By the Commission.*

Joseph C. Polking,

Secretary.

Questions To Be Addressed in Response to Petition for Exemption From the NVOCC Tariff Filing Requirements Under the Shipping Act of 1984

1. Should the issue of revising the regulatory structure by exempting NVOCCs from tariff filing more appropriately be considered by Congress and/or the Advisory Commission on Conferences in Ocean Shipping?

2. Does section 16 and/or its legislative history provide the FMC with authority to exempt NVOCCs from tariff filing? Is the section 16 exemption authority a constitutional delegation of authority to the FMC?

3. Does this petition for exemption from NVOCC tariff filing meet the conditions for granting an exemption contained in section 16 of the Shipping Act of 1984? Explain your answer giving reasons why it does or does not fulfill each of the conditions for exemption.

4. What will be the economic impact of exempting NVOCCs from tariff filing on:

a. shippers;

b. vessel-operating common carriers ("VOCCs");

c. ports;

d. freight forwarders;

e. shippers' associations;

f. NVOCCs; and

g. consumers.

5. If the exemption were granted, could the Commission monitor and ensure that NVOCCs do not charge different rates to shippers of the same commodities if NVOCCs are exempted from tariff filing? Conversely, if the exemption were granted should it be accompanied by an exemption from presently applicable prohibitions of section 10(b) of the Act? If so which ones? If the NVOCC tariff-filing requirement were eliminated, how would the Commission investigate and act upon those still applicable prohibitions of section 10 ("Prohibited Acts" of the 1984 Act?

6. If tariffs are intended to disclose to the shipping public the rates charged a shipper by a carrier for specific services, yet NVOCC services include services not subject to the Shipping Act of 1984, do existing NVOCC tariffs serve their intended function?

7. Is the use of a tariff-based approach to pricing transportation intermediary services consistent with the 1984 Act goal of a regulatory process characterized by "a minimum of government intervention and regulatory costs?" What services do NVOCCs perform which are not required to be filed under section 8 of the 1984 Shipping Act? In light of the requirements in section 8 mandating that all transportation services be filed, what is the justification for not filing these services?

8. Is NVOCC tariff filing consistent with the goals of "* * * an efficient and economic transportation system in the ocean commerce of the United States * * * in harmony with, and responsive to, international shipping practices?"

9. The petition maintains that NVOCCs are effectively prevented from discriminating because (a) the industry's overall competitiveness prevents it, (b) NVOCCs lack sufficient market, power to discriminate and (c) the uniqueness of each NVOCC's value-added package renders discrimination impossible. Is this accurate?

10. It has been argued that NVOCCs are inconsequential players in today's shipping marketplace in that they enjoy only a limited market share vis-a-vis VOCCs. Is this accurate? Does NVOCC market share vary from trade to trade?

11. What impact would exempting NVOCCs from tariff filing have on the concept of common carriage in ocean shipping?

12. If NVOCC services tend to be "shipper specific", why must shippers have greater flexibility to negotiate individual deals than afforded by a tariff's "menu" of services?

13. What unaddressed consequences could arise from eliminating the NVOCC tariff filing requirement but retaining the requirement for VOCCs?

14. If NVOCCs are exempted from filing tariffs, could VOCCs use their own NVOCC operation to obtain cargo, thereby permitting VOCCs to, for all practical purposes, avoid tariff filing requirements? If this were the case, what steps should be taken to avoid such results—*e.g.*, prohibiting VOCCs from using affiliated NVOCCs to procure cargo for their own ships?

15. Assuming a difference between NVOCCs and VOCCs, particularly in the "unique package of services" NVOCCs state they provide, could a modified form of tariff filing be developed for some or all NVOCCs which might ease the burden of tariff filing while still satisfying the basic intent of the requirement? What modifications should be considered? Would modifications in the tariff format enhance shipper usage of such tariffs in shopping for NVOCC services?

16. What is the "unique package of services" NVOCCs provide? Do all NVOCCs provide such services or only some?

17. Assuming NVOCCs may offer additional services, don't they still essentially compete with VOCCs for cargo? If not, why not? Do VOCCs and NVOCCs compete for LCL shipments in the marketplace today?

18. Are there unique circumstances involving controlled carriers' use of NVOCCs that the Commission should address? Although the controlled carrier statute does not cover NVOCCs, could state-run VOCCs use a relationship with state-run NVOCCs to disadvantage commercial VOCCs?

19. How important from an "international comity" perspective is the NVOCC tariff filing issue? Does it have any policy or operational implications for U.S. and European transportation system harmony in 1992 and beyond?

20. Would an exemption from NVOCC tariff filing address one of the primary objectives of the Non-Vessel-Operating Common Carrier Amendments of 1990, *e.g.* the creation of a level playing field for both domestic and foreign NVOCCs engaged in our foreign commerce?

21. Should the Commission consider exempting only NVOCCs that ship less than a minimum number of containers per year or exempting only NVOCCs whose business consists only of consolidating LCL shipments? If so, what should be the minimum? How would the Commission keep track of the number of containers shipped to enforce this provision, and how could it prevent NVOCCs from establishing subsidiaries with different names for the sole purpose of circumventing the spirit of the regulation?

22. Should the Commission consider giving NVOCCs a limited term exemption from tariff filing instead of granting an indefinite exemption at this time? Information gathered during the initial period could be used to determine the impact of eliminating tariff filing for NVOCCs on a permanent basis. If a limited term exemption should be considered, how long should it be?

23. What, if any, conditions should be attached to any exemption?

* Commissioners Hathaway and Ivancie dissent.

[FR Doc. 91-23263 Filed 9-26-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3344 and C-3345]

Medical Staff of Broward General Medical Center and Medical Staff of Holy Cross Hospital; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent orders prohibit, among other things, the medical staff of the Florida hospitals from entering, or attempting to enter, into any agreement which would prevent or restrict the offering or delivery of health care services by Broward General Hospital, Holy Cross Hospital, Cleveland Clinic Florida (CCF), any CCF physician, or any other provider of health care services.

DATES: Complaints and Orders issued September 10, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/S–3115, Washington, DC 20580. (202) 326–2770.

SUPPLEMENTARY INFORMATION: On Tuesday, June 25, 1991, there was published in the **Federal Register**, 56 FR 28911, two proposed consent agreements with analysis In the Matter of Medical Staff of Broward General Medical Center; and Medical Staff of Holy Cross Hospital; for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposal form of the orders.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreements, made its jurisdictional findings and entered two orders to cease and desist, as set forth in the proposed consent agreements, in disposition of these proceedings.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 91–23348 Filed 9–26–91; 8:45 am]

BILLING CODE 6750–01–M

[File No. 892 3224]

Excell Mortgage Corporation; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair and deceptive acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Englewood Cliffs, New Jersey, corporation to accurately calculate and disclose the annual percentage rate, finance charge, payment schedule and other information required by Regulation Z. The order would also require respondent to make adjustments to the accounts of consumers extended an adjustable rate mortgage on or after January 1, 1987, and before January 1, 1990, and who had an open loan as of April 1, 1991, to whom it disclosed annual percentage rates (APRs) that were understated by more than ¼ of one percentage point below the APR determined in accordance with Regulation Z.

DATES: Comments must be received on or before November 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds or Rolando Berrelez, FTC/S–4429, Washington, DC 20580 (202) 326–3230 or 326–3222.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The agreement herein, by and between Excell Mortgage Corporation (hereinafter sometimes referred to as "proposed respondent" or "respondent") by its duly authorized officer and counsel for the Federal Trade Commission, is entered into in accordance with the Commission' Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Excell Mortgage Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its principal office and place of business located at 550 Sylvan Avenue, Englewood Cliffs, New Jersey 07532. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

2. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

3. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

4. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint here attached.

5. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives

[1] Copies of the Complaints and the Decision and Orders are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.