

PUBLIC

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 95-172-CC
Citicorp Securities, Inc.
File No. 132-3

Your letter dated March 23, 1995 requests our assurance that we would not recommend enforcement action to the Commission if a business trust, organized and operated as described in your letter (the "Trust"), does not register under the Investment Company Act of 1940 (the "1940 Act") in reliance on the exception from the definition of investment company provided by Rule 3a-7 under the 1940 Act.

The Trust proposes to issue a single class of unrated beneficial interests that will be sold only to qualified institutional buyers as defined in Rule 144A under the Securities Act of 1933 (the "Securities Act") and to persons involved in the organization or operation of the Trust. The beneficial interests will have a targeted maturity of between two and seven years. Proceeds from the sale of the beneficial interests will be used to acquire certain short-term, high quality investments ("Short-term Assets") that have a maturity of 31 days or less. ^{1/} These assets will be held to maturity. The proceeds received on maturity of the Short-term Assets will be reinvested in similar Short-term Assets selected by a third-party administrator.

In addition to investing in Short-term Assets, the Trust will enter into standby commitments with commercial paper issuers identified at the time of the formation of the Trust. Each standby commitment will conditionally require the Trust to purchase from a commercial paper issuer (1) specified asset-backed securities or (2) notes or other securities supported by a security interest in specified asset-backed securities (collectively, "Long-term Assets"). ^{2/}

As compensation for entering into standby commitments, the Trust will receive commitment fees. The commitment fees will be calculated as a specified number of basis points per annum of the principal amount of the standby commitment. The standby commitment generally will require the Trust to purchase the Long-term Assets if the commercial paper issuer is unable to roll over

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- ^{1/} The Trust's Short-term Assets may include repurchase agreements for government securities, A-1/P-1 commercial paper or other corporate obligations rated A-1/P-1, securities issued or guaranteed by the U.S. government or its agencies, and dollar-denominated obligations issued or guaranteed by U.S. and foreign banks with assets exceeding \$1 billion and rated A-1/P-1.
 - ^{2/} The Trust will be permitted to hold Long-term Assets that consist of (or are supported by) asset-backed securities that have not been registered under the Securities Act. The Long-term Assets may be unrated.

maturing commercial paper by issuing new commercial paper. The Trust will acquire Long-term Assets only in connection with honoring commitments.

Each Trust investor will be entitled to receive the stated amount of the beneficial interests upon their targeted maturity (or potentially earlier or later if Long-term Assets are acquired). 3/ In addition, each Trust investor will be entitled to receive a pro rata share of the (1) interest (or discount) earned on Short-term Assets, (2) commitment fees generated by the standby commitments, and (3) interest and similar distributions earned on any Long-term Assets that are acquired.

Trust assets will be maintained in the name of an independent trustee in its capacity as trustee for the Trust, under the trustee's sole dominion and control. All payments received by the Trust will be deposited in one or more segregated accounts maintained in the name of the trustee in its capacity as trustee for the Trust, under the sole dominion and control of the trustee. 4/

Nature of the Trust's Business and Its Assets

Rule 3a-7 excepts from the definition of investment company an issuer that "is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets and who does not issue redeemable securities (and in activities related or incidental thereto)," provided that certain conditions are met. "Eligible assets" are defined in paragraph (b)(1) of Rule 3a-7 as "financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure servicing or timely distribution of proceeds to the security holders." You believe that both the Short-term Assets and Long-term Assets meet the definition of eligible assets. We agree.

You also believe that the commitment fees received by the Trust should be viewed as eligible assets because each commitment fee will be structured as a series of periodic, fixed payments over a finite time period equal to the length of the commitment. We disagree. The commitment fees are in the nature of fees paid to the Trust for providing a service (i.e., standing ready to

3/ If a commitment is called and the Trust acquires Long-term Assets, investors will be repaid in accordance with the Trust's receipt of distributions on the Long-term Assets.

4/ Paragraph (a)(4) of Rule 3a-7 imposes certain requirements with respect to the appointment of an independent trustee and the safekeeping of assets.

purchase the underlying Long-term Asset) and therefore, in our view, do not qualify as eligible assets under the Rule. 5/

Any issuer that relies on Rule 3a-7 must be engaged solely in the business of purchasing, or otherwise acquiring, and holding eligible assets and in activities related or incidental thereto. 6/ It is the Division's view that the "related or incidental" activities permitted by Rule 3a-7 include only those activities that support or further, and therefore are secondary to, the entity's business of purchasing, or otherwise acquiring, and holding eligible assets. 7/ Accordingly, if the acquisition and holding of eligible assets by an issuer is secondary to, or is undertaken primarily in support of, another business, that issuer may not rely on Rule 3a-7. Because we conclude that the commitment fees are not eligible assets, the Trust may rely on Rule 3a-7 only if entering into the standby commitments is an activity incidental or related to the Trust's business of acquiring and holding the Short- and Long-term Assets. You state that the Trust has received your opinion of counsel stating that,

5/ This position should not be read to mean that the right to receive this type of fee could not, under certain circumstances, be separately securitized and held as an eligible asset by an entity relying on Rule 3a-7.

6/ In the proposing release for Rule 3a-7, the Commission stated that only issuers whose sole business is to hold a pool of eligible assets and to issue non-redeemable securities could rely on the rule. Investment Company Act Rel. No. 18736 (May 29, 1992) (proposing Rule 3a-7). Rule 3a-7, as adopted, permits issuers also to engage in activities that are "related or incidental" to the business of acquiring and holding eligible assets. This change was made in response to comments that an issuer's activities during the operation of a structured financing are not necessarily limited to acquiring and holding eligible assets but also may include activities such as filing registration statements, returning defective assets to the sponsor, and servicing the assets (through the servicer as the financing's agent). Investment Company Act Rel. No. 19105 at n.23 and accompanying text (November 19, 1992) (adopting Rule 3a-7).

7/ The definition of eligible assets includes assets that are necessary to assure the distribution of cash flow and/or proceeds to securityholders. See Adopting Release at nn. 16 & 18 and accompanying text. Therefore, the business of holding eligible assets may legitimately include activities such as the temporary management of an office building or other property acquired as a result of a default on a secured loan.

Based on the standard set forth above, the Trust may rely on Rule 3a-7 because (i) it will be engaged solely in the business of acquiring and holding eligible assets and (ii) entering into the standby commitments is an activity related or incidental to that business.

Next, paragraph (a)(3) of Rule 3a-7 permits an issuer to acquire additional eligible assets or to dispose of eligible assets only if certain conditions are satisfied. First, the acquisition or disposition must comply with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued. With respect to the Trust's reinvestment of proceeds from maturing Short-term Assets, you state that the Trust's Administrator will select new Short-term Assets from a list of eligible obligors set forth in a schedule to the Trust Agreement, based on a set of investment criteria also specified in the Trust Agreement. 8/ You believe that these limitations placed on the reinvestment process will satisfy this condition. With respect to the acquisition of Long-term Assets, you state that the Trust Agreement will permit investment only in Long-term Assets specifically identified in the Trust Agreement as underlying the standby commitments. 9/

Paragraph (a)(3) also states that eligible assets must not be acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes. You represent that the Trust will not be permitted to "trade" Short-term Assets or Long-term Assets for any reason. 10/ The Trust will sell Short-term Assets only in connection with the

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- 8/ The administrator will be able to make changes to the list of eligible obligors if necessary to satisfy the requirements in the Trust Agreement concerning the minimum credit standards within the pool of eligible obligors and the minimum number of eligible obligors on the list.
- 9/ In addition, the acquisition or disposition of eligible assets must not result in a downgrading of the rating of the issuer's outstanding fixed-income securities. Rule 3a-7(a)(3)(ii). Assuming the beneficial interests are fixed-income securities, you believe that this condition should not apply to the proposed transaction because the beneficial interests will not be rated and the Trust will not otherwise issue rated securities. We agree, although we express no view on whether the beneficial interests are fixed-income securities, as indicated in note 13 below.
- 10/ The Trust will be permitted to sell the collateral securing the repurchase agreements referred to in footnote 1 if there are defaults on the repurchase agreements.

Termination of the Trust or as needed to honor commitments. Similarly, the Trust will sell Long-term Assets only in connection with the termination of the Trust or the Trust's targeted maturity. We agree that, under the circumstances described above, the Trust will satisfy the requirements of Paragraph (a) (3) of Rule 3a-7.

Securities Issued by the Trust

As stated above, to qualify under Rule 3a-7, an issuer may not issue redeemable securities. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. You believe that the Trust will not be issuing redeemable securities within the meaning of Section 2(a)(32) because of the limitations placed on an investor's ability to withdraw all or a portion of its investment from the Trust prior to the targeted maturity date. 11/ Withdrawals will not be permitted during the first six months following an investment in the Trust, and, thereafter, a notice period of 180 days will be required. In addition, no withdrawal requests will be honored if, prior to the date of honor, the Trust has received notice requiring it to honor a commitment to purchase Long-term Assets. We agree that, in these circumstances, the Trust will not be issuing redeemable securities. 12/

11/ Investors will be permitted to sell their beneficial interests at any time to qualified third-party purchasers that are not affiliated with the Trust or its administrator, but only if other investors representing at least 51% of the remaining beneficial interests consent in writing to the sale. Third-party purchasers will be subject to the same limitations on resale of beneficial interests and withdrawal from the Trust as initial investors. The Trust's administrator may elect to create a private secondary market for the beneficial interests. We express no view on whether the creation of a secondary market would require the administrator to register as a broker-dealer under the Securities Exchange Act of 1934.

12/ You assert that the Trust's beneficial interests should not be considered redeemable because each beneficial interest will be cashed out, if at all, based on the stated dollar amount of the beneficial interest plus accrued return, as opposed to the fair market value of the Trust's assets. We disagree. It is the staff's position that the net asset value (or its equivalent) of fixed-income securities can be calculated by reference to their stated dollar amount plus

Finally, paragraph (a)(1) of the Rule requires that the Trust must issue either fixed-income securities or other securities that entitle their holders to receive payments that depend primarily on the cash flow from eligible assets. You state that the payments on the beneficial interests will be derived from the interest earned on the Short-term Assets and the periodic receipt of commitment fees, and, if a commitment is called, from distributions on the Long-term Assets. You further state that the commitment fees will not account for more than 15% of the return on the beneficial interests. Therefore, although we have determined that the commitment fees are not eligible assets, we agree that, regardless of whether a commitment is called, payments on the beneficial interests will depend primarily on the cash flow from eligible assets. 13/

We would not recommend enforcement action to the Commission if the Trust does not register under the 1940 Act in reliance on Rule 3a-7. Our position is based on all the facts and representations contained in your letter, particularly that the Trust has received your opinion of counsel that entering into the standby commitments is an activity related or incidental to the business of acquiring and holding eligible assets, and the representation that the beneficial interests will be sold only to qualified institutional buyers and persons involved in the organization or operation of the Trust. Because this position is based on the facts and representations contained in your letter, any different facts or representations might require a different conclusion.

accrued return. See Donaldson, Lufkin & Jenrette Securities Corporation (pub. avail. Sept. 23, 1994).

13/ You have not asked and we offer no view regarding whether the beneficial interests are fixed-income securities as defined in Rule 3a-7(b)(2).

Your request for confidential treatment under 17 C.F.R. 81(b) has been granted until the earlier of 120 days from the date of this letter or the date of any disclosure of the facts sufficient to reveal the essence of the no-action request or this response. Please inform this office if this information is made public in any fashion prior to the expiration of the 120-day period.



Amy R. Doberman
Assistant Chief Counsel



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No Act

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Pe 3/23/95 8-21254

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22-22-M
SEP 10 1995

March 23, 1995

ACT ICA-40

SECTION _____

Rule 3a-7 of the
Investment Company Act of 1940 3a-7

PUBLIC AVAILABILITY 8/4/95

DISCLOSURE INC.
Dear Ladies and Gentlemen:

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We represent ~~Citicorp~~ Citicorp Securities, Inc. ("Citicorp") in connection with the proposed formation of a Delaware or other business trust (the "Trust"). The Trust will be formed for the purpose of investing in "eligible assets", as such term is defined in Rule 3a-7(b)(1) of the Investment Company Act of 1940 (the "1940 Act"), in accordance with the terms and conditions specified in the trust agreement (the "Trust Agreement") pursuant to which beneficial interests in the Trust (the "Beneficial Interests") will be issued to investors (the "Investors"). To enhance the return to Investors, the Trust will provide standby commitments ("Commitments") to one or more commercial paper issuers identified at the time of the formation of the Trust. In effect, commercial paper issuers will be paying commitment fees to the Trust in return for the Trust's providing liquidity and assuming the credit risk of the Long-term Assets described below under "Trust Assets". The assets that will be held by the Trust, the Beneficial Interests that will be issued by the Trust and the formation, operation and administration of the Trust are described below.

On behalf of Citicorp, we hereby request a statement that the staff of the Division of Investment Management (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission upon the facts provided in this letter if the Trust does not register as an investment

company under the 1940 Act based on our opinion that the Trust will qualify for the exclusion from the definition of "investment company" provided by Rule 3a-7 under the 1940 Act ("Rule 3a-7").

Trust Assets

The Trust will be permitted to hold two classes of assets: "Short-term Assets" and "Long-term Assets". Short-term Assets will consist of extremely short-term high quality investments, such as repurchase agreements for government securities ("Repos"), A-1/P-1 commercial paper or other corporate obligations rated A-1/P-1, securities issued or guaranteed by the United States Government or its agencies and dollar-denominated obligations issued or guaranteed by U.S. and foreign banks with assets exceeding \$1 billion and rated A-1/P-1, in each case with maturities of 31 days or less. Long-term Assets will consist of (i) certificates and other securities issued by special purpose entities such as Standard Credit Card Master Trust 1/ (collectively, "Asset-Backed Securities") or (ii) notes or other securities issued by commercial paper issuers supported by a security interest in Asset-Backed Securities. Long-term Assets will be acquired by the Trust only in connection with honoring Commitments, as more fully described below. It is our opinion that both the Short-term Assets and the Long-term Assets are "eligible assets" within the meaning of Rule 3a-7. Because the Trust's assets will initially consist exclusively of highly-rated liquid investments, Citicorp believes that the Trust will satisfy

1/ Standard Credit Card Master Trust has from time to time issued asset-backed securities registered under the Securities Act of 1933 (the "1933 Act"). (See, e.g., Registration Statement on Form S-3 No. 33-62180 filed with the Commission on June 17, 1993). The Trust will be permitted to hold Long-term Assets that consist of (or are supported by) Asset-Backed Securities that have not been registered under the 1933 Act. If this proposed structure proves successful, Citicorp intends to use this trust format to structure standby liquidity commitments for a wide range of users of liquidity, and, accordingly, Long-term Assets acquired by similar trusts could consist of a variety of securities, including Asset-Backed Securities and secured and unsecured notes that may or may not be rated.

rating agency standards for providers of liquidity to A-1/P-1 and A-1+/P-1 rated commercial paper programs.

Formation and Operation of Trust

The commercial paper issuer that desires to obtain liquidity for a commercial paper program through the trust structure described in this letter will be involved in the organization of the Trust as described below. The commercial paper issuer will specify the commercial paper program to which the Trust will be permitted to issue Commitments. The Trust will not be permitted to issue Commitments to any other programs. The commercial paper issuer will also require that the Trust be structured to permit investment only in specified Long-term Assets. The Trust Agreement will limit the investment in Long-term Assets to specific Asset-Backed securities owned by the commercial paper issuer (or to notes or other securities supported by a security interest in such specific Asset-Backed Securities). And, in general, the Trust will be custom tailored, in consultation with the commercial paper issuer, to meet the specific requirements of the commercial paper issuer. Citicorp expects that issuers may find the Trust an attractive alternative to traditional liquidity facilities provided by commercial banks and other financial institutions because the Trust should not be subject to many of the ratings downgrade risks that accompany traditional liquidity facilities.

The Trust Agreement will permit the Trust to take the following types of actions: (i) invest and reinvest in specified Short-term Assets; (ii) provide Commitments to a specified commercial paper program in exchange for commitment fees; and (iii) invest in specified Long-term Assets.

The Trust will use the proceeds from the sale of Beneficial Interests to acquire Short-term Assets, and it will hold such Short-term Assets to their maturity. The proceeds received on maturity of the Short-term Assets will be reinvested in similar Short-term Assets. The reinvestment of proceeds from maturing Short-term Assets will be essentially programmatic--new investments will be selected by a third party administrator (the

"Administrator"), ^{2/} who will make such selections from a list of eligible obligors set forth in a schedule to the Trust Agreement (the "Obligor List"), based on a set of investment criteria also specified in the Trust Agreement. The only discretion that will be available to the Administrator will be to remove obligors from the Obligor List and to add new obligors to the Obligor List. Particular Short-term Assets will be selected for investment over other Short-term Assets based solely on the credit rating of Short-term Asset issuers, yield considerations and limitations on acquiring more than a specified percentage of assets from a single obligor. Even these "decisions" will be guided by requirements in the Trust Agreement that the Trust maintain minimum credit standards within the pool of eligible obligors and that the Trust maintain a minimum number of eligible obligors on the Obligor List. It is our opinion that these limitations will satisfy the requirement of Rule 3a-7(a)(3)(i), that "the assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued". ^{3/}

No rating will be sought for the Beneficial Interests. Consequently, the Beneficial Interests will be sold only to investors who satisfy the requirements of Rule 3a-7(a)(2). Citicorp intends to comply with Rule 3a-7(a)(2)(ii) and, accordingly, the Beneficial Interests will be sold to qualified institutional buyers as

^{2/} It is expected that the Administrator will be an investment banking or investment advisory firm with experience in buying, selling and evaluating short term money-market assets.

^{3/} In order to prevent the Trust from being treated as an association taxable as a corporation, the Trust Agreement will provide that if any of the Investors goes into bankruptcy (any such Investor being an "Insolvent Investor" and any such event being an "Insolvency Event"), the Administrator will promptly notify each of the Investors of the occurrence of the Insolvency Event, which notice will state that the Trust will automatically terminate unless within 30 days from the date that the Administrator sends such notice, Investors other than the Insolvent Investor representing 51% in stated amount of the Beneficial Interests held by such Investors shall have notified the Administrator that they waive the Insolvency Event.

defined in Rule 144A under the 1933 Act [17 CFR 230.144A] and to persons involved in the organization or operation of the Trust or an affiliate, as defined in Rule 405 under the 1933 Act [17 CFR 230.405], of such a person. 4/ Furthermore, because the Beneficial Interests will not be rated, it is our opinion that, assuming the Beneficial Interests are fixed income securities, the requirement of Rule 3a-7(a)(3)(ii), that "the acquisition or disposition of the assets does not result in a downgrading in the rating of

4/ Rule 3a-7(a)(2) provides as follows:

"(2) Securities sold by the issuer or any underwriter thereof are fixed-income securities rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, except that:

(i) any fixed-income securities may be sold to accredited investors as defined in paragraphs (1), (2) (3), and (7) of rule 501(a) under the Securities Act of 1933 [17 CFR 230.501(a)] and any entity in which all of the equity owners come within such paragraphs; and

(ii) any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act [17 CFR 230.144A] and to persons (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act [17 CFR 230.405], of such person;

provided that the issuer or any underwriter thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be resold to persons specified in paragraphs (a)(2)(i) and (ii) of this section;"

the issuer's outstanding fixed-income securities" does not apply to this transaction. 5/

In the absence of a call on a Commitment, the Trust (through the Administrator or otherwise) will not be permitted to "trade" Short-term Assets for any reason. This will prevent the Trust (through the Administrator or otherwise) from managing the Trust's portfolio of Short-term Assets for the purpose of recognizing gains or decreasing losses resulting from market value changes in the Short-term Assets held by it. 6/ It is our opinion that this limitation will satisfy the requirement of Rule 3a-7(a)(3)(iii), that "the assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes".

Rule 3a-7(a)(1) requires that the Trust issue "fixed-income securities" or "other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets". The Trust will satisfy

5/ In order to provide a form of liquidity acceptable to rating agencies, the Trust must be permitted to purchase Long-term Assets without the imposition of a rating condition on the obligation of the Trust to make a purchase.

6/ The Trust will be permitted to liquidate Short-term Assets as needed to honor Commitments or in the event that the Trust terminates because an Insolvency Event occurs which is not waived by the Investors. The liquidation of Short-term Assets might result in gains or losses; however, the sale of Short-term Assets will not be undertaken for the purpose of recognizing gains or decreasing losses resulting from market value fluctuations. Any sale of Short-term Assets will be consummated only for the purpose of honoring Commitments (or if required following an Insolvency Event). Although the Trust will be permitted to sell collateral pledged to it to secure Repos acquired by it if there are defaults on such Repos, it is our opinion that such a limited right to sell collateral securing Repos, which right is triggered only by actions independent of the Trust's and the Administrator's discretion (i.e., defaults on the Repos), is not for the purpose of recognizing gains or decreasing losses resulting from market value fluctuations, but rather simply reflects an integral aspect of Repos. A sale of Long-term Assets may be consummated in connection with a targeted maturity. See footnote 9 infra.

the requirements of Rule 3a-7(a) (1) because, in the absence of a call on a Commitment, the payments to Investors will be provided from (i) interest (in the form of payments or discount) earned on the Short-term Assets and (ii) the periodic receipt of commitment fees for providing Commitments. It is expected that the commitment fees will account for less than fifteen percent of the return to Investors earned during periods prior to a call on a Commitment. It is our opinion that a commitment fee should be viewed as a financial asset that by its terms converts into cash within a finite time period as required to satisfy the definition of "eligible assets" in Rule 3a-7(b) (1) because each commitment fee will be structured as a series of payments of fixed amounts payable periodically over a finite time period equal to the length of the Commitment. If the Staff agrees with our opinion that a stream of payments for a commitment fee should be viewed as an eligible asset, then payments to Investors will depend exclusively on the cash flow from eligible assets. If the Staff does not agree with this analysis, it is our opinion that the payments to Investors will depend primarily on the cash flow from eligible assets because less than fifteen percent of the return or yield to Investors (and less than five percent of the total combined amount of payments to Investors) will be provided from commitment fees, with the balance being provided from payments received in respect of Short-term Assets and, if a Commitment is called on, Long-term Assets. In either case, the requirements of Rule 3a-7(a) (1), that payments to Investors "depend primarily on the cash flow from eligible assets", will be satisfied. 7/

7/ The Staff has taken the position that, under Section 3(c) (5) (C) of the 1940 Act, a company is primarily engaged in "purchasing or otherwise acquiring mortgages and other liens on and interests in real estate" if at least 55% of such company's assets are invested in mortgages and other interests in real estate and the remaining 45% of the company's assets are invested primarily in real estate-type interests. See, e.g., Econo Lodges of America, Inc., publicly available December 22, 1989; Salomon Brothers Inc., publicly available June 17, 1985. Where, as here, the payments from eligible assets will in all cases exceed 55% by a substantial margin, the requirement of Rule 3a-7(a) (i) should be easily satisfied if the interpretation of the word "primarily" is applied uniformly.

Each Commitment will be structured as an agreement by the Trust to purchase, on certain conditions, Long-term Assets from the commercial paper issuer that is a party to the Commitment. 8/ It is our opinion that issuing a Commitment and receiving a commitment fee as part of an agreement to purchase on certain conditions an eligible asset is an "activit[y] related or incidental" to purchasing an eligible asset within the meaning of Rule 3a-7(a). It is our opinion therefore that the Trust will be engaged solely in the business of purchasing, or otherwise acquiring and holding, eligible assets and in activities related or incidental thereto.

Following the acquisition by the Trust of Long-term Assets pursuant to a Commitment, the return to Investors will be provided by payments to the Trust on the Long-term Assets. The Long-term Assets acquired by the Trust will not be tradeable by the Trust. The Trust will hold the Long-term Assets to maturity, paying Investors out of distributions received by it from time to time on the Long-term Assets. 9/

8/ In general, the conditions will require the Trust to purchase Long-term Assets from the commercial paper issuer if the commercial paper issuer is unable to roll-over maturing commercial paper by issuing new commercial paper. The proceeds received by the commercial paper issuer from its sale of Long-term Assets to the Trust will be used by the commercial paper issuer to retire maturing commercial paper. We recognize that the Staff has expressed the view that certain types of agreements to purchase securities may themselves be considered securities for purposes of the 1940 Act. See Investment Company Act of 1940, Release No. 10666 (April 18, 1979). We do not believe the Staff must determine whether or not the Commitments contemplated by this letter are securities. Even if a Commitment were considered to be a security for purposes of the 1940 Act, it would be "issued" by the Trust to a commercial paper issuer who was involved in the organization of the Trust and thus the "security" would have been issued to a person expressly permitted to hold it by virtue of Rule 3a-7(a)(ii). See footnote 4 supra.

9/ Although the Long-term Assets will not be tradeable by the Trust, the Trust Agreement will permit the holders of 51% in stated amount of the Beneficial Interests to direct the Administrator to attempt to sell all or a portion of the

Securities Issued by the Trust

The Trust proposes to issue a single class of Beneficial Interests which will be represented by trust certificates. Each Beneficial Interest will be denominated in U.S. dollars, with a stated amount equal to the dollar amount of the purchase price paid for the Beneficial Interest. The return paid to Investors will consist of a pro rata share of (i) interest (or discount) received on Short-term Assets, (ii) commitment fees received from commercial paper issuers and (iii) interest and similar distributions received in respect of Long-term Assets. From the perspective of Investors, the Trust is an investment vehicle that, because of the collection of both interest (or discount) and commitment fees, may provide a yield or return in excess of that available from traditional short-term money market investments. Although the higher return or

Long-term Assets then held by the Trust for the book value of such Long-term Assets (i.e., the price that the Trust paid to acquire the Long-term Assets pursuant to a Commitment) and to use the proceeds thereof to acquire Short-term Assets. This right of direction will be exercisable only in connection with the liquidation of the Trust or to make a payment in connection with a targeted maturity. This would enable the Trust, in a situation where the targeted maturity date of the Beneficial Interests is approaching, but some or all of the Long-term Assets then held by it prove unable to meet their expected maturities, to obtain proceeds with which to pay off the Beneficial Interests on the targeted maturity date. To the extent that such proceeds were insufficient to pay off all of the Beneficial Interests in full, the proceeds would be applied pro rata among the holders of the Beneficial Interests. We believe that because this mechanic limits the price at which the Administrator can sell such Long-term Assets to at most book value, at which price there may not even be a buyer, it does not enable the Trust to recognize gains or decrease losses resulting from market value changes as prohibited by Rule 3a-7(a)(3)(iii). The Trust will also be permitted to liquidate Long-term Assets in the event that the Trust terminates because an Insolvency Event occurs which is not waived by the Investors. Such a liquidation of Long-term Assets will not be undertaken for the purpose of recognizing gains or decreasing loss resulting from market value fluctuations.

yield is accompanied by a risk that the liquidity commitment will be called upon, it is expected that Investors will evaluate this risk as small. The Beneficial Interests will have a targeted maturity of two to seven years. The Trust will be prohibited from acquiring Short-term Assets with a maturity date later than the earlier of (i) 31 days following the date of acquisition and (ii) one business day prior to the targeted maturity date. As a result of this limitation, if a Commitment is not called on, Investors will be repaid on the targeted maturity date from the proceeds of Short-term Assets. If a Commitment is called on and Long-term Assets are acquired, Investors will be repaid in accordance with the receipt by the Trust of distributions on the Long-term Assets, which could result in a repayment of the Beneficial Interests either before or after the targeted maturity date. As outlined earlier in footnote 9, the Long-term Assets may be sold at the direction of holders representing 51% in stated amount of the Beneficial Interests for the purpose of providing a pay-out at or near the targeted maturity date. In addition, each Investor will have a limited ability to withdraw all or a portion of its investment from the Trust prior to the targeted maturity date.

Withdrawals from the Trust will be subject to the following procedures and limitations:

- (i) no withdrawals will be permitted during the first six months following an investment in the Trust;
- (ii) each Investor will be permitted to send a withdrawal request to the Trust requesting a withdrawal date not earlier than 180 days after the date on which the withdrawal request is received by the Trust; and
- (iii) no withdrawal requests will be honored if, prior to the date of honor, the Trust has received a notice requiring it to honor a Commitment to purchase Long-term Assets. 10/

10/ Although Investors will only be entitled to withdraw their investment from the Trust pursuant to these limitations, Investors will be permitted by the terms of the Trust Agreement to sell their Beneficial Interests (any such Investor being a "Selling Investor") to third party purchasers who are not affiliated with the Trust or the Administrator ("Independent Purchasers") at any time

The availability of the exclusion from the definition of "investment company" provided by Rule 3a-7 is limited to issuers who do not issue redeemable securities. A redeemable security is defined in Section 2(a)(32) of the 1940 Act ("Section 2(a)(32)") as:

"any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof".

Based on the restrictions on withdrawals from the Trust described above, it is our opinion that the Trust will not be issuing redeemable securities within the meaning of Section 2(a)(32).

First, Investors will have no right to make withdrawals "upon . . . presentation to the issuer or to a person designated by the issuer". Withdrawals will not be permitted for a period of six months after an Investor first invests in the Trust. Thereafter, a notice period of a minimum of 180 days will be required. The Staff previously has taken a no action position under Section 3(c)(5)(C) of the 1940 Act where similar restrictions were imposed. See, e.g., Redwood Mortgage Investors VII, a California LTD Partnership, publicly available January 5, 1990; California Dentists' Guild Real Estate Mortgage Fund II, publicly available January 4, 1990; Breen Mortgage Fund I, publicly available January 20, 1988; and Embarcadero Mortgage Fund I, publicly available November 5, 1986. Although in Redwood Mortgage Investors and California Dentists' Guild,

(subject to the limitations in Rule 3a-7(a)(2) and the general limitations of the 1933 Act), but only if Investors other than the Selling Investor representing 51% in stated amount of the Beneficial Interests of such Investors shall have consented in writing to such sale. The Independent Purchasers will be subject to the same limitations on resale and withdrawal from the Trust that apply to the initial Investors. In connection with the foregoing, the Administrator will be permitted, at its sole discretion, to attempt to create a private secondary market for the Beneficial Interests of Selling Investors, composed entirely of qualified institutional buyers.