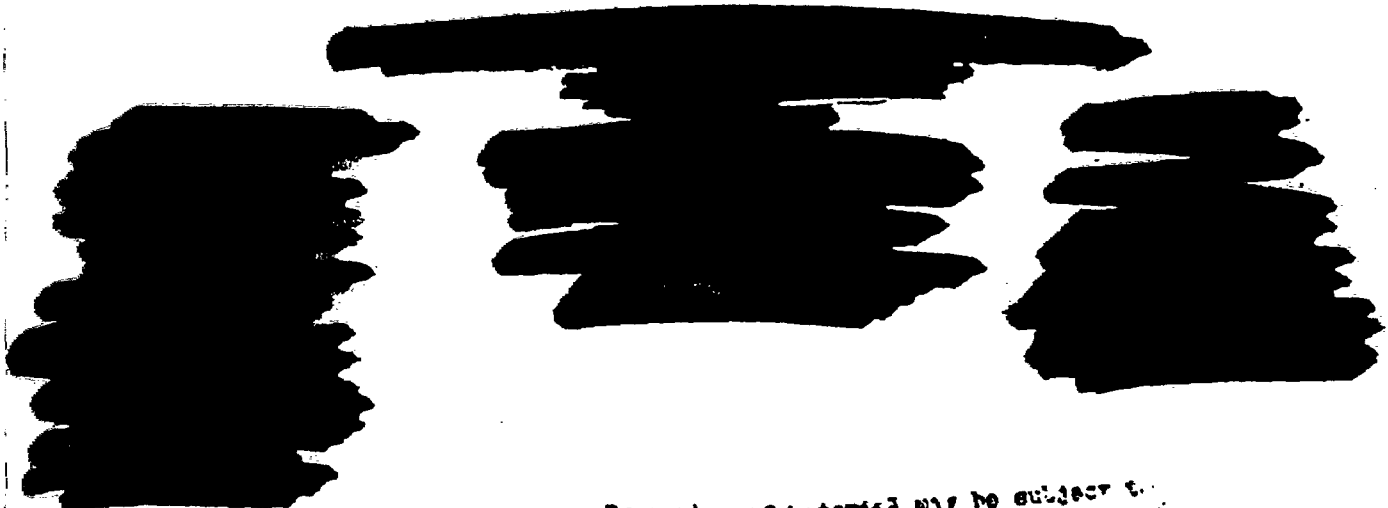


801.1  
f statute



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-



work in advisory capacity of business gov  
not private law. V.C.

[REDACTED]

approximately \$5 billion.

portfolio, along with substantially all of the physical assets

buyer will also enter into a sublease agreement with the seller

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

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

servicing rights from the purview of the Act.

Mr. Patrick Sharpe

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assignee) of a mortgage loan has the right to determine whether

insurance; collection and foreclosure activity; management of foreclosed properties; and

portfolio bears directly on the performance -- and value -- of

owner views the servicing rights as a critical element of its mortgage ownership rights.

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

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

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 FMO has consistently

transactions, there does not appear to be any basis for reaching a contrary result with respect to a transfer of a

[REDACTED]

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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

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

related to the acquisition of certain leases - proprietary

[REDACTED]