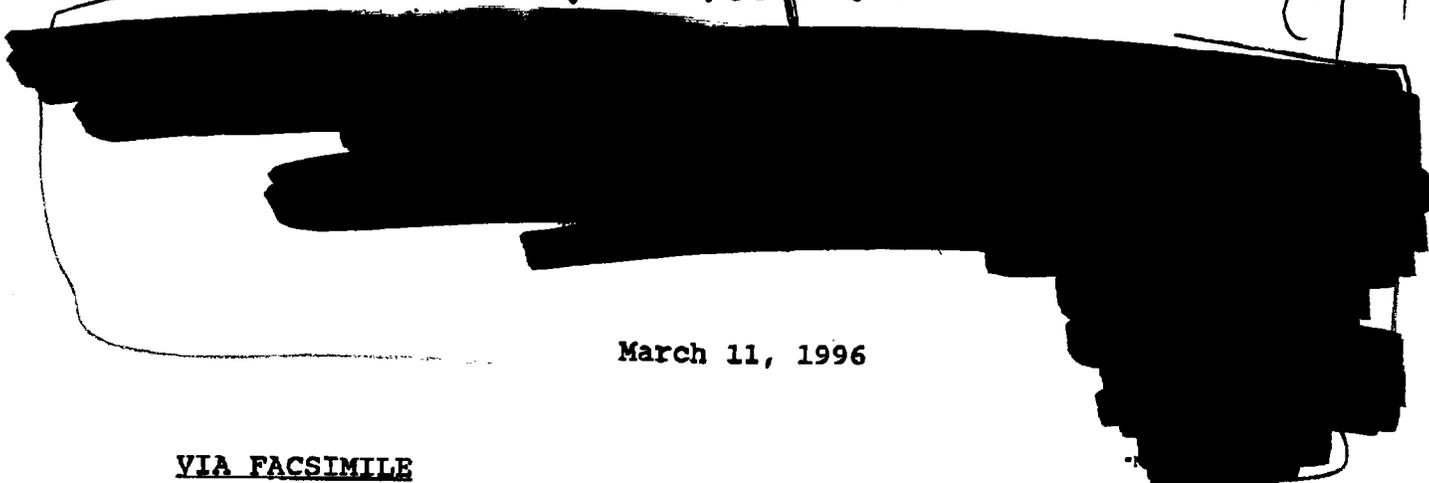


*See separate response*

*C7*  
*C1*



March 11, 1996

VIA FACSIMILE

Victor Cohen, Esquire  
Staff Attorney  
Pre-Merger Notification Office  
Bureau of Competition  
Federal Trade Commission, Room 301  
Sixth Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

This material may be subject to the confidentiality provisions of Section 7A(h) of the Clayton Act which restricts release under the Freedom of Information Act.

Re: Confirmation of Telephone Conversation

Dear Mr. Cohen:

This letter confirms verbal advice that you provided to me in a telephone conversation that I had with you and your fellow Staff Attorney, Richard Smith, Esquire, on March 8, 1996 regarding whether a filing under the Hart-Scott-Rodino Antitrust Improvements Act (HSR) is necessary in connection with an acquisition involving a client of my firm. The facts regarding the acquisition are set forth below.

My client (Purchaser) is a mortgage banking company that is wholly owned by a bank, which in turn is wholly owned by a bank holding company (Purchaser's Parent). Purchaser plans to acquire the servicing rights to mortgage loans serviced for third parties by another mortgage banking company (Seller). Seller also is wholly owned by another bank holding company (Seller's Parent). Pursuant to a separate arrangement that is subject to Federal Reserve Board approval under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1842), Seller's Parent will be acquired by and merged with and into Purchaser's Parent (the "Merger"), thus resulting in Purchaser's Parent owning both Purchaser and Seller.<sup>1/</sup>

*C-7  
example  
for parent*

<sup>1/</sup> Although it does not affect the HSR analysis, we note that immediately before the Merger, in a transaction subject to Federal Reserve Board approval, the stock of Seller will be transferred from Seller's Parent to the bank that also is owned by Seller's Parent.



[REDACTED]

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Purchaser will acquire the beneficial ownership to Seller's third party servicing rights before the Merger, subject to several conditions subsequent. The conditions include, among others, obtaining the approval of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and private investors to the transfer of the servicing rights. As you may know, FNMA, FHLMC and other investors do not permit the transfer of servicing rights until they approve the transfer. The actual transfer of the servicing rights and the consummation of the sale thereof will not occur until after the Merger, and Seller will continue to service the related mortgage loans at least until consummation of the servicing rights acquisition. The current book value of the third party servicing rights to be acquired by Purchaser is approximately \$28 million.

In connection with the servicing rights acquisition, Purchaser will not acquire (a) the mortgage loans owned by Seller, which are held for investment or held for sale, or the servicing rights to such loans, (b) the rights to service loans owned by Seller's Parent that are serviced by Seller, (c) the mortgage loans being processed, but not yet closed, by Seller in connection with Seller's ongoing mortgage loan origination operations, (d) Seller's mortgage loan servicing or mortgage loan origination facilities, or (e) any other assets of Seller (collectively the "Other Assets"). The current book value of the Other Assets is approximately \$110 million. In connection with the Merger, Purchaser's Parent will acquire control of Seller and the Other Assets; however, such acquisition is subject to approval by the Federal Reserve Board and, in fact, has already been approved. Although it does not affect the HSR analysis with respect to the servicing rights transaction, we note that some time following the Merger, Seller may be liquidated and the Other Assets, including the mortgage loans, may be sold or transferred.

As we discussed, we believe that the acquisition of the servicing rights by Purchaser does not require a filing under the HSR. First, the acquisition is in the ordinary course business, and ordinary course of business acquisitions are exempt from the HSR (see HSR § 7A(c)(1)<sup>2/</sup>). Specifically, Purchaser is not acquiring all of Seller's servicing rights, and the servicing rights being acquired represent only a minority of Seller's total assets. As noted above, among other assets, Seller will continue to own mortgage loans and the servicing rights thereto. Second, while Purchaser's Parent will acquire control of Seller and all of the Other Assets pursuant to the Merger, such acquisition is

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[unclear]

<sup>2/</sup> Citations to the HSR are to the Act as contained in Section 7A of the Clayton Act (15 U.S.C. § 18a).

[REDACTED]  
Mr. Victor Cohen

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subject to Federal Reserve Board approval and, thus, also is exempt from the HSR (see HSR § 7A(c)(7)).<sup>2/</sup>

Accordingly, standing on its own, the servicing rights acquisition is exempt from the HSR as an ordinary course of business transfer of assets. Furthermore, this result is not altered by the transfer of control of Seller and the Other Assets to Purchaser's Parent in connection with the Merger because such transfer is exempt from the HSR as a transfer that it is subject to Federal Reserve Board approval.

During our telephone conversation, you and Mr. Smith ultimately agreed with the conclusion that the servicing rights acquisition by Purchaser from Seller is exempt from the HSR. You also indicated that you would confirm this advice in writing if I submitted a letter that outlined the discussion. Please confirm your advice by signing this letter in the space provided below and transmitting a copy to me by facsimile to [REDACTED] and sending a hard copy to me by regular mail at my address set forth above.

Thank you for your assistance in this matter. If you have any questions, please feel free to call me.

[REDACTED]

By signing below I hereby confirm that the acquisition of servicing by Purchaser from Seller as described above is exempt from the HSR:

\_\_\_\_\_  
Name:  
Title:  
Date:

<sup>2/</sup> We also note that most of the Other Assets are mortgage loans, and acquisitions of mortgage loans are exempt from the HSR (see HSR § 7A(c)(2)).

This transaction relates to the beneficial transfer of mortgage servicing rights prior to a merger between bank holding companies that requires Federal Reserve Board (FRB) approval. The transfer of these rights is to the same acquiring person who needs FRB approval to acquire the bank holding company. If the mortgage servicing rights are left within the bank holding company (or subsidiary thereof) their acquisition would be exempt from HSR reporting under section C-7 because it is part of a larger transaction requiring FRB approval. The premerger staff concurs with the opinion that the separate transfer of beneficial ownership of the servicing rights to the same acquiring person in the merger transaction should also be exempt under C-7. If the entire transaction is exempt then this portion should also be exempt; furthermore, the transfer of servicing rights (legal title and ultimate transfer approval) is subject to the final approval of the merger by the FRB. If approval of the merger is not obtained the acquisition can be considered to be exempt under C-1 as a transfer in the ordinary course of business since this represents only a portion of the mortgage servicing rights held by the acquired person and the seller has not exited this line of commerce and may not do so due to the failure to obtain FRB approval.