ASSOCIATION OF MORTGAGE INVESTORS

November 7, 2011

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via Email: rule-comments@sec.gov

Re: Inquiry concerning "Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments," File no. S7-34-11 and RIN 3235-AL21"

Dear Ms. Murphy:

The Association of Mortgage Investors ("AMI") appreciates the opportunity to comment upon this inquiry concerning "Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments," including the staff's review of its long-standing interpretation of § 3(c)(5)(C) of the Investment Act of 1940 (the "Act").

Introduction

The AMI was organized as the primary trade association representing investors in mortgage-backed securities ("MBS"), including university endowments and pension funds. The AMI was founded to play a primary role in the analysis, development, and implementation of mortgage and housing policy to help keep homeowners in their homes and provide a sound framework to promote continued home purchasing. Since its formation, the AMI has been developing a set of policy priorities that we believe can contribute to achieving this goal. We are an investor-only group comprised of a significant number of substantial institutional investors in commercial and residential mortgage-backed and other asset-backed

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securities. As of last Fall, our members managed a collective investment in ABS in excess of $300 billion.

Mortgage investors share your frustration with the slow restoration of the mortgage market, the inadequate relief for homeowners, and the absence of any meaningful or permanent relief for the capital markets and homeowners that are truly in need. As an example, the markets for Residential Mortgage Backed Securities ("RMBS") securitizations have virtually ground to a halt since the financial crisis for reasons that I will now enumerate.[1] As U.S. Senator Bob Corker has noted, mortgage investors are currently "on strike." [2]

State of the U.S. Housing Market

AMI is comprised of large fixed income institutional investors who support the reemergence of a healthy and balanced U.S. mortgage and MBS market. As a preliminary matter, we wish to provide a context for the proposed inquiry in terms of the economic climate within which our firms, and our peer institutions, conduct investments. The U.S. housing and mortgage markets are still experiencing the effects of the economic crisis. At best, we can say that the market is experiencing a weak housing recovery along with the economy at-large. Most housing metrics supports this conclusion, including the following:

- *Housing Prices.* On a national basis, housing prices are still below their pre-crisis levels. A key industry metric for the health of the housing sector, the Standard & Poor's Case-Shiller Home Price Indices, confirms this. It is a constant-quality index of U.S. house prices. This national index reached an all-time high of 189 in 2006. In contrast, over the past year, it has dropped to the 130s, hence illustrating the decline realized in national housing prices.
- *Negative Equity.* CoreLogic estimates that there are 10.9 million underwater mortgages which account for 22.5% of all outstanding loans.
- *Foreclosures.* While the number of foreclosure filings have declined in the first half of 2011 to a still elevated level of 1.2 million properties (compared to 1.6 million properties in the first half of 2010, and a record-setting 2.9 million for all of 2010), the decline may prove to be illusionary because of increases in the level of delinquencies. All of this is illustrative of the weakened state of the housing market. [3]

[1] The exceptions are two recent securitizations by Redwood Trust.

[2] http://nashvillepost.com/news/2010/10/26/corker_next_big_battle_is_housing_market_regulation.

[3] http://financialservices.house.gov/UploadedFiles/100611barofsky.pdf.

In sum, all key quantitative housing metrics taken in totality demonstrate the weakened and continuing fragile state of the U.S. housing market's recovery. It is uncertain if a change or an alternate interpretation of the Act impacting mortgage REITs would be helpful for investors and the mortgage market. In contrast, we believe that any regulatory change impacting the mortgage REIT sector is likely to inject legal and market uncertainty and create confusion. Thus, it will be harmful for investors, the general public, and the market-at-large.

The Regulation of REITs

As a general matter, we do not believe that the mortgage REIT industry merits additional government regulation. AMI seeks a reasonable balance regarding any regulatory or legislative proposal impacting the industry. This view applies equally for internally or externally managed companies; the views expressed herein apply equally to both. This regulatory and legal certainty and precedent within the current framework ensure confidence for investors and other market participants. The development of enhanced structures, standards, and safeguards will continue to contribute to improving the functioning of capital markets for all investment asset classes, especially those pertaining to a necessity of life, namely sound housing. The work of policy-makers and enforcement authorities will contribute to keeping Americans in their homes, expanding credit availability, and developing effective tools to combat the foreclosure crisis. However, for the abovementioned foregoing reasons, the REIT industry is already subject to prudent regulation on the federal and state level. We do not believe that the Commission should pursue a reinterpretation of the Act.

As the Commission is intimately aware, the firms that invest in mortgages and mortgage-related investments are regulated through a variety of federal provisions that have been in place for decades, including the Investment Company Act of 1940, as well as, the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, Investment Advisers Act of 1940, and the Sarbanes-Oxley Act of 2002. These REIT investment firms are publicly traded companies, and are hence subject to NYSE and NASDAQ corporate governance and listing standards. Additionally, state law provides a number of legal structures for regulating these investment firms and the underlying real estate collateral, *i.e.*, mortgages and real estate. Investors make every effort to comply with these state and federal regulatory requirements. Today, we are also watching a rapidly evolving regulatory landscape as additional rules are promulgated, *inter alia*, in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

In 2000, Paul Roye, the former Director of the Division of Investment Management at the S.E.C. noted:

> *Investment companies are one of America's primary savings and investment vehicles . . . Since 1940, the Investment Company Act has proved to be remarkably resilient. Indeed, the true genius of the Act was its drafters' understanding that markets and circumstances change, and that industries evolve. For example, the Investment Company Act gives the SEC express authority to exempt any person, security, or transaction from any section of the Act - consistent with the protection of investors. This authority makes the Act flexible and allows it to accommodate change and innovation in ways that preserve its underlying principles. This flexibility has permitted the development of money market funds, variable insurance products, expanded international investing, securities lending programs, and unique exchange-traded products that serve particular investor needs . . .[t]he industry has responded to competitive pressures and rapid technological changes by creating and marketing new types of funds. We need to ensure that the rush to develop attractive products does not come at the expense of products and services that offer investors real financial benefits and value.*[4]

Applying the guiding principle set forth above, AMI believes that any narrowing of the staff's long-held interpretation of § 3(c)(5)(C) will be contrary to the interests of investors and consumers in the current economic landscape. It is not the time to disturb the well-reasoned, balanced approach currently in place.

As these mortgage REIT investment firms are already highly regulated, we respectfully suggest that the consequences of a change in interpreting § 3(c)(5)(C) of the Act would likely include curtailing investor access to private capital, discouraging badly needed investment in the mortgage market, and discouraging foreign capital investment resulting in a net trade imbalance.

We are hopeful that meaningful solutions can be implemented quickly, and we believe that our interests align with those of responsible homeowners. As difficult as it may be to believe, many of the most sophisticated investors were as victimized and abused by the servicers and their affiliates, just as were many consumers. Investors are essential in order to rebuild the private mortgage market. However, investors and their private capital will only return to a market which is transparent, has non-conflicted stakeholders, and the protection of contract law. We respectfully urge policy-makers to focus their attention to these issues.

Accordingly AMI and its members have supported a number of reforms as proposed in the Commission's pending Regulation AB proposal ("File Number S7-08-10"). In AMI's July 2010

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[4] http://www.sec.gov/news/speech/spch402.htm.

comments on the Reg AB proposal, we expressed our support for provisions calling for uniformity and transparency requirements in ABS transactions. Regretfully any incorrect regulation of REITs and the mortgage-related investment firms will threaten the future of the U.S. housing market and its recovery as well as harm America's global competiveness and domestic health. The removal of the exception from the Act for REITs will curtail mortgage liquidity provided by REITs. As a result, there will be less lending, more expensive credit, fewer housing options and less opportunity for all Americans. In the current economic climate, it is time to focus on existing frameworks, not look for ways to create more uncertainty and confusion for investors through the re-interpretation of decades of controlling authority. Accordingly, we need solutions providing for more transparent systems and restarting our capital markets.

Conclusion

Mortgage investors believe that the vibrancy and effectiveness of the U.S. capital markets depends on the clarity and certainty of legal and regulatory structures. Any reinterpretation of the controlling statute -- the Act -- would result in uncertainty and have consequences for continued investment. Further, investor confidence can be restored, in part, by enhancing the transparency around fundamental regulatory structures, standards, and systems. Toward this goal, the government has a role – not through additional heavy-handed regulation, but rather through the light touch of a prudent standard-setter and facilitator. With appropriate standards and rights for the holders of asset-backed securities, securitization would achieve the goals sought by many –more efficient funding of capital markets and less market volatility which would result in better economic activity.

We have never observed an economic recovery without a strong housing sector. Accordingly, we urge that the Commission refrain from a reconsideration of the interpretation of § 3(c)(5)(C) or any other provision of the Act at this time. As explained, such an action is (i) unnecessary, if not superfluous, in light of the existing, robust financial regulatory framework already in effect and enforced by the Commission and the states; (ii) it will likely result in confusion and uncertainty for investors and other market participants; (iii) it is likely to have negative implications on the fragile U.S. economic recovery; and, (iv) it is likely to have negative consequences on housing prices and distressed homeowners who are struggling with the current housing market.

On behalf of our membership, again let me express our appreciation for giving us this opportunity to comment on the inquiry concerning REITs and mortgage-related investments. Should you or any member of your Staff have any questions with regard to our views, please contact me at 202-327-8100.

Very truly yours,

/Chris J. Katopis/

Chris J. Katopis
Executive Director