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§01.21
§01.13

The acquisition of mortgages is exempt under 7A(c)(2) & a mortgage is not an asset under §01-21. Therefore, its value need not be aggregated with other non-exempt assets under §01.13.

PROPRIETARY AND CONFIDENTIAL

November 21, 1991

BY OVERNIGHT COURIER

Mr. Victor L. Cohen, Esquire
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
6th and Pennsylvania Ave., N.W.
Washington, D.C. 20580

RE: Hart-Scott-Rodino Act Interpretation

Dear Mr. Cohen:

understanding of that position.

As I explained, [REDACTED], a wholly-owned subsidiary of [REDACTED], itself a wholly-owned subsidiary of [REDACTED] Inc. [REDACTED] currently is negotiating

treatment of an acquisition of mortgage loans exempt under § 7A(c)(2) of the Hart-Scott-Rodino Act, 15 U.S.C. § 18A(c)(2), [REDACTED] is a [REDACTED] transaction with [REDACTED] utilized to

Specifically, [REDACTED] is negotiating a transaction in which it would acquire a home-improvement mortgage loan portfolio

servicing that business. The acquired firm desires to sell the [REDACTED] mortgage portfolio [REDACTED] servicing assets

servicing assets consist primarily of furniture, fixtures, and office equipment. In addition, [REDACTED] plans to hire certain

the acquired person computer equipment that the latter uses in servicing the mortgage portfolio, and will assume the lease of the premises where the servicing is performed.

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The mortgage portfolio itself accounts for the dominant share of the transaction's fair market value. The final purchase agreement is expected to assign a separate price to the servicing assets. This price will be less than one percent of the overall

or-transaction test under the Act and the Rules. On the other hand, if the transaction is otherwise reportable, that size-of-transaction test clearly would be met if the value of the (otherwise exempt) mortgage portfolio must be aggregated with the value of the servicing assets because the two are acquired in the same transaction.

You have informed me that, as the Premerger Office interprets the HSR Act and the Rules, the acquisition of the mortgage portfolio is exempt under §.7A(c)(2) of the Act. That provision exempts from the Act's reporting requirements "acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities." Further, under HSR Rule 801.21, such mortgages are not treated as "assets" of the acquired person. And under Rule 801.13 the mortgage portfolio will not be treated as an asset held by [REDACTED] as a result of the acquisition. Thus, the mortgage portfolio is not aggregated with the servicing assets in applying the size-of-transaction test of the Act and the Rules. The Premerger Office's position is that [REDACTED] acquisition of the servicing assets would be reportable only if their assigned purchase price or fair market value by itself met the \$ 15 Million

If the transaction proceeds, [REDACTED] desires to make any required filing in the very near future in order to consummate by [REDACTED] and [REDACTED]. I am therefore requesting that [REDACTED] greatly appreciate your calling me directly at [REDACTED] if my understanding of your Office's interpretation is incorrect.

[REDACTED] assure that it is in full compliance with all

[REDACTED]