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June 21, 1972

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

1933 Act/4(2)
1934 Act/3(a)(1),
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Gentlemen:

JUN 28 1972

Re: MGIC Mortgage Corporation --
Request for No Action Letter

On behalf of MGIC Mortgage Corporation ("MGIC/MC"), we respectfully request your advice as to whether the staff of the Commission would recommend any enforcement action with respect to the business activities of MGIC/MC described below without registration of such activities under the Securities Act of 1933 (" '33 Act"), the Securities Exchange Act of 1934 (" '34 Act") and the Investment Company Act of 1940 (" '40 Act").

We are advised by MGIC/MC as follows:

1. Organization of MGIC/MC -- General

MGIC/MC was incorporated in March, 1972, as a wholly owned subsidiary of MGIC Investment Corporation, a holding company engaged through its subsidiaries principally in the business of financial guarantee. MGIC/MC will engage in the business of issuing commitments to buy, and buying evidences of indebtedness secured by first mortgages on residential properties. All mortgages will be insured by a private

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Section 3 (c) (5) (6)
File
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Availability 10/6/72

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mortgage insurance company. It is anticipated that a great majority of mortgages purchased will be insured by Mortgage Guaranty Insurance Corporation ("MGIC"), also a subsidiary of MGIC Investment Corporation.

Initially, MGIC/MC is restricting its activities to whole mortgage loans on 1-4 family properties which are also the primary residence of the mortgagor. However, it is anticipated that the scope of business may be progressively expanded to include other classes of privately insured loans secured by second homes, rental properties, commercial properties and mobile homes. It is also expected that the method of purchase may be expanded to include various percentages of participation in individual loans or in pools of specified loans secured by any or all of the above types of insured loans.

By way of summary, MGIC/MC will participate in the secondary market for conventional home mortgages, in a pattern not dissimilar to that of Federal National Mortgage Association.

2. Purchases of Mortgages

MGIC/MC will buy mortgages only pursuant to contracts between itself and interested sellers. The contracting system consists of a Master Selling/Servicing Agreement ("Master Agreement") between MGIC/MC and sellers which,

- (a) incorporates by reference the detailed provisions of a Sellers Guide (the "Sellers Guide") and a Servicers Guide and
- (b) is supplemented by one or more "Commitments" which specify the economic terms of specific proposed transactions between the parties.

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A copy of the Sellers Guide as applicable to residential mortgages is attached hereto as Exhibit 1. A copy of the Master Agreement is included in the Forms Appendix to Exhibit 1.

Eligible sellers must first be approved by MGIC to process individual mortgage insurance applications ("MGIC Approved Financial Institutions") and receive a "Master Policy" of mortgage insurance. This process is used to determine the general qualifications, experience and financial responsibility of lenders:

- (a) to originate sound mortgage loans;
- (b) to properly process individual applications for mortgage loan insurance; and
- (c) to properly administer ("service") loans either for its own account or for other investors so as to minimize defaults on mortgages and consequent insurance claims.

As of December 31, 1971, approximately 6,800 lenders were MGIC Approved Financial Institutions -- 4,200 federally or state chartered savings and loan associations, 1,700 federally or state chartered commercial banks, and 900 mortgage banking firms.

MGIC/MC has established as additional criteria that its contractors must be Federal Housing Administration "Approved Mortgagees" and must qualify under the "Nationwide Lending Regulation" issued for federally chartered savings and loan associations by the Federal Home Loan Bank Board. These additional qualifications involve minimum capital requirements and location of offices in relation to the

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mortgaged properties in addition to business experience and satisfactory performance requirements comparable to those applied by MGIC in its own approval. For a further description of an "Approved Mortgage" and the requirements for "nationwide lending", see Exhibits 2 and 3, respectively.

After a potential seller of mortgages meets the eligibility criteria and has signed the Master Agreement, he may make specific proposals to sell mortgages to MGIC/MC, either in writing or by telephone. If his terms as to types of mortgages yield to MGIC/MC, and fee are acceptable to MGIC/MC, it will issue its Commitment (see Exhibit 1, Sellers Guide, Forms Appendix, MGIC/MC Commitment - House Mortgages).

Commitments may be for purchase of mortgages already owned by the seller or for future mortgage loans which the seller expects to make which will be of a quality acceptable to a private mortgage insurance corporation. If the seller pays the agreed upon non-refundable fee (typically, one percent on one year stand-by commitments to no fee for mortgages for immediate delivery) and returns the Commitment within the specified time from the oral agreement, he will have the option of delivering mortgages which meet the conditions of the contracts at the agreed upon price or yield until the expiration date specified in the Commitment. Thereafter, seller will continue to have certain responsibilities specified in the Master Agreement, Part B - Servicers, to represent MGIC/MC in servicing the loan for the continuing compensation rate specified in the Commitment under which the particular mortgage was sold to MGIC/MC. These continuing responsibilities include collection of amounts due under the mortgage, remittances to the appropriate recipient, accounting, supervision of requirements imposed on the mortgagor by terms of the mortgage loan, and administration of insurance claims resulting from defaults.

As of May 31, 1972, MGIC/MC had purchased and issued commitments to purchase \$14,618,780 and \$176,557,000 of mortgages, respectively. MGIC/MC's Cumulative Report of Activity

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for the period April 1, 1972 through May 31, 1972 is attached hereto as Exhibit 4. To finance these purchases, MGIC/MC is arranging approximately \$150,000,000 in bank credit, \$100,000,000 on a term loan basis and \$50,000,000 of open credit lines. It is MGIC/MC's intention to posture its debt so that eventually such debt will approximately match the natural cash flow arising from its portfolio of insured mortgages. This will be accomplished by staggering maturities on both anticipated private and public debt offerings.

3. Sales of Mortgages

As the demand for seasoned loans permits, MGIC/MC will sell mortgages to permanent investors. As of June 15, 1972, no mortgages had been sold.

While the procedures for offering mortgages for sale cannot be predicted with certainty until actual sales opportunities are available, it is most likely that they will closely parallel the purchasing system. A large percentage of sales are expected to be on an unsolicited basis. The balance of sales are expected to be generated by telephone solicitation.

Individual contracts would be made when prospective purchasers and MGIC/MC agree on terms for sale. Sales of mortgages would be subject to continuation of established servicing relationships or for explicit alternate arrangements satisfactory to the purchasing institution. Buyers would have available to them, at the offices of MGIC/MC all data with respect to mortgages to be purchased that sellers furnished to MGIC/MC. See Exhibit 1, Sellers Guide, page 11. In addition, the servicers will make available to buyers for examination the payment records, and other credit history of the mortgagor in the possession of the servicer. Based upon such investigation, buyers would have a reasonable period of time, generally 90 days, to reject any mortgage purchased.

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During the first years of MGIC/MC's operations, it is probable that MGIC/MC will sell from 25% to 50% of mortgages purchased. Sales of mortgages will be made only in accordance with the following:

- (a) sales of mortgages will be made only in blocks of not less than \$100,000 (although it is anticipated that a representative purchase would be from \$500,000 to \$1,000,000)
- (b) sales will be made only to permanent investors who are MGIC Approved Financial Institutions and FHA Approved ortgagees and have qualified as nationwide lenders. See discussion, pages 2 and 3, supra. Thus, the class of buyers from MGIC/MC will be the same as the sellers to MGIC/MC, institutions and firms which are experienced and active in continuing mortgage lending.

It is intended that the Seller/Servicer shall maintain the servicing responsibilities and receive the servicing compensation for the full term of mortgage loans he sells (maturity or earlier prepayment). MGIC/MC has undertaken to assure the continuing relationship by agreeing in the Master Agreement to give original sellers the right of first refusal when MGIC/MC proposes to sell a specific mortgage to another investor and to give him a lump sum settlement if its sale results in a loss of the continuing servicing relationship. This penalty gives an economic incentive to MGIC/MC to sell its own mortgages primarily to investors who will be willing to continue established servicing relationships, i.e., investors who are continuously active in mortgage investments in locations outside their own normal loan origination and servicing areas.

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4. Applicability of Securities Laws to Business of MGIC/MC

(a) The proposed activities of MGIC/MC do not constitute MGIC/MC a "broker", a "dealer" or an "exchange" under Sections 3(a)(4), 3(a)(5) and 3(a)(1), respectively, of the '34 Act.

Section 3(a)(4) of the '34 Act provides as follows:

"The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank."

The proposed activities of MGIC/MC do not constitute those of a "broker". The definitional section refers to "effecting transactions in securities for the account of others". Sales of mortgages will not be for the account of others but for MGIC/MC as principal. Cf. Letter of Securities and Exchange Commission to USF Mortgage Exchange, CCH Fed. Sec. L. Rep. ¶78,636, October 18, 1971.

Section 3(a)(5) of the '34 Act provides, as follows:

"The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

Assuming that MGIC/MC is a "dealer" within the context of the '34 Act, it may still sell mortgages without registration as a dealer, in reliance upon applicable exemptions. Rule 15a-1 exempts from Section 15(a) certain indebtedness secured by real estate mortgages.

"Evidences of indebtedness secured by mortgage, deed of trust or other lien upon real estate

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or upon leasehold interests therein where the entire mortgage, deed of trust or other lien is transferred with the entire evidence of indebtedness are hereby exempted from the operation of Section 15(a) of the Securities Exchange Act of 1934, as amended."

MGIC/MC is aware that the Commission has indicated that this exemption may be inapplicable if the mortgage is an "investment contract". An investment contract, broadly defined, is a "contract . . . whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of a third party . . ." S.E.C. v. Howey & Co., 328 U.S. 293, 299 (1946). In Release Nos. 33-3892 and 34-5633, the Commission set forth a list of services and other attributes which may result in a mortgage constituting an "investment contract".

1. Complete investigation and placing service.
2. Servicing collection, payments, foreclosure, etc.
3. Implied or express guarantee against loss at any time or providing a market for the underlying security.
4. Making advances of funds to protect the security of the investment.
5. Acceptance of small uniform or continuous investments.
6. Implied or actual guarantee of specified yield or return.
7. Continual reinvestment of funds.
8. Payment of interest prior to actual purchase of the mortgage or trust note.
9. Providing for fractional interests in mortgages or deeds of trust.
10. Circumstances which necessitate complete reliance upon the seller, e.g., great distance between mortgaged property and investor.
11. Seller's selection of the mortgage or deed of trust for the investor.

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As previously indicated, MGIC/MC intends initially to deal only in whole loans, and not in participations. Thus, MGIC/MC respectfully submits that its proposed activities do not have attributes 3, 4, 5, 6, 7, 8 and 9. MGIC/MC's mortgages would have attributes 1 and 2 and may have attribute 10, depending upon the proximity of the property to MGIC/MC and/or its buyer. Thus, in the aggregate, mortgages acquired and sold by MGIC/MC are not "investment contracts".

Lastly, Section 3(a)(1) of the '34 Act provides as follows:

"The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange."

The definition of "exchange" by its terms excludes the activities of MGIC/MC. The activities of MGIC/MC will not be that of bringing together purchasers and sellers of mortgages but rather of purchasing mortgages for its portfolio and from time to time making dispositions thereof.

(b) MGIC/MC is not an investment company under the '40 Act.

The '40 Act defines an investment company as any issuer which

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"[I]s or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. . . ."
§3(a)(1), '40 Act.

However, Section 3(c) provides as follows:

"(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(5) Any 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: . . . (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate."

Accordingly, MGIC/MC would be exempt from '40-Act registration since the securities to be acquired and sold are "mortgages".

(c) The sales of mortgages by MGIC/MC are exempt from registration under the '33 Act by reason of Section 4(2) of that Act.

As discussed, supra, as the demand for seasoned loans warrants, MGIC/MC will sell mortgages to permanent investors.

Section 5, of the '33 Act provides generally that it shall be unlawful to sell a "security" unless a Registration Statement is in effect with respect to such security

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or unless the transaction is exempt from registration under Section 4 of the '33 Act. The sale of mortgages by MGIC/MC does not fit precisely within the traditional parameters of the '33 Act.

MGIC/MC is aware that the sales of mortgages are not considered by the real estate business community to be transactions necessitating registration under the '33 Act. Indeed, banks, mortgage bankers, savings and loans and others engage in the origination and sale of mortgages, including insured mortgages, on a daily basis without registration. The absence of registration may be based upon (i) industry tradition; (ii) implicit reliance upon 4(2); and (iii) Commission inaction which may indicate acquiescence in (i) and (ii).

In addition, the traditional registration statement as applied to the sale of mortgages to sophisticated mortgage buyers in large blocks with numerous obligors, yields, and originating institutions may neither be commercially feasible, nor responsive to the public policy behind '33 Act registration.

As previously discussed, sales of mortgages by MGIC/MC will be made only within the following criteria: (i) buyers will be a closed class of institutions who are engaged in the business of mortgage lending; (ii) buyers will have available for examination complete data with respect to mortgages purchased; (iii) buyers will have an opportunity to reject any mortgage after the examination referred to in (ii); and (iv) sales will be made in blocks of not less than \$100,000. Because of these criteria, MGIC/MC respectfully contends that its prospective purchasers are persons who do not need the protection of the Act, and thus, that such sales may be made in reliance upon Section 4(2). Securities and Exchange Commission vs. Ralston Purina, 346 U.S. 119 (1952) Securities and Exchange Commission vs. Continental Tobacco Company of South Carolina, _____ Fed. 2d, _____ (5th Cir. 1972).

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4. Opinion of Counsel for MGIC/MC

Based upon our understanding of the business activities of MGIC/MC, it is our opinion that:

- (a) The activities of MGIC/MC do not constitute those of a broker, a dealer, or an exchange;
- (b) MGIC/MC is not an investment company under the Investment Company Act of 1940; and
- (c) Sales of mortgages from MGIC/MC's portfolio within the criteria set forth on pages 5 and 6, supra, are exempt from registration by reason of Section 4(2) of the Act.

5. General Statements

MGIC/MC contemplates filing with the Commission a registration statement for a public offering of senior debt securities in the near future. MGIC/MC has requested that its counsel prepare this request for no-action and file such with the Commission in order that MGIC/MC and the Commission may promptly consider these points apart from the registration process. Accordingly, the Company respectfully requests a conference with the staff of the Commission at the earliest possible date, prior to a response to this letter.

In accordance with Release 33-5098, three copies of this letter are being submitted herewith.

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MGIC/MC requests that this letter be accorded confidential treatment for 120 days after response from the Commission.

Very truly yours,

FOLEY & LARDNER

By:

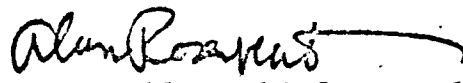

William J. Willis

Enclosures:

- Exhibit 1: MGIC Mortgage Corporation Sellers Guide
(Conventional Home Mortgages)
- Exhibit 2: FHA Regulations on Approval of Mortgagees
- Exhibit 3: 12 C.F.R., Chapter V, §563.9
- Exhibit 4: Cumulative Report of Activity for the Period
April 1, 1972 through May 31, 1972

Based on the foregoing facts and representations, we would not recommend that the Commission take any action if MGIC Mortgage Corporation ("MGIC/MC") does not register under the Investment Company Act of 1940 if it proceeds in reliance on your opinion as counsel that the exception to the definition of investment company in Section 3(c)(5)(C) is available.

Section 3(c)(5)(C) requires that the issuer be primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. This position is based on the assumption that MGIC/MC will be initially engaged solely and in any event at all times will be engaged primarily in dealing in whole loans, and not in participations or fractional interests in individual or pooled mortgages or deeds of trust. In our view a company primarily engaged in purchasing participations or fractional interests in individual or pooled mortgages or deeds of trust would not be entitled to rely upon the exception in Section 3(c)(5)(C).


Alan Rosenblat, Chief Counsel
Division of Investment Company Regulation

September 1, 1972

SLC:rao

cc: Harvey L. Pitt, Division of Market Regulation (Room 310)
David McLellan, CF (Room 593)