

Sheinberg, Samuel I.

From: HSRHelp
Sent: Thursday, March 23, 2023 2:54 PM
To: Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Fetterman, Michelle
Subject: FW: Sale of MSRs

From: Walsh, Kathryn E. <kwalsh@ftc.gov>
Sent: Thursday, March 23, 2023 2:53:46 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: HSRHelp <HSRHelp@ftc.gov>
Subject: FW: Sale of MSRs

We agree.

From: [REDACTED]
Sent: Wednesday, March 22, 2023 9:06:38 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp <HSRHelp@ftc.gov>
Subject: Sale of MSRs

I am writing to seek your view regarding whether the scenario described below is exempt under HSR Act Section 7A(c)(1) as a sale in the ordinary course of business.

Party A currently is in the mortgage lending and servicing business. Historically Party A has originated mortgage loans ("Retail Loans") and acquired mortgage loans originated by third parties ("Correspondent Loans"), and thereafter, Party A has sold the Retail Loans and Correspondent Loans to the GSEs or Ginnie Mae and retained the related mortgage servicing rights ("Agency MSRs"). As the holder of Agency MSRs, Party A would be considered a third party servicer. On a more limited basis, Party A also services loans for private investors.

Party A now plans to engage in a series of transactions through which it will sell Agency MSRs to one or more purchasers, including a large portion of its Agency MSRs pertaining to mortgage loans held by the GSEs, with the result that, at the end of these sales, Party A will have divested itself of 50%-60% or more of its existing Agency MSRs and approximately 40% of its overall servicing rights book. The first of these transactions will be valued in excess of \$111.4 million. For purposes of this inquiry, we assume both this first sale and any subsequent sales will meet the Size of Persons Threshold, and that at least some, but perhaps not all of the subsequent sales will meet the Size of Transaction Threshold.

Party A also intends to wind down its Correspondent Loan channel. While Party A does not intend to acquire Corresponding Loans in the future (and therefore not hold servicing rights related to loans acquired through the Correspondent Loan channel), it is not completely exiting the mortgage loan servicing business. In particular, Party A will continue to originate Retail Loans and sell those loans to the GSEs / Ginnie Mae while retaining the new Agency MSRs. Party A expects the servicing rights on new Retail Loans to replace some of the volume of the Agency MSRs that it is selling off. In addition, Party A will continue to provide mortgage servicing relating to a significant portion of its current servicing rights book (approximately 60%) including certain legacy Correspondent Loans it is retaining. Finally, Party A also will continue to service Retail Loans it originates and retains.

The Premerger Office long has previously advised that sales of mortgage servicing rights are exempt as being in the ordinary course of business so long as the seller is not exiting the mortgage loan servicing business. See *ABA Premerger Notification Practice Manual* (5th ed. 2015), Interpretation Nos. 99, 106. As explained above, in this case, Party A is not exiting the mortgage loan servicing business, and will continue to service new Retail Loans it originates, service legacy third party loans, and hold new Agency MSRs. Based on these facts, we believe that both the first sale of mortgage servicing rights described as well as any of the subsequent sales that exceed the HSR Size of Transaction Threshold will be exempt under HSR Act in Section 7A(c)(1). Please let us know if you agree. We would appreciate hearing back from you before the end of the week if possible.

Thank you.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]