

MEMORANDUM

TO: File No. S7-34-11, Concept Release: Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments

FROM: Christian L. Broadbent
Counsel to Commissioner Walter

DATE: April 27, 2012

RE: Meeting with members and representatives of the Mortgage Bankers Association

On March 27, 2012, Commissioner Walter and her Counsel, Christian Broadbent, met with the following members and representatives of the Association to discuss the above-referenced release:

- Byron L. Boston, Executive Vice President and Chief Investment Officer, Dynex Capital, Inc.
- Peter Federico
Senior Vice President and Chief Risk Officer
American Capital Agency Corp.
Bethesda, MD
- Kevin Grant
Chief Executive Officer and President
CYS Investments, Inc.
Waltham, MA
- Donald Ramon
Chief Financial Officer
INVESCO Mortgage Capital, Inc.
Atlanta, GA
- David Lynn
Partner
Morrison & Foerster Law Firm
Washington, DC
- David Stevens
MBA President/CEO
- Michael Carrier
MBA Staff

The agenda submitted was as follows:

The purpose of the meeting would be to discuss the SEC's "Concept Release" regarding whether REITs and other similar entities should be subject to the Investment Company Act of 1940.

A document provided for the meeting is attached.



Mortgage REIT Key Advocacy Considerations

Listed below are highlights from the Mortgage Bankers Association's (MBA's) position regarding issues related to mortgage Real Estate Investment Trusts (REITs).

- **Mortgage REITs are a vital component of the real estate finance system and play an important role in enhancing residential and commercial real estate finance liquidity.** The role of REITs is more significant now given the turmoil in the primary and secondary mortgage markets. There is widespread support for substantially reducing the government's role in the mortgage markets and increasing the participation of private capital. REITs are a ready source of private capital into the mortgage market. In the first part of 2011 alone, they raised \$11 billion, which translates into \$71 billion of mortgage demand out of net supply of \$203 billion.¹
- **The Securities and Exchange Commission's (SEC) "Concept Release" is improvident.** In August 2011, the SEC issued a "Concept Release" to seek public comment on whether companies such as mortgage REITs should lose their longstanding exemption from the Investment Company Act of 1940. This action is imprudent because the housing finance system has yet to normalize. Even the suggestion of a change in the SEC's requirements could quell innovation in the mortgage markets and adversely affect private investors in the markets. For example, the mere publication of the Concept Release had a chilling effect on capital formation in the mortgage REIT sector.
- **Mortgage REITs are currently subject to a wide range of statutory and regulatory requirements governing REITs.** The Dodd-Frank Act, Sarbanes-Oxley Act, Basel Capital Accord and financial accounting standards already impose rigorous governance, reporting and other requirements for publicly-listed mortgage REITs. MBA believes these requirements provide sufficient protection to investors in the securities of mortgage REIT.
- **The statutory language and congressional intent of Section 3(c)(5)(C) is unambiguous with regard to the treatment of real estate assets.** The SEC's long-standing position is that companies engaged in the business of acquiring mortgages and interests in real estate are excluded from the application of the Investment Company Act. Although the mortgage markets have evolved over recent years, we do not believe that this evolution, and the SEC's interpretive approach in light of that evolution, should be revisited at this time.
- **The SEC should consider all potential costs associated with any change in approach on the Investment Company Act exemption.** MBA is concerned that the SEC has not carefully considered the full range of economic consequences of moving forward with its Concept Release, particularly the negative impact on liquidity and consumer borrowing.
- **The SEC should announce future actions regarding the concept release.** We are concerned that prolonged uncertainty regarding the SEC's Concept Release will negatively impact mortgage REIT activity. We respectfully request that the SEC provide an indication of how it plans to proceed.

¹ Barclays Capital, "SEC Action Threatens REIT demand for MBS," September 20, 2011.