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Office of Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Redwood Trust, Inc.

On behalf of Redwood Trust, Inc. (“Redwood”), this is a request to the staff of the Division of Investment Management (the “Staff”) regarding the Section 3(c)(5)(C) exclusion from the registration requirements of the Investment Company Act of 1940 (the “1940 Act”). Specifically, we request that the Staff advise that it will not recommend that the Securities and Exchange Commission take any enforcement action if certain wholly-owned subsidiaries of Redwood (“Redwood Subsidiaries”), for purposes of determining the applicability to such entities of the Section 3(c)(5)(C) exclusion, treat cash proceeds of assets as “qualifying interests” if the assets to which the cash proceeds relate were “qualifying interests”, or as “real estate type interests” if the assets to which the cash proceeds relate were “real estate type interests”; and treat as “qualifying interests” mortgage servicing rights (“MSRs”) relating to mortgages acquired and later sold, including in securitizations, by the Redwood Subsidiaries, all as more fully described below.

Redwood is a residential mortgage-focused finance company. Established in 1994, Redwood is structured as an internally-managed real estate investment trust (“REIT”) for federal income tax purposes, and conducts certain of its activities through wholly-owned subsidiaries. (References herein to the business and activities of Redwood refer to the businesses and activities carried out by Redwood and its subsidiaries unless otherwise indicated.) Redwood engages in various mortgage banking activities, which generally involve providing financing to the mortgage market, including by acquiring mortgage loans, mortgage-backed securities (“MBS”) and other real estate type assets, in each case, generally backed by single family or multifamily residential real estate. Mortgage loans acquired by Redwood may be sold to Redwood-sponsored mortgage-backed securitization trusts, sold to third parties such as financial institutions or other investors, or held by Redwood as long-term investments.

Redwood generally receives principal and interest payments on a monthly basis in respect of the mortgage loans, MBS and other real estate type assets it holds. Redwood also generally

receives cash proceeds when it sells any of these assets. These payments and cash proceeds are available for reinvestment in additional mortgage loans, MBS and other real estate type assets.

A Redwood Subsidiary will often sell mortgage loans to third parties or to securitization trusts but retain the MSR associated with such loans.¹ When it retains an MSR, the Redwood Subsidiary remains responsible for the servicing of the associated loan and has the right to receive a portion of the interest and fees collected from the mortgage loan borrower for being responsible for performing specified mortgage servicing activities. However, as Redwood's operations do not include a direct servicing function, the Redwood Subsidiary contracts with third-party mortgage loan sub-servicers who perform the day-to-day administration and servicing of the mortgage loans. For purposes of this letter, we refer to MSRs that are, as described above, retained following the sale or transfer of the associated loan as "Created MSRs". Created MSRs can be contrasted with MSRs that are purchased from a third-party on a stand-alone basis without a concurrent purchase of the associated mortgage loan, which we refer to as "Purchased MSRs".

Legal analysis

Section 3(c)(5)(C) of the 1940 Act provides an exclusion from the definition of "investment company", and therefore from the registration requirements of the 1940 Act, for:

[A]ny person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: . . . purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

The Staff has taken the position that an entity may rely on the exclusion provided by Section 3(c)(5)(C) if at least 55% of the issuer's assets consist of mortgages and other liens on and interests in real estate ("qualifying interests") and the remaining 45% of its assets consist primarily of "real estate type interests". As for such remaining assets, the Staff has stated that an issuer must "invest at least 25% of its total assets in real estate type interests (subject to reduction to the extent that the issuer invests more than 55% of its total assets in qualifying interests) and may invest no more than 20% of its total assets in miscellaneous investments"².

¹ MSRs are carried by Redwood at "fair value" for financial reporting purposes under GAAP as well as for purposes of evaluating compliance with Section 3(c)(5)(C).

² Capital Trust, Inc., SEC Staff No-Action Letter (Feb. 3, 2009). See also Citytrust, SEC Staff No-Action Letter (Dec. 19, 1990).

Under these tests, as presently applied, cash is considered a miscellaneous investment included in the 20% bucket. (These factors together are referred to herein as the “Asset Composition Test”.)

Cash Proceeds

As indicated above, Redwood’s mortgage banking business consists of the purchase and the sale (including in securitizations) of mortgage loans, MBS and other real estate type assets and the reinvestment of the proceeds of such sales in additional mortgage loans, MBS and other real estate type assets. Such mortgage loans, MBS and other real estate type assets may be held on balance sheet for some period of time and Redwood may receive cash proceeds from principal amortizations, interest payments and payoffs in connection with its real estate-related assets, as well as from the sale of such assets. Such cash proceeds typically are later invested in additional real estate-related assets. The status of an issuer relying on Section 3(c)(5)(C) should not be affected by the conversion of real estate-related assets into cash proceeds under these circumstances, particularly if such cash proceeds are shortly thereafter used to acquire additional real estate-related assets.

All of these cash proceeds are integral parts of and directly related to and arising from Redwood’s mortgage banking activities and should be treated for purposes of the Asset Composition Test as having the same character as the assets to which they relate. Accordingly, cash proceeds from principal amortizations, interest payments and payoffs or from the sale of a mortgage loan would be treated for purposes of the Asset Composition Test as having the same qualifying interest (55%) characterization as the mortgage loan, and cash proceeds from principal amortizations, interest payments and payoffs or from the sale of an MBS would be treated for purposes of the Asset Composition Test as having the same 25% real estate type asset characterization as the related MBS (or the same qualifying interest (55%) characterization in the case of a whole pool MBS, as the case may be). It would be inconsistent, we believe, with the public policy behind the Section 3(c)(5)(C) exclusion for one of the Redwood Subsidiaries to be in compliance when it is fully invested in mortgages, but not, for example, in compliance if on the next day it sells half of these mortgage loans as part of its mortgage banking business and receives cash proceeds that would then comprise 50% of its assets. The ebb and flow of mortgage loans into and out of the company is an integral part of the mortgage banking business.

We understand that there should be some time limit included in this proposal so that cash proceeds do not retain the characterization of the related assets indefinitely. We suggest that for a period of up to 12 months after receipt, these cash proceeds should retain the same characterization, for purposes of the Asset Composition Test, as the assets from which they

were derived. Redwood is regularly receiving principal amortizations, interest payments and payoffs and acquiring and selling mortgage loans, and then putting the cash received into additional mortgage loans and real estate type assets. Accordingly, unlike the restrictions in Section 3(a)(2) of the 1940 Act, there should be no limit to the number of times that this relief could be relied on.

Created MSRs

The retention of MSR associated with loans acquired by Redwood and later sold (including to securitization trusts) flows directly from, and is directly related to, Redwood's mortgage banking activities, and the right to continue to control the servicing of loans it has acquired is an integral part of Redwood's mortgage banking business. Retention of these MSR facilitates both loan sales and securitizations, as many investors do not have the ability or the desire to own the MSR and as the market has confidence in Redwood's retention of the servicing responsibility.

For these reasons, it is our view that Created MSR from the sale of loans to third parties and to securitization trusts by a Redwood Subsidiary and retention of servicing rights by the selling entity, as described above, should be treated as qualifying interests for purposes of the Asset Composition Test because such assets are acquired as a direct result of Redwood's mortgage banking activities.³

* * * * *

On the basis of the foregoing, we respectfully request that the Staff advise that it will not recommend that the Securities and Exchange Commission take any enforcement action if the Redwood Subsidiaries, for purposes of the Asset Composition Test under Section 3(c)(5)(C), characterize the cash proceeds attributable to the principal amortization, interest payments, payoff, sale (including in securitizations) of real estate-related assets in the same manner as the assets from which the cash proceeds were derived and treat as "qualifying interests" MSR held by a Redwood Subsidiary relating to mortgages acquired and later sold (including in securitizations) by the selling entity, all as described above.

If for any reason the Staff is not disposed to grant the requested no-action position, we request an opportunity to discuss this matter with the Staff prior to the issuance of any formal letter.

³ Great Ajax Funding LLC, SEC Staff No-Action Letter (Feb. 12, 2018): "We would be willing to entertain other no-action requests to treat as qualifying interests certain other mortgage-related assets if they are acquired by an issuer as a direct result of the issuer being engaged in the business of purchasing or otherwise acquiring whole mortgage loans (e.g., certain "A-Notes" and servicing rights)."



We thank you for your attention to this matter. If further clarification is required, please contact Andrew Stone, General Counsel of Redwood (andy.stone@redwoodtrust.com; (415) 389-7373), or Howard Altarescu of Orrick, Herrington & Sutcliffe LLP (haltarescu@orrick.com; (212) 506-5000).

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard Altarescu". The signature is fluid and cursive, with the first name "Howard" and last name "Altarescu" clearly distinguishable.

Howard Altarescu