7A(c)(1)

Verne, B. Michael

From: [redacted]
Sent: Wednesday, October 30, 2013 10:55 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Question regarding ordinary course exemption

Mike/Kate:

Could you confirm that the PNO's position with respect to acquisitions by a third party of creditor claims in bankruptcy are eligible for the ordinary course exemption under 7A(c)(1) and 802.1? (See informal interpretation #0410002.) If so, which of the following is necessary/sufficient for the analysis?

- The ultimate parent entity of the seller remains in the business of extending credit (as with acquisitions of loans).
- The ultimate parent entity of the seller sells creditor claims in the ordinary course of its business.
- The acquirer buys creditor claims in the ordinary course of its business (the interpretation above states that this is not necessary).
- The acquirer buys financial instruments (which may or may not include creditor claims) in the ordinary course of its business.

Many thanks in advance,

[redacted]

[redacted]

AS LONG AS THE UPE OF THE SELLER IS NOT EXITING THE BUSINESS OF EXTENDING CREDIT, 7A(c)(1) WILL COVER IT. CREDITOR CLAIMS ARE THE TYPE OF FINANCIAL INSTRUMENTS WE HAVE EXTENDED THIS EXEMPTION TO.

BW

KW CONCURS

10/30/13

Rule(s):	15USC18a(c)(1) - 7A(c)(1)
Staff:	Michael Verne
Response / Comments:	10/07/2004 - Agree
	Original Image File

October 6, 2004

VIA FACSIMILE

Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
7th & Pennsylvania Avenue, NW
Washington. DC 20580

Dear Mike:

1 am writing *to* confirm my understanding of telephone conversations we had, the most recent being on August 27, 2004, concerning the potential reportability under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), of a proposed transaction discussed below.

Proposed transaction.

Our client is a limited liability corporation that holds a minority ownership interest of voting securities in a publicly traded company. While our client only owns a minority interest, it is the largest shareholder of the publicly traded company and intends to *increase* its holdings at some point in the future. The publicly traded company is a holding company and the holding company's sole ownership interest is of a subsidiary that operates a business. That subsidiary is currently in bankruptcy. The publicly traded holding company is not in bankruptcy.

Our client intends to buy the creditor claims of some of the creditors of the bankrupt entity. Our client will acquire claims that exceed $50 million in total value from several creditors. Further, in one or two instances, the claim purchased from a single creditor will alone exceed $50 million in value. For the creditors from whom claims are purchased, our client will purchase 100% of each creditor's claim against the bankrupt entity. Our client does not in the ordinary course of its business buy creditor claims out of bankruptcy, but we understand that there are entities that purchase such interests in the ordinary course of their business.

Conclusions

You agreed that the acquisition of creditor claims against a bankrupt entity, regardless of the percent of the creditor claims purchased or the value of the claims, would be exempt from reportability under the HSR Act. Specifically, you confirmed that the acquisition of the creditor claims would qualify

for exemption under the "ordinary course of business" exemption. *See* 15 U.S.C. § 18a(c)(1) (exempting "acquisitions of goods or realty transferred in the ordinary course of business."). Further, you confirmed that *the* ordinary course of business exemption *applies to* our client's purchase of creditor claims in *a* bankruptcy even though our client does not make such purchases in the ordinary course of its own business.

Please let me know as soon as possible if you disagree with any of the conclusions discussed above, or if I have misunderstood any aspect of your advice. Thank you for your assistance in this matter.