CRE Finance Council

November 7, 2011

VIA ELECTRONIC FILING – rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Request for Comments – Companies Engaged in the Business of Acquiring Mortgages and Mortgage-Related Instruments, File No. S7-34-11; Concept Release (IC Rel. No. 29778)

Dear Ms. Murphy:

The Commercial Real Estate ("CRE") Finance Council® appreciates the opportunity to respond to the request of the Securities and Exchange Commission (the "Commission") for comments on questions concerning the interpretation of Section 3(c)(5)(C) of the Investment Company Act of 1940 (the "Act") as it pertains to companies engaged in the business of acquiring mortgages and mortgage-related instruments.[1]

The CRE Finance Council is the collective voice of the entire $3.5 trillion commercial real estate finance market, including loan and bond investors such as insurance companies, pension funds, and money managers; portfolio, multifamily, and CMBS lenders; issuers of CMBS; servicers; rating agencies; accounting firms; law firms; and other service providers.

Our members include publicly traded companies that operate as commercial mortgage real estate investment trusts ("CMRs") and invest principally in commercial real estate mortgages and related assets. Therefore, the CRE Finance Council has an interest in the development of a regulatory framework that allows commercial mortgage REITs to determine with reasonable certainty, for purposes of Section 3(c)(5)(C), the appropriate treatment of commercial real estate mortgage loans and related instruments.

[1] Investment Company Act Release No. 29778 (August 31, 2011), 76 FR 55300 (Sept. 7, 2011) (the " Concept Release").

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CMRs provide an integral source of capital in the commercial mortgage finance market. Specifically, CMRs' financing includes the origination and acquisition of all financing products available in the commercial mortgage loan market, including: (1) commercial mortgage loans, (2) participations in commercial mortgage loans, (3) mezzanine loans, and (4) various securitized products, such as commercial mortgage-backed securities ("CMBS"). As of September 30, 2011, there were approximately 15 public CMRs with an aggregate market capitalization of $5.39 billion and assets under management of $39.4 billion.

CMRs benefit immensely from being able to borrow to finance the origination and acquisition of their assets. Any restriction on this ability, along the lines of the restrictions applicable to registered investment companies ("RICs"), would have a significant effect on the business of REITs.

We are aware that Paul Hastings is submitting comments on behalf of a coalition of commercial mortgage REITs in this proceeding that concur and amplify these views, the CRE Finance Council endorses Paul Hastings's comments.

The CRE Finance Council urges the Commission to bear in mind that any action to impose Investment Company Act regulation on commercial mortgage REITs, or advance a restrictive interpretation of the Section 3(c)(5)(c) exclusion from such regulation, would substantially impair the business models of these entities, and would create a risk that they may be forced to limit their role in or exit the commercial mortgage finance market. Such a result would negatively impact capital formation in the commercial real estate sector, and would come at a sensitive time for the CMBS market. With continued global economic difficulties and the sovereign debt concerns that came to light this summer, there has been a slow-down in CMBS issuance. Total issuance for the year is expected to reach roughly $30 billion, which is at the low end of predictions made at the beginning of 2011. Furthermore, a major CMBS issuer recently announced that it is exiting the CMBS market, which has generated serious concerns within the market that there may be a trend toward the market contracting.

A significant pull-back in the CMBS market at this point in time would create considerable difficulties because the CRE industry faces an increasing number of mortgage maturities for which capital will be required, either in the form of debt or equity, to avoid further declines in commercial property values. Through 2017 for example, approximately $600 billion of CMBS loans and more than $1.2 trillion in outstanding commercial mortgages will mature. Borrower demand to re-finance these mortgages will be at an all-time high.

We believe that by codifying certain existing staff guidance and adopting a principles-based definition of "qualifying asset," the Commission will enable commercial mortgage REITs to determine with reasonable certainty for purposes of Section 3(c)(5)(C) the appropriate treatment of commercial real estate mortgage loans and related instruments that are prevalent in the market today or that may be introduced in the future as the commercial mortgage finance market continues to evolve and innovate. We believe such action would ultimately serve the interests of issuers and investors alike by facilitating the continued availability of capital from this important source.

The CRE Finance Council appreciates the Commission's consideration of our comments regarding the Concept Release. We stand ready to provide any additional assistance that may be helpful.

Respectfully submitted,

Stephen M. Renna
Chief Executive Officer
CRE Finance Council