

Re: Investment Company Act of 1940
Sections 3(c)(1) and (5)

MARSH, DAY & CALHOUN
COUNSELORS AT LAW
. 955 MAIN STREET
BRIDGEPORT, CONN. 06604

ARTHUR M. MARSH 1897 - 1942
DAVID S. DAY 1910 - 1962
PHILO C. CALHOUN 1914 - 1964

DANIEL FAIRCHILD WHEELER
COUNSEL

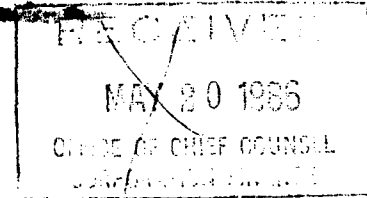
MURIEL E. ZACHARIAS
SPECIAL COUNSEL

FAIRFIELD OFFICE
1150 POST ROAD
FAIRFIELD, CONN. 06430
TELEPHONE (203) 259-8993

NORMAN KING PARSELLS
GREGORY C. WILLIS
DAVID S. MACLAY
LUCE E. DILLINGHAM
FER WILKINSON
SEPH T. GORMLEY, JR.
ROBERT J. BERTA
JAMES E. RICE
MICHAEL P. A. WILLIAMS
TIMOTHY G. ATWOOD
ELIZABETH C. SEELEY
MICHAEL A. DOWLING
SUZANNE BALDASARE KROLIDES
ROBERT L. DANAHER
PETER T. MOTT
TIMOTHY J. HAUBURGER
JENNIFER M. DAMON
EDWARD J. KELLEHER

Act ICA-40 (203) 368-4221
FAX: (203) 384-9417
Section 3(c)(5)(c)
Rule _____ May 16, 1986
Public _____
Availability 7/17/86

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, DC 20549



Re: The State Street Mortgage Company

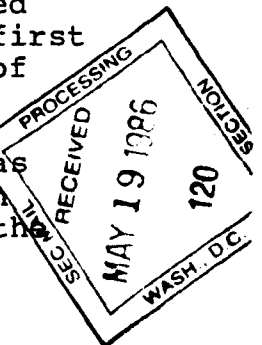
Dear Sir:

Please be advised that this office represents The State Street Mortgage Company, a Connecticut corporation organized on July 1, 1983.

The Company is in the business of making mortgage loans, primarily second mortgage loans, on real property located in the State of Connecticut. It is licensed as both a first and second mortgage lender by the Banking Commissioner of the State of Connecticut. As of December 31, 1985, its total assets were \$13,370,000, of which \$11,209,000 was invested in mortgage loans. In 1985 its total income was \$1,864,000, of which \$1,810,000 was interest received on mortgage loans. The Company has four Shareholders and the stated capital of the Corporation is \$1,000 and as of December 31, 1985, the net worth is \$82,100.

Funds for the Company's operations come from two sources. First, a \$10,000,000 line of credit from a bank, which line of credit is secured by a pledge of all of the Company's outstanding mortgage loan receivables. Presently \$7,810,000 is outstanding under this line of credit. Second, the Company has borrowed from individuals who have loaned money to it on a demand unsecured basis. Presently there is \$9,067,000 outstanding on these loans.

The loans from individuals are represented by demand notes of the Company ("Notes") and these Notes are payable



thirty days after demand has been made by the holder. All Notes are personally guaranteed by the four principal officers and stockholders of the Company. These Notes bear interest at the rate of 12-3/4 per cent per annum, payable monthly, but as long as the Notes are outstanding, the Company has the right to change the rate upon giving the holder thirty days' prior written notice to give him the opportunity to demand payment if he is not satisfied with the adjusted rate. Most noteholders have taken the option of not having the interest paid to them monthly but to have the interest compounded on a monthly basis.

Notes were sold to investors in three issues. First, a private offering under Rule 506 of Reg. D commencing on October, 1983, in the amount of \$4,000,000, as a result of which 50 persons purchased Notes. A second offering, in the amount of \$2,000,000 to \$4,000,000 was commenced in April, 1985, under Section 505 of Reg. D and 51 persons purchased Notes in this issue. On a continuous basis, the Company has issued Notes to eight Officers and Directors of the Company and members of their families under Section 4(6) of the Securities Act. At the present time, there are in the aggregate 99 holders of Notes of the Company.

The Company now contemplates issuing additional Notes in a private offering under Reg. D, as a result of which, the outstanding security holders, both noteholders and stockholders, would exceed 100 in number.

The question involved concerns the Company's exemption from registration under the Investment Company Act of 1940 ("Act"), should it have in excess of 100 security holders. It is the opinion of this firm that the Company is exempt from registration pursuant to Section 3(c)(1) and Section 3(c)(5) of the Act.

In our opinion, the Company need not register under the Act because Section 3(c)(1) exempts

"Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities."

In pertinent part, Section 2(a)(38) of the Act defines "short-term paper" to mean, "Any note ... payable on demand or having a maturity at the time of issuance of not exceeding

nine months, exclusive of days of grace, or any renewal thereof, payable on demand, or having a maturity likewise limited;"

Since all of the Company's Notes are payable thirty days after demand, these should be "short-term paper" within the meaning of the Act and therefore not included when determining the outstanding securities of the Company. Since there are only four holders of common stock of the Company, then its outstanding securities (other than short-term paper), being beneficially owned by not more than 100 persons, would make the issuer exempt from registration under Section 3(c)(1).

In addition, the applicable exemption under Section 3(c)(5) of the Act exempts

"Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic 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."

A "redeemable security" is defined in the Act as follows:

"Section 2(a)(32); "Redeemable security" means 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."

The demand notes issued by the Company are not redeemable securities for two reasons. First, they are short-term paper; and second, they do not entitle the holder to receive his proportionate share of the issuer's current net assets or the cash equivalent thereof. Each Note is a fixed obligation which is not related to the value of the issuer's assets. Also, the Notes would not be face-amount certificates or periodic plan certificates.

Further, the Company meets the test of being primarily engaged in purchasing or otherwise acquiring

mortgages and other liens on and interests in real estate. Of its assets, over 90 per cent are invested in first and second mortgage loans, and the remainder are invested in properties acquired on foreclosure and other miscellaneous investments. In our opinion, the Company would be entitled to the exemption under Section 3(c)(5) since it is issuing short-term paper and is primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

We respectfully request that the staff issue a letter stating that, based on the facts presented herein, the staff is in agreement that the Company is exempt from registration under the Act pursuant to the exemptions contained in Sections 3(c)(1) and (5) of the Act.

Should you have any questions, would you please advise the undersigned, or in his absence, Suzanne B. Krolides.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bruce E. Dillingham".

Bruce E. Dillingham

CC: Mr. Jerome Goldman
The State Street Mortgage Company

PUBLIC

JUN 17 1986

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 86-245-CC
The State Street Mortgage Company
File No. 132-3

In your letter of May 16, 1986, you request that the staff issue a letter stating that The State Street Mortgage Company ("Company") is not required to register as an investment company by virtue of sections 3(c)(1) and 3(c)(5) of the Investment Company Act of 1940 ("Act").

We express no opinion regarding the Company's ability to rely on section 3(c)(1) of the Act. Section 3(c)(1) requires not only that an issuer's outstanding securities (other than short-term paper) be beneficially owned by not more than one hundred persons, but also that the issuer is not making and does not propose to make a public offering of its securities. We have taken the position that offerings which qualify under section 4(2) of or rule 506 under the Securities Act of 1933 would satisfy the nonpublic offering requirement of section 3(c)(1). See, e.g., STARS & STRIPES GNMA Funding Corporation (pub. avail. Apr. 17, 1986). However, unless an offering complies with rule 506, we will not, as a matter of policy, issue a no-action or interpretive letter on the question of whether an offering is nonpublic for purposes of section 3(c)(1) under the Act. Because the offerings described in your letter were not all pursuant to rule 506, we do not express any opinion on this question.

However, we believe that the Company would be excepted from the definition of an investment company by section 3(c)(5)(C) of the Act and would, therefore, not be required to register under the Act. See Salomon Brothers Inc. (pub. avail. June 17, 1985). Our position is based on the facts and representations made in your letter.

Gerald T. Lins

Gerald T. Lins
Attorney