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February 7, 1974

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Act	<i>ICA-40</i>	
Section	<i>3(c)(5)(C)</i>	REC'D - S.E.C.
Availability	<i>8/1/74</i>	FEB 11 1974

Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D. C. 20549

Attention: Alan Rosenblat, Chief Counsel,
Division of Investment Management Regulation

Gentlemen:

Re: MGIC Mortgage Corporation -- Letter of Division
of Investment Company Regulation dated
September 1, 1972

MGIC Mortgage Corporation (the "Company") is engaged in the business of issuing commitments to purchase, and purchasing loans secured by mortgages on 1 to 4 family residences, including individual condominium units. For a detailed description of the business of the Company, reference is made to the Prospectus dated January 24, 1974, attached hereto as Exhibit 1. The Company also, from time to time, sells mortgages from its portfolio. For a description of such sales, see Page 18 of the Prospectus, attached as Exhibit 1.

In response to a no-action letter request dated June 21, 1972, the Commission, by a letter dated September 1, 1972, of the Division of Investment Company Regulation advised the Company that the activities of the Company would not constitute that of an investment company by reason of Section 3(c)(5) of the Investment Company Act of 1940. For the convenience of the Staff, a copy of the letter of the Commission

Securities and Exchange Commission
February 7, 1974
Page Two

is attached as Exhibit 2 and a copy of the letter on behalf of the Company is attached hereto as Exhibit 3.

1. Description of Participation Agreement.

The Company now seeks a revision to the letter of September 1, 1972 to extend its application to include the sale of participations. A draft of form of Participation Agreement (the "Agreement") is attached hereto as Exhibit 4. In summary, the Agreement will relate to an investment for a given term and at a specified yield in a designated pool of mortgage loans in which the Company retains a continuing percentage ownership interest. See Agreement, Participation Certificate/Exhibit A. Generally, neither the term nor the yield will be the same as the average maturity of or yield on the mortgages included in the pool.

All mortgage loans subject to the Agreement must meet the requirements of and have been purchased by the Company pursuant to the MGIC/MC Master Agreement and will be serviced by a servicer subject to the MGIC/MC Servicers Guide. The forms of Master Agreement and Servicers Guide are attached hereto as Exhibits 5 and 6, respectively. The Agreement also provides that, for a specified period, in the event of default in the payment of principal and interest due on any mortgage loan for a period of 90 consecutive days after the due date of any payment thereon; the Company will promptly purchase at par the Participant's full participation share in the loan. See Agreement, Paragraph 1. The Company agrees to submit reports in reasonable detail and to remit to the Participant on or before the 15th day of the month following the month the mortgage payments are due, the Participant's pro rata share of principal and interest on the mortgage loans at a negotiated rate. See Agreement, Paragraph 5.

Under the terms of the Agreement, the Company is responsible for supervising the servicing of mortgage loans by the servicer and all other matters with respect to mortgage loans included in the participation such as enforcement of collections and foreclosure. See Agreement, Paragraphs 5 and 7. In the event of insolvency or bankruptcy of the Company,

the Agreement provides that the Participant shall have the right to exercise all powers granted to the Company and the mortgage loans and all records thereof shall be delivered to the Participant, together with appropriate assignments and documents of authority. See Agreement, Paragraph 11.

2. Business Reason for Sale of Participations vs. Sale of Whole Loan Mortgages.

Participation arrangements in mortgage investments by two or more institutional lenders perform a number of useful economic functions. Direct whole mortgage loan ownership involves many legal requirements (qualification for doing business, etc.), as well as the maintenance of a capable specialized administrative organization (supervising servicing agents, maintaining individual loan repayment status records, supervising delinquent collection and default processing, etc.). Further, transfers of mortgage loan ownership involve additional administrative and legal expenses (preparing and recording assignments, etc.).

With a participation, however, a secondary investor may avoid either or both of qualification for recorded mortgage ownership and the largely fixed expense of maintaining a specialized staff to administer the functions of mortgage loan ownership, as well as transfer expenses, since formal, recorded ownership is retained by a lead investor.

Thus, even as between two similar fully qualified and organized mortgage loan investors, there are significant economies of expense in the purchase of a participation interest as compared with the purchase of a similar value of whole mortgage loans. These considerations are particularly relevant for those classes of institutional investor who have never had (e.g., pension funds) or who have disbanded (e.g., most life insurance companies) specialized mortgage loan ownership sub-organizations.

Many such investors are now interested in mortgage loan investments -- at a proper competitive yield -- provided

that the organizational and legal requirements can be avoided. The participation interest technique offers them this possibility and thereby opens up a large segment of potential investment in home mortgage loans, which has been a continuing object of public policy studies for a number of years.

The techniques of participation have been widely developed as between savings and loan associations and between savings and loan associations and qualified mortgage loan originators and servicers under the impetus of Federal Home Loan Bank and Federal Savings and Loan Insurance Corporation regulations encouraging the use of participation interests as a means of facilitating inter-regional flows of mortgage investment between the financial institutions they regulate and insure.

Pension and trust fund interest in an acquaintanceship with the investment flow characteristics of mortgage participations has been developed more recently through the emergence of pass-through type, mortgage-backed securities sponsored by the Government National Mortgage Association. The familiarity and experience gained through the simplicity of the GNMA guaranteed securities creates a potential receptivity to similar pass-through investments in nongovernmental mortgage loans which could substantially enlarge the potential national pool of funds from which mortgage loan investments can be drawn.

3. Criteria For Sale of Participation Interests.

The Company anticipates that the dollar amount of participations sold could amount to approximately 40% of the dollar amount of cumulative purchases of mortgage loans. The Company has structured various criteria for the sale of participation interests the consequence of which will be to restrict such sales solely to professional mortgage investor institutions. These criteria are principally as follows:

a. Transaction Size. The initial minimum dollar equivalent of the percentage participation in the mortgage pool would be \$500,000.

b. Institutional Character of Participants. Only the following investors will be eligible to purchase a participation: mortgage companies, commercial banks, state and federally chartered savings and loan associations, mutual savings banks, insurance companies and pension funds.

c. Number of Participants. The number of participants, excluding the Company, in a single participation would be limited to one.

d. Restriction on Transfer. No resale or sub-participation of the interest could be made without the consent of the Company, and in any event only in conformity with the foregoing standards of transaction size, number of participants and institutional character of participants. Paragraph 4 of the Agreement, in final form, will reflect this limitation.

Accordingly, because of these criteria, the purchase of the participations will be restricted to the area of professional mortgage investing institutions, where the protection supplied by the '40 Act is not required.

4. Conclusion.

The letter of the Division of Investment Company Regulation dated September 1, 1972, limited the Company's business activities to "dealing in whole loans, not in participations or fractional interests in individual or pooled mortgages or deeds of trust." Nevertheless, to the extent such letter was based upon 3(c)(5) of the '40 Act, we and the Company believe that such letter should continue to be applicable to these additional business activities.

The Company requests that the letter be restated to reflect the described change in the business of the Company. However, if the Staff of the Division believes that such restatement is inappropriate, the Company requests a conference to discuss an application by the Company for an exemption order under Section 6(c) of the Investment Company Act of 1940.

Securities and Exchange Commission
February 7, 1974
Page Six

Three (3) copies of this letter are being submitted herewith.

Very truly yours,

Benjamin F. Garmer, III
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Benjamin F. Garmer, III

- Exhibit 1: Prospectus dated January 24, 1974
2: Letter of Division of Investment Company Regulation dated September 1, 1972
3: Letter of Foley & Lardner dated June 21, 1972
4: Preliminary Form of Participation Agreement
5: MGIC/MC Master Agreement
6: MGIC/MC Servicers Guide

cc: Commissioner John R. Evans

As you know, in our view MGIC Mortgage Corporation ("MGIC/MC") would not be entitled to rely upon the exception to the definition of investment company contained in Section 3(c)(5)(C) of the Investment Company Act of 1940 ("Act") if MGIC/MC were to engage primarily in purchasing or otherwise acquiring participations or fractional interests in individual or pooled mortgages or deeds of trust. However, based on the facts presented and the representations made in this letter and its attachments, and the attached supplementary letter of April 16, 1974, we would not recommend that the Commission take any action if MGIC/MC is primarily engaged in the acquisition of mortgage participation interests provided: (1) such interests are created by the fractionalization of whole mortgage loans or pools of whole mortgage loans which have been purchased by MGIC/MC; (2) MGIC/MC retains a continuing percentage ownership interest of at least 10% in each whole mortgage loan or pool thereof which it has fractionalized; (3) MGIC/MC alone is the formal, record owner of the mortgages; and (4) MGIC/MC throughout the life of the participation has complete supervisory responsibility with respect to the servicing of mortgage loans included in a participation and has sole discretion as to enforcement of collections and the institution and prosecution of foreclosure or similar legal proceedings as set forth in paragraph 7 of the Participation Agreement (Exhibit 4, copy attached).

These conditions are intended to insure that if MGIC/MC engages primarily in acquiring undivided interests in whole mortgages or pools thereof in the manner described, MGIC/MC will have a substantial continuing ownership interest in such mortgages and pools and unrestricted control over the enforcement of the lien and other matters with respect to such mortgage loans so that the interest retained by MGIC/MC would be an interest in real estate within the meaning of Section 3(c)(5)(C) of the Act rather than an interest in the nature of a security in another person engaged in the real estate business.

Sidney L. Cimmet

Sidney L. Cimmet, Assistant Chief Counsel
Division of Investment Management Regulation

cc: Mark Lezell
Division of Corporation Finance

Jeff Steele
Division of Market Regulation

SLC:ds

JUL 2 1974