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November 17, 1988

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COMM-FED

Mr. Patrick Sharpe
Compliance Specialist
Federal Trade Commission
7th Street and Pennsylvania Avenue N W

Dear Mr. Sharpe:

We represent a state licensed mutual savings bank, a subsidiary of which ("Seller") is considering selling substantially all of its assets to a subsidiary of a publicly traded real estate investment trust ("Buyer"). We are writing pursuant to our telephone conversations of November 11 and 14, 1988, in the hope that you will confirm our conclusion that the proposed transaction is not subject to the premerger reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Hart-Scott-Rodino Act") by virtue of the exemption

Seller was incorporated in 1985 as a limited purpose finance company organized for the purpose of issuing collateralized mortgage obligations ("CMOs")¹. Under its charter, Seller is prohibited from engaging in any activity other than issuing CMOs and holding the collateral securing such obligations. In October 1985, Seller filed a registration statement with the Securities and Exchange Commission providing for the public offering of up to \$400,000,000 principal amount of CMOs. In November 1985, Seller issued \$200,000,000 principal amount of its CMOs and in January

¹ CMO is a debt obligation issued in one or more classes which is collateralized and backed up to the payment of interest and the repayment of principal by a specific group of mortgage loans or

mortgage-backed securities. As of November 1988, over \$200 billion aggregate principal amount of CMOs had been issued

1986, Seller issued the remaining \$200,000,000 principal amount of its CMOs. Each series of CMOs is separately collateralized, principally by Guaranteed Mortgage Pass-Through Certificates

was rated AAA by Standard & Poor's Corporation and the second series of CMOs was rated AAA by Standard & Poor's Corporation and Aaa by Moody's Investors Service. Seller has no present intention of issuing any additional CMOs.

As the issuer of the CMOs, Seller is entitled to receive the difference, if any, between (a) distributions on the FNMA Certifi

income thereon and (b) debt service on the two series of CMOs and related administrative expenses (such difference being referred to herein as "residual cash flow"). To date, Seller has distributed all of the residual cash flow it has received as dividend payments to its banking parent.

Seller's banking parent is not in compliance with its regulatory net worth requirement and is operating under the supervision of its regulators. In an effort to improve its financial position, Seller's parent is considering the sale of substantially all of Seller's assets in the manner described below. It will be a condition to the consummation of the proposed transaction that it be approved by the parent's federal and state banking regulators.

Under the terms of the proposed sale, Seller will sell to Buyer substantially all of its assets and Buyer will assume substantially all of Seller's liabilities. The assets to be sold consist of approximately \$150,000,000 principal amount of FNMA

FNMA Certificates, deposit receipts and cash are held in trust by

As a condition to consummating the sale, Buyer will be required to enter into a supplemental indenture with the Indenture Trustee pursuant to which Buyer will succeed to Seller's obligations under the CMO Indenture, including its obligations under the CMOs. The assets to be purchased will continue to be held in trust by the Indenture Trustee for the benefit of the holders of the CMOs. As the new CMO issuer, Buyer will be entitled to all future residual cash flow generated as a consequence of the two CMO transactions.

Section 18a(c)(2) of the Hart-Scott-Rodino Act exempts from the premerger reporting requirements transactions involving acquisition of bonds, mortgages, deeds of trust, or other

(assuming it is otherwise available) to transactions involving the sale of substantially all of an entity's assets. It is our view that the sale of the FNMA Certificates securing the two series of CMOs (together with a de minimus amount of non-voting deposit receipts and cash) should be treated as falling within

requirements. FNMA guarantees to the registered holder of each

received, and the full principal amount of any foreclosed or other finally liquidated mortgage loan, whether or not received. FNMA, a federally chartered privately owned corporation, is perceived by Standard & Poor's Corporation and Moody's Investors Service as having the equivalent of an AAA/Aaa credit rating. Accordingly, collateralizing a CMO with FNMA Certificates eliminates the requirement for expensive credit enhancement features which are typically required for CMOs collateralized with mortgage loans. For purposes of the Hart-Scott-Rodino Act

we are further of the view that the proposed transaction would not diminish competition among CMO issuing entities and

active market for sales or investments in CMO issuances. Indeed, within the past three years at least eight publicly traded real estate investment trusts have been organized for the purpose of investing in residual cash flow generated from CMO transactions.

(footnote continued from previous page)

to finance such assets, the resulting acquisition would amount to \$708,251. The purchase price of the assets (which was determined on the basis of the parties' expectations of the amount of residual cash flow to be generated over the life of the two CMO issuances) is expected to be approximately \$1,150,000. Viewed from such a perspective, the size of the transaction would not be

In addition to such companies, a large number of other entities make such investments as a component of their regular business

proposed transaction is not subject to the premerger reporting requirements of the Hart-Scott-Rodino Act, and we respectfully request that you confirm our conclusion. As the parties to the transaction are under extreme scheduling pressure to conclude the transaction, we would be grateful for a response at your earliest convenience.

Please call either of us at [redacted] if we can be of any assistance.

Very truly yours,

[redacted signature]

802.1 or

the [redacted] [redacted]

c-2 exemption because substantially all of the assets of the acquired entity will be acquired. As a result, a "business" will be acquired. Thus, this cannot be in the ordinary course.

(1984)) and provided for the creation of real estate mortgage investment conduits (26 U.S.C. §860A et seq.) as part of the Tax Reform Act of 1986. Among other things, such legislation was intended to facilitate trading of derivative mortgage products.

period for bankruptcy may apply. called [redacted] 11-22-88 and informed him of the above. B.S. W.K. concurs