

See separate response

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March 11, 1996

VIA FACSIMILE

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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 [redacted]

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,

acquired by and merged with and into Purchaser's Parent (the "Merger"), thus resulting in Purchaser's Parent owning both Purchaser and Seller.^{1/}

C: 1/ example for parent

^{1/} 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.

✓

Mr. Victor Cohen [REDACTED]

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Purchaser will acquire the beneficial ownership to Seller's third party servicing rights before the Merger, subject to

[REDACTED] and provide investors to the transfer of the servicing rights. As you may know, FVMA, FVMO and other investors do not

[REDACTED] Merger, and Seller will continue to service the related mortgage

In connection with the servicing rights acquisition

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

and ordinary course of business acquisitions are exempt from the HSR (see HSR § 7A(c)(1)(2)). Specifically, Purchaser is not

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[Handwritten initials]

assets. As noted above, among other assets, Seller will continue to own mortgage loans and the servicing rights thereto. Second, this Purchaser's Parent will acquire control of Seller and all

2/ 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)).^{2/}

Accordingly, standing on its own, the servicing rights acquisition is exempt from the HSR as an ordinary course of

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

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:

^{2/} 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

ownership of the servicing rights to the same acquiring person in the merger transaction should also be exempt under C-7. If the

exempt; furthermore, the transfer of servicing rights (legal title and ultimate transfer approval) is subject to the final

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 business and has not done so due to the failure to obtain FRB