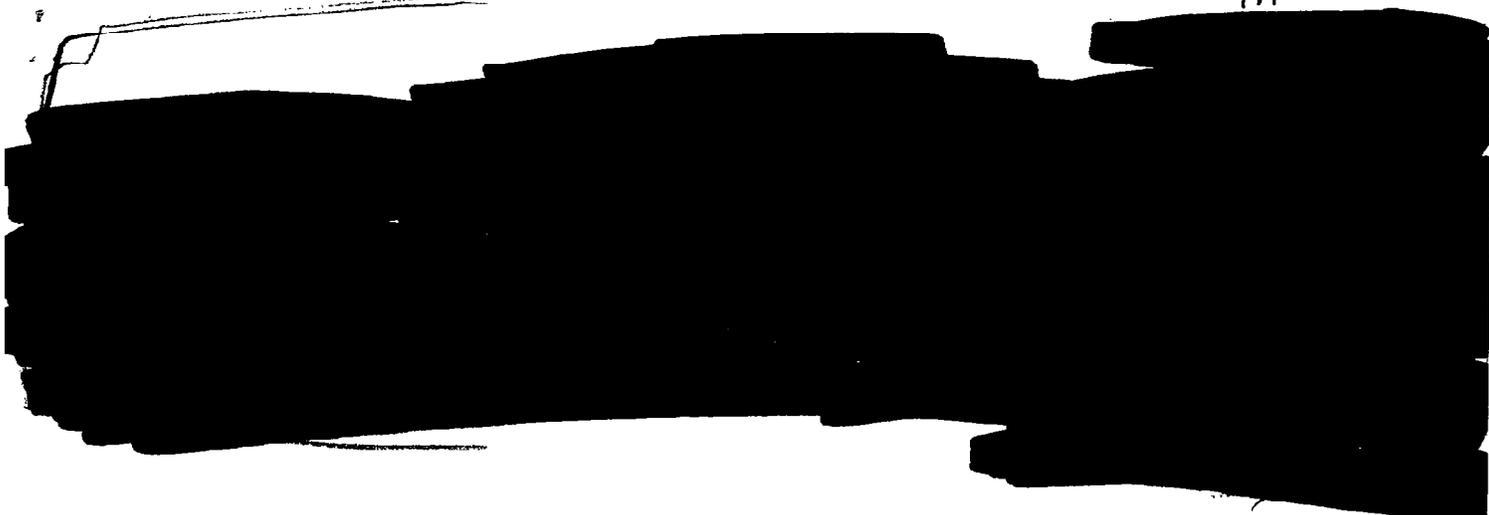


7A(c)(2)



May 10, 1995

By facsimile and by regular mail

Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
FAX: 202/326-2624

Attention: Hy Rubenstein, Esq.

Re: [redacted]
Compliance with Premerger Notification Program

Dear Mr. Rubenstein:

We represent [redacted] hereinafter [redacted] a recently formed New York corporation which is wholly owned by [redacted] New York chartered mutual savings bank. [redacted] proposes to acquire (the "proposed acquisition") certain of the assets and liabilities, and none of the capital stock, of [redacted] a [redacted] company which has been in existence since 1985 which is currently operating a successful [redacted] business in New York and New Jersey. The essential facts of the proposed acquisition are outlined below.

In telephone conversations with you and other representatives of the Premerger Notification Office you have advised us that the proposed acquisition would not be subject to the notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (Section 7A of the Clayton Act; hereinafter the "Act"). We now write to request confirmation of that advice.

We have determined that [redacted] meets the size of the person test under 15



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U.S.C. § 18a(a)(2). Although this newly-formed corporation itself has under \$100,000,000 in assets (actual capitalization is expected to be approximately \$1,000,000 at the time of the acquisition), it is a wholly owned subsidiary of [redacted] which has assets in excess of \$1.5 billion. We have also determined that [redacted] the target company, satisfies the \$10 million size of the person test. Accordingly, our question is whether the proposed acquisition satisfies the size of the transaction test under 15 U.S.C. § 18a(a)(3).

Currently, although a definitive Assets Purchase Agreement has not been executed, it is expected that the total purchase price of approximately \$23 million will be composed of following (all figures are estimates):

a. Mortgage Servicing Portfolio	\$9,600,000
b. Furniture, Fixtures and Equipment	150,000
c. Advances	100,000
d. Production Premium/Good Will	1,600,000
e. Pipeline Loans	250,000
f. Pipeline Construction Loans	100,000
g. Seller's Closing Expenses	150,000
h. Certain Servicing Fees	<u>150,000</u>
Subtotal	\$13,300,000
i. Warehouse and Investment Loans	\$10,000,000
TOTAL:	\$23,000,000

Mortgages! →

As indicated above, as much as \$10 million of the anticipated purchase price will be attributable to "warehouse loans" and "investment loans." Warehouse loans are those mortgage loans which [redacted] has made and is holding pending sale to investors (e.g., [redacted] and private investors, among others) pursuant to "investor commitments". Generally, such loans will not be held for more than sixty (60) days before they are packaged and sold at an agreed upon price in the ordinary course of business. Warehouse loans which are in [redacted] "warehouse" at the time of closing will be purchased by [redacted] (or possibly directly by [redacted] and then held (by [redacted] or sold to investors pursuant to investor commitments expected to be in existence on the closing date.

[REDACTED]

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Investment Loans are loans made by [REDACTED] that it holds for its own account (Generally, these are loans which, for one reason or another, are not capable of being sold to investors). Of the approximately \$10 million in warehouse loans and investment loans, it is anticipated that, upon the closing, approximately \$500,000 of such loans will be investment loans. Any investment loans which [REDACTED] acquires from [REDACTED] will be held or disposed of in accordance with policies to be established by [REDACTED] [REDACTED] whichever the case may be.

Based upon the Act and the rules promulgated thereunder at 16 C.F.R. Parts 801 and 802, we understand that reporting of the proposed acquisition will be required if the assets to be acquired from [REDACTED] have a value in excess of \$15 million as of the closing date. Furthermore, we understand that in an assets acquisition it is necessary to consider separately each individual asset to be acquired to determine whether any of those assets are exempt under the Act or Rules, and that under Section 18a(c) of the Act exempt assets are excluded from the calculation of the size of the transaction (whereas, in a stock transaction, all assets are aggregated without regard to any exemptions that may apply).

Under Section 18a(c)(2), acquisitions of mortgages are exempt from the Act's premerger notification requirements. We refer to a 1980 staff memorandum in which the Commission stated that, under Section 18a(c)(2) of the Act, mortgage loans should be considered exempt assets when acquired -- even though the Commission had earlier determined that accounts receivable were not "exempt assets" under 16 C.F.R. § 801.21.¹

We have concluded that the warehouse ^{Mortgage} loans and investment loans which are to be acquired from [REDACTED] would be exempt under Section 18a(c)(2). Therefore, provided the other assets to be acquired in connection with the proposed acquisition have an aggregate value of less than \$15 million, the proposed acquisition would not satisfy the size-of-the-

¹ FTC informal interpretations and memoranda which support this position include: Memorandum to the file from Naomi Licker dated July 16, 1980 (subject: correspondence from [deleted]), attached to letter to Mr. Malcolm R. Pfinder [sic] dated July 9, 1980 (re: Premerger Notification Rules); letter to Barry J. Reingold, Esq. dated October 18, 1978 (purchase of commercial loan accounts and related agreements is exempt under § 7A(c)(2)); letter to Mr. Andrew M. Scanlon dated November 8, 1982 (acquisition of mortgage loan portfolio and related assets and real estate also exempt under § 7A(c)(1) and (c)(2)).

[REDACTED]

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transaction test, even though the acquiring company [REDACTED] or its parent [REDACTED] would simultaneously purchase warehouse loans and investment loans having an aggregate value of approximately \$10 million which will cause the total purchase price to be paid for the assets acquired to exceed \$15,000,000.

Would you kindly confirm as soon as possible that the warehouse loans and investment loans which [REDACTED] or [REDACTED] proposes to acquire are excluded under Section 18a(c)(2) from the calculation of the purchase price, and, consequently that no filing is required under the Act if the remaining aggregate purchase price does not exceed \$15,000,000.

AID

If more information is required, please do not hesitate to contact us by telephone at the above [REDACTED] office.

[REDACTED]

[REDACTED]

17 May 95 Called writer:
When Mortgages are subtracted
this is only a \$13 mil sale.

[Signature]