

November 8, 2011

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

RE: Companies Engaged in the Business of Acquiring
Mortgages and Mortgage-Related Instruments
(Release No. IC-29778; File No. S7-34-11)

Dear Ms. Murphy:

Springleaf REIT Inc. (the "REIT") has filed an S-11 and is considering an initial public offering of its shares of common stock. The REIT intends to invest primarily in residential real estate loans. Following the completion of the REIT's initial public offering, Springleaf REIT Management LLC (the "Manager"), a subsidiary of Springleaf Finance Corporation ("Springleaf"), would serve as the manager of the REIT.

We are pleased to provide this comment letter in response to the request of the Securities and Exchange Commission (the "Commission") for comment on its concept release entitled *Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments* (the "Release"). We commend the Commission's efforts to provide clarity, consistency and regulatory certainty to the mortgage industry in a manner that facilitates capital formation, and hope that our comments will assist the Commission in its efforts.

We appreciate the opportunity to address the Commission's request for comments on whether certain residential mortgage backed securities ("RMBS"), as more

fully described in this letter, should be treated as “mortgages and other liens on and interests in real estate” for purposes of the exclusion afforded by Section 3(c)(5)(C) (the “Exclusion”) from the definition of investment company under the Investment Company Act of 1940 (the “1940 Act”).¹ Unless otherwise indicated, all section references in this letter are to sections of the 1940 Act.

BACKGROUND

The REIT currently is a wholly-owned subsidiary of Springleaf. Springleaf is a financial services company with significant U.S. residential real estate and consumer finance lending operations. With a 90-year operating history, and a nationwide network of more than 1,100 branches, Springleaf has a long track record and significant experience in originating and servicing high quality residential real estate and consumer loans. Traditionally, Springleaf has originated Mortgage Loans (as defined below) with the intent of holding them until maturity, promoting consistency in the application of its rigorous underwriting criteria.

Through its branches and headquarter operations, Springleaf also performs traditional loan servicing and administrative functions, such as collecting loan payments and managing escrow funds for the payment of mortgage-related expenses in exchange for servicing fees. With respect to loans owned by third parties, Springleaf performs these services, together with remitting principal and interest payments to such owners. Routine collection activities generally begin when the customer is 10 days or more past due. If necessary, Springleaf considers loan modifications if the customer has the capacity to pay only a reduced payment amount. Prior to initiating foreclosure on an owner occupied Mortgage Loan, the customer typically is allowed to apply for consideration under the branch loan modification program. Once a foreclosure is completed and Springleaf owns the property, the property is typically handled by its Centralized Real Estate Owned unit, or CREO. The CREO unit is responsible for maintaining and selling the property. The REIT intends to continue to follow a similar approach with respect to any of its Mortgage Loans because it intends to retain Springleaf or one of its affiliates as the servicer primarily responsible for servicing any Mortgage Loans (the “Primary Servicer”) that it owns directly or indirectly through a special-purpose vehicle (an “SPV”) it sponsors.

In order to refinance a portion of its business, Springleaf is evaluating whether to offer shares of common stock in the REIT to the public. The REIT will be primarily engaged in the business of sourcing, screening and acquiring performing whole loans secured by mortgages on residential real estate (“Mortgage Loans”). If the REIT

¹ See 15 U.S.C. § 80a-3(c)(5)(C) (2010).

completes an initial public offering, Springleaf currently expects that it would contribute to the REIT approximately 149,000 performing Mortgage Loans owned and primarily originated by Springleaf with an aggregate principal amount of approximately \$11.6 billion as of June 30, 2011.²

The Manager will source, screen and cause the REIT to acquire Mortgage Loans and other assets pursuant to guidelines (the “Guidelines”) established by the REIT’s board of directors based upon a number of factors, including but not limited to:

- *Credit Characteristics* — the perceived credit quality of the Mortgage Loans, the estimated yield on the Mortgage Loans and the likelihood that the Mortgage Loans will be repaid in full;
- *Geography* — the geographical location of the properties underlying the Mortgage Loans and how concentrated the REIT’s portfolio is in that location at that time;
- *Availability of Financing* — whether the REIT can finance the Mortgage Loans on attractive terms; and
- *Comparison to Other Potential Assets* — the attractiveness of the Mortgage Loans relative to other potential assets that could be purchased at that time.

The REIT intends to finance its future acquisition of Mortgage Loans with the interest and principal payments it receives from the Mortgage Loans that it owns as well as through other financings such as the issuance of additional shares of common stock, credit facilities and securitizations.

The REIT intends to sponsor RMBS securitizations, secured by its Mortgage Loans, as one method of financing. The REIT anticipates that it will sell the more senior classes of RMBS it sponsors to third-party investors and retain the more junior classes of such RMBS, as well as 100% of the “trust certificates” which represent the equity of the SPV established for the securitization. Notably, the governing documents of each RMBS securitization will grant the REIT — as the holder of the most subordinate class of issued securities — control rights over the remedies that may be

² Springleaf will also contribute to the REIT residual interests in two existing RMBS, which do not provide the REIT with the ability to direct foreclosure on the underlying mortgages, and which are outside the scope of the analysis in this letter. The REIT intends to treat such RMBS interests as Real Estate Type Interests (as defined below).

employed with respect to delinquent or defaulted Mortgage Loans securing such RMBS securitization.

As further described below, SPVs sponsored by the REIT will be structured to provide the REIT with the functional equivalent experience of owning the Mortgage Loans directly. When the REIT (i) acquires Mortgage Loans, (ii) sponsors an RMBS securitization secured by such Mortgage Loans, (iii) retains the most subordinate class of such RMBS (and, if applicable, one or more sequentially contiguous senior class of such RMBS issuance) and (iv) retains effective ongoing control over the remedies that may be employed with respect to any delinquent or defaulted Mortgage Loans securing the RMBS, we refer to such RMBS as “Qualifying RMBS.”³ We respectfully submit that the Commission should treat Qualifying RMBS as qualifying interests for purposes of the Exclusion.

LEGAL ANALYSIS

The REIT intends to rely on Section 3(c)(5)(C) for its exemption from regulation as an investment company. The staff (the “Staff”) of the Commission currently interprets Section 3(c)(5)(C) to require (i) at least 55% of an issuer’s assets to consist of investments in “mortgages and other liens on and interests in real estate,” which the Staff refers to as “qualifying interests,” and (ii) at least 80% of an issuer’s assets to consist of investments in (A) qualifying interests plus (B) other assets that are not qualifying interests but which are real estate type interests (“Real Estate Type Interests”).⁴

The REIT in the first instance will source, screen, acquire and directly own Mortgage Loans. Mortgage Loans are qualifying interests.⁵ The REIT’s ownership of Mortgage Loans indirectly through one or more SPVs, which are passive financing

³ This letter is not commenting on the treatment of any RMBS issued by an SPV that the REIT did not form or which does not provide the REIT with the ability to direct foreclosure with respect to defaulted Mortgage Loans. The REIT currently intends to treat such RMBS as Real Estate Type Interests (as defined below).

⁴ The Staff has not defined Real Estate Type Interests. The Staff generally appears to view Real Estate Type Interests more broadly than qualifying interests.

⁵ See, e.g., United States Property Investment N.V., SEC No-Action Letter (May 1, 1989) (mortgage loan secured exclusively by real estate in which the value of the real estate was equal or greater than the note evidencing the loan); Division of Investment Management, SEC, *The Treatment of Structured Finance Under the Investment Company Act*, Protecting Investors: A Half Century of Investment Company Regulation (1992) Ch. 1 at n. 345 and accompanying text (mortgage loan in which 100% of the principal amount of each loan was fully secured by real estate at the time of origination and 100% of the market value of the loan was fully secured by real estate at the time of acquisition).

vehicles sponsored and structured by the REIT, does not change the REIT's economic experience of owning its Mortgage Loans directly on a leveraged basis, provided the REIT retains Qualifying RMBS.

The Staff's most recent no-action letter with respect to qualifying interests states that "an asset that can be viewed as being the functional equivalent of, and provide its holders with the same economic experience as, a direct investment in real estate or in a loan or lien fully secured by real estate, may be considered to be a qualifying interest."⁶ In the same pronouncement, the Staff stated its view that an asset is not a qualifying interest if it is in the nature of a security in another person engaged in the real estate business. As a result, the Staff generally takes the position that an issuer that is engaged primarily in purchasing or otherwise acquiring participations or fractionalized interests in individual or pooled mortgages is not entitled to rely on Section 3(c)(5)(C), unless the participation interests "have attributes that would classify them as being interests in real estate rather than as being interests in the nature of a security in another person engaged in the real estate business."⁷ Qualifying RMBS satisfy each of these standards for the reasons set forth below and therefore, we respectfully submit that the Commission should affirm that Qualifying RMBS are qualifying interests for purposes of the Exclusion.

Qualifying RMBS are qualifying interests because they provide the same economic experience as holding Mortgage Loans directly.

The REIT's economic experience of holding Qualifying RMBS will be the same as owning Mortgage Loans directly on a leveraged basis. In each case, the REIT will be in the first loss risk position. Because SPVs sponsored by the REIT will be passive, pass-through financing vehicles, the REIT's returns will be dependent on its ability to (i) source, screen and acquire attractive Mortgage Loans in accordance with the Guidelines; (ii) analyze economic and market forces that will affect the value of the Mortgage Loans; (iii) select agents to service the Mortgage Loans; and (iv) achieve low-cost financing on attractive terms.

The only difference in the economic experience of the REIT owning Qualifying RMBS and owning Mortgage Loans directly is that Qualifying RMBS involves a financing that requires interest and principal payments on the Mortgage Loans to be paid first to the senior classes of RMBS. This is an alternative to borrowing from a bank on a non-recourse basis, in which case interest and principal payments would be used by the REIT first to make payments on the bank debt before making any distributions to owners of the REIT's common stock. RMBS is frequently a more

⁶ See Capital Trust, Inc., SEC No-Action Letter (February 3, 2009) (the "Capital Trust Letter").

⁷ *Id.*

attractive financing structure to a Mortgage Loan owner than bank debt. Owning Qualifying RMBS also is similar to the economic experience of owning second mortgages and B-Notes (as defined below) because the owners of such interests are in a first loss position with respect to the underlying real estate assets and subordinated to the owners of the more senior interests (*i.e.*, the owner of the first mortgage or the A-Note (as defined below), as the case may be), and the Staff has stated that both second mortgages and B-Notes are qualifying interests.⁸ In fact, the financing nature of Qualifying RMBS is also reflected in their accounting treatment as the Mortgage Loans contributed by the REIT will be consolidated on its balance sheet because the securitizations will be treated as financings under generally accepted accounting principles.⁹

Qualifying RMBS are qualifying interests because they are the functional equivalent of owning the Mortgage Loans directly due to the REIT's effective ongoing control over certain remedies.

The ability of the REIT to administer and service the Mortgage Loans and protect its beneficial interests in such Mortgage Loans will be functionally the same whether the REIT owns them directly or through an SPV to which it has contributed its Mortgage Loans to finance its operations. In each case, the REIT will retain all of the most important attributes of owning an interest in a Mortgage Loan, including ongoing control over remedies relating to enforcement, such as the unilateral ability to foreclose on a Mortgage Loan.¹⁰

As the sponsor of a Qualifying RMBS securitization and the owner of Qualifying RMBS, the REIT will have the ability (i) to source, screen and acquire the Mortgage Loans contributed to the SPV; (ii) to select the initial trustee and servicers for the SPV, including the Primary Servicer; (iii) to monitor the servicers with respect to any remedies they may seek to enforce; (iv) if the REIT is dissatisfied with the remedies pursued by the Primary Servicer, to purchase the Mortgage Loan from the SPV, at which point the REIT would have the unilateral right to foreclose upon the Mortgage Loan or seek alternative remedies; and (v) to reacquire the Mortgage Loans at the termination of

⁸ See, *e.g.*, Prudential Mortgage Bankers & Investment Corp., SEC No-Action Letter (December 4, 1977) and The State Street Mortgage Co., SEC No-Action Letter (July 17, 1986) (each treating second mortgages as qualifying interests); and the Capital Trust Letter (treating B-Notes as qualifying interests).

⁹ See ASC 860, Transfers and Servicing.

¹⁰ The Staff has stated that the ability to foreclose is the most important attribute. See MGIC Mortgage Corporation, SEC No-Action Letter (Aug 1, 1974) (the "MGIC Letter"); Northwestern Ohio Building & Construction Trades Foundation, SEC No-Action Letter (May 21, 1984) (the "Northwestern Ohio Letter").

the financing, upon the satisfaction of certain conditions. Overall, the REIT will maintain effective control over the Mortgage Loans and have the ability to readily cure defaults.

Because the REIT will retain substantially the same ability to protect its economic interest in its Mortgage Loans whether it owns them directly or through an SPV, the REIT will have the same or a greater level of control over its interest in such Mortgage Loans as others have had in circumstances in which the Staff previously has determined securities qualify as the functional equivalent of owning a Mortgage Loan and therefore are qualifying interests under Section 3(c)(5)(C).¹¹ The final result in every case is that the REIT is able to readily protect its interest in Mortgage Loans that are delinquent or defaulted by approving the remedies pursued by the Primary Servicer or, if dissatisfied with the actions of the Primary Servicer, by exercising its right to reacquire the Mortgage Loans and then unilaterally pursue the remedies the REIT believes to be in its best interest.

Qualifying RMBS are qualifying interests because they have attributes that make them interests in real estate rather than interests in the nature of a passive investment in a person engaged in a real estate business.

Qualifying RMBS are substantially similar in all material respects to the participation interests the Staff concluded were qualifying interests in the no-action letter the Staff issued to MGIC Mortgage Corporation (“MGIC”).¹² MGIC was a company engaged in the business of acquiring Mortgage Loans, pooling those Mortgage Loans and selling participation interests in the pools, while retaining a participation interest in the pool of Mortgage Loans for itself. All of the Mortgage Loans in a pool were serviced by a servicer subject to guidelines established by MGIC. MGIC was responsible for supervising the servicing of Mortgage Loans in the pool.

The Staff granted no-action relief to MGIC, provided that (i) participation interests owned by MGIC were created as the result of the fractionalization of whole Mortgage Loans or pools of Mortgage Loans that had been purchased by MGIC, (ii) MGIC retained at least a 10% economic interest in each Mortgage Loan or pool of Mortgage Loans it fractionalized, (iii) MGIC alone was the formal record owner of the Mortgage Loans and (iv) MGIC had supervisory responsibility with respect to the servicing of the fractionalized Mortgage Loans and had sole discretion with respect to the remedies sought for delinquent or defaulted Mortgage Loans, including foreclosure. The Staff stated that these conditions were intended to ensure that the company “will have a substantial continuing ownership interest in such mortgages and pools and unrestricted

¹¹ *Id. See, also*, NAB Asset Corp., Sec No-Action letter (Jun. 20, 1991).

¹² *See* MGIC Letter, *supra*.

control over the enforcement of the lien and other matters with respect to such mortgage loans so that the interest retained . . . would be an interest in real estate . . . rather than an interest in the nature of a security in another person engaged in the real estate business.”¹³

As described above, the REIT will operate in a manner substantially similar to the manner in which MGIC operated. The REIT will acquire Mortgage Loans and, after pooling those Mortgage Loans in an SPV, cause the SPV to sell senior debt obligations to investors while retaining a substantial economic interest in the SPV for itself, although the interests sold to investors will be senior to the interest retained by the REIT. The REIT also will be able to monitor the servicing of the Mortgage Loans and, if the REIT disagrees with the remedies enforced by the Primary Servicer with respect to delinquent or defaulted Mortgage Loans, will have the ability to reacquire the Mortgage Loans from the SPV and unilaterally pursue such remedies, including foreclosure, as it believes to be in its best interest. In the *MGIC Letter*, the Staff stated that the company’s maintenance of at least a 10% economic interest in the pool of mortgages was a factor in determining that mortgage participation interests were qualifying interests. Although the Staff did not require such a minimum interest in the subsequent *Northwestern Ohio Letter*, the REIT intends to retain at least a 10% economic interest in each SPV it forms.

The only requirement of the *MGIC Letter* that the REIT will not satisfy on its face is the requirement that MGIC continue to hold legal title to fractionalized Mortgage Loans; however, the Staff did not impose this requirement in the more recent *Capital Trust Letter*, in which the Staff granted no-action relief for certain B-Notes. In the relevant B-Note structures, the primary lender with respect to a Mortgage Loan held legal title to the loan, was listed as the lender of record and retained a participation interest in the Mortgage Loan (which participation interest is referred to as the “A-Note”), but sold a subordinate participation interest in the Mortgage Loan (referred to as a “B-Note”) to the applicant.¹⁴ The Staff granted no-action relief even though the owner of the B-Note did not hold legal title to the underlying Mortgage Loan. It also is not clear how holding legal title directly at the REIT instead of indirectly through a passive financing vehicle sponsored by the REIT would cause the REIT to have any greater ownership interest or control over enforcement of the lien, in light of the other protections available to the REIT through a Qualifying RMBS.

¹³ See *MGIC Letter*, *supra*.

¹⁴ The B-Note holders are subordinate in all respects to the A-Note holders. In fact, in certain A/B financings, where the borrower does not issue a note to the B-Note holder to create contractual privity between the borrower and the B-Note holder, the B-Note holder could have difficulty obtaining payment in the event that the A-Note holder files for bankruptcy.

In our view, the REIT will retain as much or more control over the Mortgage Loans underlying Qualifying RMBS as the owner of a B-Note had over its interest in the underlying real estate. The REIT first sources, screens and acquires the full Mortgage Loans, transfers them to an SPV sponsored by the REIT in connection with a securitization, selects the trustee and servicers of the Mortgage Loans, supervises the operations of the servicers and has the power to repurchase any delinquent or defaulted Mortgage Loans from the SPV if the REIT disagrees with the remedies pursued by the Primary Servicer, thereby regaining title to the Mortgage Loans and enabling it to unilaterally pursue such remedies as it believes to be in its best interest. This bundle of rights ensures that the REIT will be able to control the protection of its interests in Mortgage Loans owned indirectly through an SPV in which it retains Qualifying RMBS and that such Qualifying RMBS will be interests in real estate rather than interests in the nature of a passive investment in a person engaged in a real estate business.

Qualifying RMBS are qualifying interests because they have more attributes of an interest in real estate than RMBS previously reviewed by the Staff.

The REIT also believes that the treatment of Qualifying RMBS as qualifying interests would be consistent with the treatment of similar RMBS investments by other real estate investment trusts reviewed by the Staff, such as KKR Financial Corp. (“KKR Financial”).¹⁵ In responding to comments of the Staff in connection with its initial public offering, KKR Financial stated that for purposes of the Section 3(c)(5)(C) exemption it would treat its interests in certain securitizations of residential mortgage loans as qualifying interests. With respect to one such securitization, KKR Financial stated that even though it may only own a partial interest in mortgage loans, it maintained the functional equivalent of owning the mortgage loans directly because it had the right to foreclose on the underlying mortgage loans. With respect to another securitization in which KKR Financial owned the subordinated securities, it stated that it “negotiated and obtained the right to direct foreclosure with respect to any defaulted loans in the related mortgage pool.” Therefore, KKR Financial stated that it was appropriate to “classify all of its interest in the ... securitization as qualifying investments ... because the investments, collectively, are coupled with the right of the Company, unilaterally, to foreclose upon any mortgage loan in the underlying pool of mortgage loans Accordingly, the Company’s entire interest in the pool of mortgage loans is ‘functionally equivalent’ to owning the underlying mortgage loans.”¹⁶ KKR Financial included similar disclosure in its registration statement.

¹⁵ In 2007, KKR Financial Corp. merged into KKR Financial Holdings LLC.

¹⁶ See Letter to the Staff, dated June 13, 2005 (publicly available via EDGAR).

We believe that Qualifying RMBS have at least as many, if not more, of the attributes of directly owning the underlying Mortgage Loans as the RMBS interests described by KKR Financial in its registration statement, because in addition to having the right to foreclose on the underlying Mortgage Loans, the Manager on behalf of the REIT will have sourced, screened and acquired the mortgages itself, will have selected the initial trustee and servicers for the issuer of the Qualifying RMBS, and will have negotiated the governing documents governing, and sponsored the issuer of, the Qualifying RMBS for the purpose of financing its own mortgage business. The REIT will not merely have acquired an interest in an RMBS issuer sponsored by a third party.

Our business is the type Congress intended to exclude from registration as an investment company.

Our business of acquiring mortgages and financing our operations through RMBS securitizations is the type of business Congress intended for Section 3(c)(5)(C) to exclude. The few statements in the legislative history that address Section 3(c)(5)(C) indicate that Congress intended it to exclude companies that own mortgages and other interests in real estate based upon a company's asset composition. In Congressional reports and transcripts of Congressional hearings, Section 3(c)(5)(C) was described alternatively as being for "companies dealing in mortgages,"¹⁷ "companies [that have] portfolios of securities in the form of . . . mortgages and other liens on and interests in real estate"¹⁸ and "mortgage companies, although they in essence deal in securities."¹⁹

We are a company primarily engaged in owning or otherwise acquiring mortgages and other interests in real estate. We acquire individual mortgages. We then finance our business by contributing those mortgages to SPVs we structure and through which we enjoy both continued exposure to the economics of those mortgages on a leveraged basis and the ability to protect our interests in those mortgages. Congress has consistently indicated that companies such as Springleaf that are primarily engaged in owning or otherwise acquiring mortgages and other interests in real estate are not the type of companies that the 1940 Act was meant to regulate.²⁰

¹⁷ S. Rep. No. 1776, 76th Cong., 3d Sess. 13 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 12 (1940).

¹⁸ S. Rep. No. 186, 91st Cong., 1st Sess. 37 (1969) ("1970 Senate Report").

¹⁹ Hearings on S. 3580, Subcommittee of the Committee on Banking and Currency, U.S. Senate, 76th Congress, 3d Sess. 181 (1940) (statement of Staff counsel David Schenker).

²⁰ When Congress amended the Exclusion in 1970, it continued to recognize and reaffirmed that it did not intend for the 1940 Act to regulate companies primarily in the business of owning or otherwise acquiring portfolios of mortgages and other real estate interests, because such companies did not fit the

CONCLUSION

The description of the REIT's business set forth above clearly establishes that the REIT is simply continuing the Mortgage Loan business of Springleaf and will be primarily engaged in the real estate business and, as it relates to employing RMBS securitizations to finance its business, not in the business of acquiring passive investments in securities issued by third parties. The most important aspects of the REIT's business will be sourcing, screening, acquiring and owning its Mortgage Loans. The sponsorship of RMBS securitizations by the REIT is merely a method of financing its operations and does not render the REIT any less engaged in the business of sourcing, screening, acquiring and owning Mortgage Loans that are qualifying interests, particularly where the REIT acquires the mortgages itself, structures the securitization itself and continues to be actively involved in decisions with respect to its Mortgage Loans by retaining the bundle of rights previously described.

We therefore believe that the REIT's ownership of Qualifying RMBS gives the REIT the same economic experience as if it continued to hold its Mortgage Loans directly and financed the Mortgage Loans through an alternative form of leverage, such as a term loan from a bank. We also believe that the bundle of rights retained by the REIT with respect to Qualifying RMBS make them the "functional equivalent" of continuing to hold the Mortgage Loans directly. As a result, we respectfully submit that the Commission should find and state the position that Qualifying RMBS are "interests in real estate" for purposes of Section 3(c)(5)(C) and, therefore, qualifying interests.

We are pleased to have provided this comment letter to the Commission in response to the SEC's solicitation for comment on the Release. We again commend the Commission's interest in providing clarity, consistency and regulatory certainty to the mortgage industry in a manner that facilitates capital formation and hope that our comments will assist the Commission in its efforts.

mold of an investment company that the 1940 Act was intended to regulate: a "conventional investment company investing in the stocks and bonds of corporate issuers." *See* 1970 Senate Report at 37; *see* H.R. Rep. No. 1382, 91st Cong., 2d Sess. 17 (1969).

Should you require further information or if you would like to discuss the matters raised in this letter further, please telephone me at (812) 468-5656.

Very truly yours,

/s/ Jack R. Erkill

General Counsel

cc: Mary L. Schapiro, Chairman
Elisse B. Walter, Commissioner
Luis A. Aguilar, Commissioner
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