

Securities and Exchange Commission
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- **17 CFR Part 270**
- **File No. S7-34-11**
- **Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments**

Dear Sir,

Thank you for giving us the opportunity to contribute to your Concept Release and request for comments on: Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments.

The Securities and Exchange Commission (SEC) is reviewing interpretive issues under the Investment Company Act of 1940 (Act) relating to the status under the Act of companies that are engaged in the business of acquiring mortgages and mortgage-related instruments and that rely on the exclusion from the definition of investment company in Section 3(c)(5)(C) of the Act (mortgage-related pools). This review focuses on certain real estate investment trusts (REITs). The SEC requests information about these companies and how Section 3(c)(5)(C) of the Act is interpreted by, and affects investors in, these companies. The SEC investigates the application of the Investment Company Act to mortgage-related pools, including suggestions on the steps that it should take to provide greater clarity, consistency or regulatory certainty with respect to Section 3(c)(5)(C).

The SEC is mainly concerned “that certain types of companies today appear to resemble in many respects management investment companies that are registered under the Act and may not be the kinds of companies that were intended to be excluded from regulation under the Act by Section 3(c)(5)(C)”.¹

¹ Quoted in paragraph III.C of the Concept Release.

I agree with the SEC here. I prefer substance over form, and would suggest that such companies that resemble investment companies in substance should not be excluded from regulation under the Act by Section 3(c)(5)(C). Key criteria for determining whether such companies are in substance investment companies include:

- The business purpose and nature of the investment management: an investment company invests in multiple investments for investment income, capital appreciation or both.
- The pooling concept: the funds of a group or class of investors are pooled so that they can benefit from economies of scale in professional investment management.
- Unitisation: for a particular group or class of investors, participation in the investments is represented by shares, participation interests or units, which benefit from a proportionate share of investment returns and / or net assets.

I would recommend that regulation under the Act should apply to such companies that are in substance investment companies, in order that investors would receive adequate protections intended by the Act. These protections include appropriate fair valuation of assets, limits on leverage, capital structure and advisory fees, a prohibition on transactions with interested persons and strict compliance procedures.

Yours faithfully

Chris Barnard