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File #	<i>ICA-40</i>
Section	<i>3(c)(5)(C)</i>
Date	
Public	
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June 26, 1987

Securities and Exchange Commission,
 Washington, D.C. 20549.

Attention: Office of Chief Counsel
 Division of Investment Management

Re: United Bankers, Inc.

Dear Sirs:

On behalf of United Bankers, Inc. and Drexel Burnham Lambert, we are writing to request advice to the effect that the Division of Investment Management will not recommend that the Commission take any action if, without effecting registrations under the Investment Company Act of 1940, as amended (the "1940 Act") with respect to any person in reliance upon Section 3(c)(5)(C) thereof, in connection with the transaction more fully described below, United Bankers, Inc., a Texas bank holding company ("United Bankers"), acts as sponsor (the "Sponsor") of a business Trust (the "Trust") at least 80% of the assets of which, based upon book value as shown on the Trust's opening balance sheet prepared in accordance with generally accepted accounting principles ("GAAP"), would initially be comprised of real estate-secured loans ("Real Estate Loans") and real

estate fee interests ("Real Estate") acquired by the Trust from bank subsidiaries (the "Subsidiaries") of United Bankers, Inc. The Real Estate Loans and Real Estate are collectively herein called the "Real Estate Assets" and the Real Estate Assets and their proceeds, together with the other assets of the Trust described below under "Description of the Pool", are herein called the "Assets" or the "Pool". Approximately one-half of the Real Estate Assets and other loan assets included in the Pool will be non-performing assets of the Subsidiaries originated by them in the ordinary course of their banking business; the remaining Assets will be performing loans originated by them in the ordinary course of their banking business.

Description of the Transaction

The Trust will be formed pursuant to a Trust Agreement (the "Trust Agreement") to be entered into between the Sponsor and an unaffiliated bank (the "Owner Trustee"). Pursuant to the Trust Agreement, the Trust at its formation will issue to the Sponsor certificates of beneficial interest (the "Certificates") representing fractional undivided interests in the Pool. Shortly after its formation, the Trust will issue one or more series of notes (the "Notes") pursuant to an indenture (the "Indenture") with a trustee (the "Note Trustee") unaffiliated with the

Sponsor or the Owner Trustee and use the proceeds of the Notes to buy the Assets to be included in the Pool from the Subsidiaries. The Assets will be pledged by the Trust to the Note Trustee for the benefit of Noteholders under the Indenture.

The Notes will not be redeemable at the option of the holders. The Notes may be subject to prepayment, but only to the extent that the Trust has on hand moneys representing payments and collections on the Real Estate Assets and other assets in the Pool.

The Notes will initially be issued in a private placement to institutional investors. Under one or more private placement purchase agreements, the Sponsor and the Owner Trustee will commit to cause to become effective as promptly as possible a registration statement on Form S-11 with respect to the Notes under the Securities Act of 1933, as amended (the "1933 Act") covering secondary sales of the Notes by the initial investors. Accordingly, the Indenture will comply with the provisions of the Trust Indenture Act of 1939, as amended. Other terms of the registration rights in favor of the initial investors, including the period for which the registration statement will initially be kept in effect, will be negotiated with the initial investors.

Concurrently with or shortly after the issuance by the Trust of the Notes, the Sponsor will distribute the Certificates as a dividend to its approximately 2,100 shareholders. Consequently, the Trust will be a reporting company under the Securities Exchange Act of 1934, as amended (the "1934 Act").

Responsibility for managing the Trust's assets, including collecting on the Assets and making determinations as to when Real Estate Loans should be foreclosed or Real Estate sold, will reside with an administrator (the "Administrator"), anticipated to be either United Bankers or a subsidiary of United Bankers. Prior to or contemporaneously with the issuance by the Trust of the Notes and purchase of the Assets with the proceeds thereof, the Trust will enter into an administration agreement (the "Administration Agreement") with the Administrator. Pursuant to that Agreement, the Administrator will have responsibility for liquidating and collecting upon the Assets, as aforesaid, preparing financial statements for the Trust and preparing on behalf of the Trust other filings and reports required under the Indenture or applicable law (including the 1934 Act). The Trustee, acting on behalf of holders of Certificates, will have authority to substitute another Administrator if the

Administrator defaults in its obligations under the Administration Agreement.

Under the Administration Agreement, the Trust will irrevocably instruct the Administrator to remit all payments and collections on the Assets directly to the Note Trustee. Under the Indenture, cash collections so remitted to the Note Trustee will be maintained by the Note Trustee in a collateral account (the "Collateral Account") under the Indenture and used from time to time to make payments of principal and interest, if any, on the Notes.

Under the Administration Agreement or other agreement, the Sponsor or the Administrator will have the authority to make short-term advances ("Advances") to the Trust. The Sponsor or the Administrator may make such Advances only where and to the extent that as of a specified date shortly prior to a principal or interest payment date on the Notes (a "Note Payment Date") the Administrator determines that (i) the Note Trustee will not have sufficient funds on such Note Payment Date in the Collateral Account to make the payment then due on the Notes and (ii) based upon a contract to sell or otherwise dispose of or collect upon an Asset entered into by the Administrator on or prior to the related Note Payment Date which the Administrator in its reasonable judgment expects to be fully performed by the other party

thereto, such Asset (the "Current Payment Asset") will generate sufficient funds within a specified number of days (yet to be determined) after such Note Payment Date to cover any deficiency as of such Note Payment Date. In the event the Sponsor or the Administrator makes such Advances, the Trust's obligation to repay the Sponsor or the Administrator will be with recourse only to the related Current Payment Asset, but the Sponsor or the Administrator's claim to proceeds generated by such Current Payment Asset will be prior to the claim of the Noteholders.

Description of the Pool

Immediately after conveyance of the Pool to the Trust, at least 80% of the Trust's assets (calculated on the basis of book value as shown on an audited balance sheet for the Trust prepared in accordance with GAAP as of the date of such conveyance and after giving effect thereto) will consist of Real Estate Assets. Because a condition to consummating the transaction is that the sale by the Subsidiaries to the Trust of the Real Estate Assets be treated by the Subsidiaries as a sale for accounting purposes, on the opening balance sheet of the Trust ~~the book value of the Real Estate Assets will be their market value.~~

As further described below, the Real Estate Loans will be evidenced by promissory notes secured primarily by first mortgages or deeds of trust ("Mortgages"). Each Real Estate Loan will represent an entire issue of a loan originated by the Subsidiaries in an ordinary commercial banking transaction and will not be of a type for which secondary markets exist at the present time. The proceeds of each Real Estate Loan are to have been used to acquire, construct, carry or renovate the property subject to the related Mortgage. Upon conveyance of the Pool to the Trust, each Loan will be fully collateralized by the real estate related thereto.

At the closing for the issuance by the Trust of the Notes, the concurrent purchase by the Trust with the proceeds of the Notes of the Assets from the Subsidiaries and related transactions, appropriate steps will be taken to (i) ~~transfer title to the Assets~~ (including the Real Estate Assets) from the Subsidiaries to the Trust and (ii) establish and perfect the pledge by the Trust of the Assets (including the Real Estate Assets) to the Note Trustee for the benefit of Noteholders. ~~The steps necessary to accomplish the foregoing will depend upon state law considerations, but are likely to at least include, in addition to appropriate bills of sale, assignments and other~~

~~documents of title and transfer, in the case of Real Estate~~
Loans (x) delivery of the original mortgage note secured by
each Mortgage to the Note Trustee or a third party custodian
for the Note Trustee which may be a service corporation
subsidiary of the Sponsor and (y) execution and delivery by
the Subsidiaries to the Trust and by the Trust (acting
through the Owner Trustee) to the Note Trustee of assign-
ments of Mortgages in recordable form, with recordation of
the assignments being effected if necessary under state law
in order to establish and perfect the ownership by the Trust
of the Real Estate Loans and their pledge to the Owner
Trustee. It is anticipated that payment or discharge of the
Real Estate Loans secured by each Mortgage will be accom-
plished through payments on the Real Estate Loans and
through foreclosure of the related Mortgages.

In addition to the Real Estate Assets, at the time
the Pool is conveyed to the Trust the remaining 20% of the
Pool (again based upon GAAP and shown on the Trust's opening
balance sheet) will consist of selected performing and
non-performing loans purchased by the Trust from the Subsid-
iaries which do not qualify as Real Estate Assets ("Other
Loan Assets") or money-market instruments ("Investment
Assets" and, together with the Other Loan Assets, "Other
Assets"). The Other Loan Assets may be secured or unsecured

and, if secured, may be secured by partial interests or participations in real estate or by non-real estate related personal property. The Investment Assets will consist of short-term obligations of the U.S. Government and agencies thereof, bank deposits, prime commercial paper and other cash equivalents. Although the Assets included in the Pool will include the Trust's rights under the Administration Agreement and the Equity Contract referred to and further described below, those contract rights will be reflected as having either no or nominal value on the basis of GAAP on the Trust's opening balance sheet.

In addition to the Administration Agreement and any agreement providing for the Advances, the Trust will be the beneficiary of an agreement (the "Equity Commitment") of United Bankers providing that, if on any Note Payment Date the funds in the Collateral Account (after giving effect to the proceeds of any Advances) will not be sufficient to make the payment then due, United Bankers will provide to the Trust either such number of its shares of common stock (to be sold by the Trust), or the proceeds of the sale of such number of its shares of common stock, as would be sufficient to enable the Trust to make the full payment due on such

Note Payment Date*. If shares, instead of cash, are provided to the Trust, the Trust will enter into a sale agreement pursuant to which immediately upon issuance of shares to the Trust the shares are to be sold and proceeds thereof delivered to the Trust. The Trust will not have any option to receive cash rather than shares; that determination will be made as an organizational matter prior to the sale of the Notes.

The transaction is structured and priced on the premise that United Bankers will never have to issue any of its shares pursuant to the Equity Commitment. Accordingly, it will be a condition to consummation of the transaction that on the basis of GAAP, the opening balance sheet of the Trust the Equity Commitment have a nominal value.**

The Pool will be fixed at the time the Sponsor conveys the Pool to the Trust. No substitution or exchange of the assets of the Pool will be permitted. The Trust will

* Alternatively, the Equity Commitment may be pledged to a third-party guarantor or surety which will guarantee payment of the deficiency in cash, such obligation to be secured by the Equity Commitment.

** Any guaranty or surety guaranteeing the payment of the deficiency as described in the previous footnote will also have a nominal value at the opening balance sheet of the Trust on the basis of GAAP.

terminate automatically upon the discharge or other disposition of all of its assets and fulfillment of all of its obligations.

The Trust will conduct only the business relating ~~to its ownership and liquidation of the Assets and issuance of the Notes and the Certificates.~~ The Trust will terminate on a date shortly after the later of (i) payment in full of the Notes or (ii) final liquidation of all the Real Estate Assets and Other Assets. Any assets remaining in the Pool upon full satisfaction of the Notes will be liquidated into cash, with the proceeds of such liquidation then distributed to such holders of Certificates.

Investment Company Act Exemption

We believe that the entity to be created by the Trust Agreement should be regarded as falling within the exemption provided in Section 3(c)(5)(C) of the Investment Company Act. That section excludes from the definition of an investment company any company not issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, which is "primarily engaged in . . . purchasing or otherwise acquiring mortgages and other liens on and interests in real estate."

In our view, exemption of the Trust under Section 3(c)(5)(C) is consistent with the positions the Staff has taken in the past. In Merrill Lynch, Pierce, Fenner & Smith (avail. November 4, 1981), the Staff took a no-action position under Section 3(c)(5)(C) with respect to a pool comprised of at least 65% whole loans secured by first mortgages. See also Hereth, Orr & Jones (avail. October 25, 1982). The Pool in the present case will consist of at least 80% real estate and whole-loan real estate interests secured by first mortgages. In Salomon Brothers, Inc (avail. June 17, 1985), the Staff took a no-action position under 3(c)(5)(C) Act provided that 55% of a pool's assets were comprised of whole qualifying real estate loan interests and 45% of the assets, while real estate related, were comprised of non-qualifying real estate interests. See also Security Mortgage Acceptance Corp. (avail. March 24, 1986); Ray Ellison Mortgage Acceptance Corp. (avail. May 5, 1986); Bear Stearns & Co., Inc. (avail. October 3, 1986). In addition, in American Commonwealth Company (avail. May 14, 1971), the Staff took a no-action position under 3(c)(5)(C) with respect to an issuer whose assets were comprised of 93% qualifying real estate bonds and of 7% non-qualifying assets including preferred stock. We believe that a Pool comprised of 80% qualifying real

estate interests and 20% other interests should be considered to be "primarily engaged in ... purchasing or otherwise acquiring loans on and interests in real estate."*

No-Action Request

We therefore respectfully request the Staff to indicate that it will not recommend action to the Commission if registration under the 1940 Act is not effected with respect to any person.

* We believe that none of the other aspects of the proposed transaction give rise to concerns resulting in regulation appropriate under the Investment Company Act. For example, the Staff has taken no-action positions under 3(c)(5)(C) in other instances in which the Sponsor has acted as administrator in servicing a real-estate loan pool. See, e.g., CMO Mortgage Corp. (avail. July 22, 1985). In addition, the Staff has taken no-action positions under 3(c)(5)(C) in cases involving prepayment of Notes out of cash flow, see, e.g., U.S. Home Finance Corp. (avail. May 30, 1980), and the Sponsor's commitment to provide the Pool with funds through short-term "advances", see, e.g., Premier Mortgage Corp. (avail. March 14, 1983); CMO Mortgage Corp., supra. Finally, the existence of the Equity Commitment does not, in our view, affect the applicability of the exemption provided by Section 3(c)(5)(C), since at the time the Pool is conveyed to the Trust, the Equity Commitment will be of nominal value, will be included in the proposed 20% non-real estate interests in the Pool, and will not affect the right of the Trust to direct access to the Assets upon default.

Because United Bankers and Drexel Burnham Lambert are anxious to proceed with the formation of the Pool and the distribution of the Notes and Certificates, we would appreciate a response to the request made hereby as promptly as practicable. If for any reason the staff is disposed not to grant the requested no-action positions, we request an opportunity to discuss this situation with the staff prior to the issuance of any formal letter.

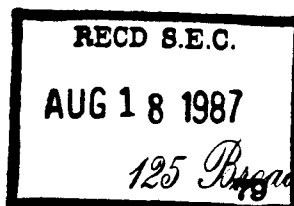
We thank you for your attention to this matter. If you have any questions or if we may provide further information, please telephone John E. Baumgardner, Jr. (212-558-3866), H. Rodgin Cohen (212-558-3534), Mark Welshimer (212-558-3669) or Ellen Porges (212-558-3849) of this office.

Very truly yours,


John E. Baumgardner, Jr.

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140 WILLIAM STREET, MELBOURNE 3000 (ASSOCIATED FIRM)

August 18, 1987

Securities and Exchange Commission,
450 Fifth Street, N.W.,
Washington, D.C. 20549.

Attention: Elisabeth Tsai, Esq.

Ladies and Gentlemen:

This letter supplements our letter of June 26, 1987 on behalf of United Bankers, Inc. and Drexel Burnham Lambert requesting your concurrence, among other things, in our opinion that the Trust described therein, at least 80% of the assets of which (based upon the Trust's opening balance sheet prepared in accordance with generally accepted accounting principles ("GAAP")) consist of qualifying real estate loans ("Real Estate Loans") and real estate (together "Real Estate Assets"), is exempt from registration under the Investment Company Act of 1940 (the "1940 Act") by reason of Section 3(c)(5)(C) thereof. Capitalized terms shall have the same meanings herein as in our June 26, 1987 letter.

The staff has requested clarification with respect to certain matters concerning certificates of beneficial interest in the Trust ("Certificates"), the method of

valuing the Real Estate Loans and other loans (collectively "Loans") contained in the Trust's assets, collateral for repayment of the Loans and the terms of notes ("Notes") issued by the Trust. The following is a response to the request for additional information.

1. Certificates. The Certificates evidence residual beneficial ownership interests in the Trust (i.e., the "equity ownership" of the Trust). The initial equity of the Trust, based upon the Trust's opening balance sheet prepared in accordance with GAAP, will be between 1% and 2% of the Trust's total assets. Distributions will be made to holders of the Certificates only if and to the extent that the assets of the Trust produce more proceeds than required for the operation of the Trust and repayment of the Notes. Except with respect to mandatory redemption upon liquidation and termination of the Trust, the Certificates will not be redeemable at any time either at the option of the holder or the Trust.
2. Value of Loans. As stated in our letter dated June 26, 1987, at least 80% of the Trust's assets ("Assets"), based upon its opening balance sheet prepared in accordance with GAAP, will consist of Real Estate Assets. Because the acquisition by the Trust of the Assets will

be accounted for as a purchase (with substantially all of the cash raised by the Trust from the issuance of the Notes being used to purchase the Assets), in accordance with GAAP, ~~the value of each Asset on the Trust's opening balance sheet will be based upon an allocation by the Trust of the total purchase price among the Assets in accordance with their fair market values, again as determined by the Trust. The consequence is that Loans are not necessarily valued in accordance with their principal amount but instead have value allocated to them based upon judgments as to potential cash flow, collectibility and the relationship of the interest rate borne by each Loan to the interest rate borne by other Loans having similar collectibility characteristics. Such GAAP accounting will be required to be used by the Trust in connection with financial reporting and filings by the Trust made with the Securities and Exchange Commission.~~

3. Collateral for the Real Estate Loans. At page 7 of our letter dated June 26, 1987, we stated that the Real Estate Loans would be "primarily" secured by first mortgages and deeds of trust ("Mortgages"). You inquired as to what is meant by "primarily" with

respect whether the collateral underlying the Mortgages consists of real estate or other property.

Each of the Real Estate Loans was made for the purpose of acquiring, constructing, carrying or renovating real estate. Each is secured by a Mortgage representing a lien on real estate, improvements thereon, leases of real property and/or fixtures constituting interests in real property under state law (together, "Real Estate Collateral"), as well as on other incidental personal property and fixtures not constituting interest in real property under state law ("Non-Real Estate Collateral"). The Real Estate Collateral in each instance, at the time the Assets are transferred to the Trust, will have a value of at least 100% of the value of the related Real Estate Loan on the books of the Trust on the basis of GAAP. In no case with respect to qualifying Real Estate Loans did the originating subsidiary of the Sponsor look to Non-Real Estate Collateral in originating a Real Estate Loan. The word "primarily", insofar as it relates to collateral under the Mortgages, was included to take note of the fact that, for lending institutions generally, including the originating subsidiaries, the loan documentation for real estate loans often includes

broad descriptions of liens on collateral, which may be broad enough to pick up some Non-Real Estate Collateral. This is particularly true with respect to commercial real estate loans such as those which will be owned by the Trust, as opposed to residential real estate lending loans for which mortgages ordinarily do not cover Non-Real Estate Collateral.

The Real Estate Loans which are expected to be purchased by the Trust were made in the ordinary course of the originating subsidiary's real estate lending business. Many of the Real Estate Loans are nevertheless secured by Non-Real Estate Collateral pursuant to broad, standard security granting clauses included in mortgages, perfected by filings under the Uniform Commercial Code. The originating subsidiaries do not look to Non-Real Estate Collateral for recourse on the Notes except after foreclosure and sale on the Real Estate Collateral. It would not as a practical matter be possible either to identify such Non-Real Estate Collateral or to separate the related Real Estate Loan into two parts (a part secured by Real Estate Collateral and a part secured by Non-Real Estate Collateral) because the expense and time required to prepare and implement appropriate documentation to

exclude Non-Real Estate Collateral is disproportionate to the significance of the Non-Real Estate Collateral. Although it might be possible for the Trust to simply waive its rights to and release any Non-Real Estate Collateral, that seems unwarranted and unnecessary in view of the purely incidental nature of any Non-Real Estate Collateral. Accordingly, we submit that the incidental presence of any Non-Real Estate Collateral, which is no more likely to be present in the case of the Real Estate Loan than in the case of many other commercial mortgage loans originated by banks, ought not to affect the categorization of the Real Estate Loans as qualifying real estate loans under Section 3(c)(5)(C).

4. Terms of Notes.

(a) Nature of Obligation. The Notes will be serial zero coupon obligations maturing in approximately one-year intervals.

(b) Security. All Assets of the Trust will be pledged by the Trust to the Note Trustee as security for the repayment of the Notes under an indenture complying with the Trust Indenture Act of 1939, as amended. Such security will equally and ratably secure the payment of all

Notes. The Note Trustee will have the right to collect and foreclose on the Assets until full payment on the Notes. After the full payment on the Notes, any collection on the Assets will be for the benefit of the Certificate holders.

(c) Prepayment. If the Sponsor determines that the Notes should be prepayable, they will be prepayable only from excess cash flow at the option of the Trust. Holders of Notes will have no redemption or prepayment rights.

If you have any questions with respect to the above, please do not hesitate to call any of the persons mentioned in our letter of June 26.

Sincerely,



Ellen R. Porges

SULLIVAN & CROMWELL

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November 9, 1987

Securities and Exchange Commission,
450 Fifth Street, N.W.,
Washington, D.C. 20549.

Attention: Elisabeth Tsai, Esq.

Re: United Bankers, Inc.

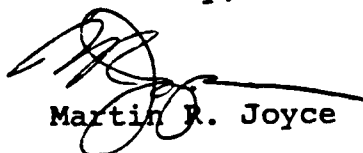
Ladies and Gentlemen:

In accordance with the conversation between Ellen Porges and Elisabeth Tsai on October 6, 1987 regarding the no-action request set forth in previous correspondence dated June 26, 1987 and August 18, 1987, please be advised that the assets of the trust created by United Bankers, Inc. in connection with the proposed transaction will consist of:

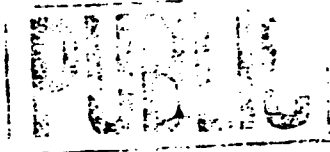
- (1) at least 55 % (valued as described in the previous correspondence) real estate fee interests and/or loans secured exclusively by real estate;
- (2) at least 25% (valued as described in the previous correspondence) loans secured primarily by real estate, subject to reduction below 25% to the extent that the value of assets described in (1) above exceed 55% of the Trust; and
- (3) up to 20% miscellaneous investments.

Thank you for your attention to this matter. If you have any questions or I can provide further information please telephone any of the persons mentioned in the previous correspondence.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. R. Joyce', written over the typed name. The signature is stylized with loops and a long horizontal stroke extending to the right.

Martin R. Joyce



NOV 24 1987

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 87-354-CC
United Bankers, Inc.
File No. 132-3

We would not recommend any enforcement action to the Commission if, without registration under the Investment Company Act of 1940 of any person in reliance upon section 3(c)(5)(C) of the Act, United Bankers, Inc. acts as sponsor of a proposed business trust ("Trust") that will issue certificates and notes, neither of which will be redeemable at the option of the holders. Our position is based on the representations in your letters of June 26, August 18, and November 9, 1987, particularly that: (1) at least 55% of the assets of the Trust will consist of real estate fee interests or loans secured exclusively by real estate, or both; (2) at least 25% will consist of loans secured primarily by real estate, subject to reduction below 25% to the extent that the value of the assets described in (1) above exceed 55%; and (3) up to 20% will consist of miscellaneous investments.

In responding to your request, this Division has not reviewed or passed upon the appropriateness of the accounting treatment for the transactions as set forth in your letters.

Mary S. Podesta

Mary S. Podesta
Chief Counsel