

THE WHITE HOUSE

WASHINGTON

January 25, 1983

MEMORANDUM FOR FRED FIELDING

THROUGH:           ROGER PORTER

FROM:               SHANNON FAIRBANKS

SUBJECT:            Issue Coordination between  
                      the SEC and OPD

Per our earlier conversation, this is to confirm that a series of meetings have been held between Commissioner Thomas of the SEC, relevant SEC staff, and a representative from the White House Office of Policy Development. (*Ann Fairbanks*)

As a result of these discussions, the SEC has initiated independent deregulatory action regarding mortgage-backed securities which complements the Administration's on-going deregulatory initiative for mortgage finance.

The attached draft letter from Commissioner Thomas of the SEC to Secretary Regan summarizes the extent of deregulatory action taken by the SEC. The draft is forwarded for your information only and copy of the actual letter will be forwarded to your office when it is available.

I believe this provides you with sufficient background information for review of the issue.

If I can provide you with any further information in this regard, please let me know.

Honorable Donald T. Regan  
Secretary of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Mr. Secretary:

This is to advise you that we have had discussions with Shannon Fairbanks, Deputy Assistant Director for Economic Affairs, concerning the deregulatory initiative for mortgage-related securities called TIMs, Trusts for Investments in Mortgages. The purpose of the TIMs deregulatory program is to remove existing barriers to the investment of private capital in securities backed by home mortgages. As background for your consideration of complementary tax changes, we have been asked to summarize actions taken by the SEC in response to the TIMs initiative.

The initiative contemplates that the sale of such securities to the public would be made in compliance with the registration and other requirements of the federal securities laws, thereby affording investors the benefits and protections of existing disclosure and anti-fraud provisions. In response to specific TIMs proposals, we have clarified and revised the registration process for private mortgage-backed securities. We expect these revisions, and our decision to provide such securities with access to recently adopted amendments to our shelf registration rules, will result in substantial savings of time and expense.

#### Form of Registration Statement

As noted above, a mortgage-backed security to be sold to public investors remains subject to the registration provisions of the Securities Act of 1933. Thus, sponsors of these securities are required to file a registration statement with the Commission prior to making a public offering. We have clarified the form of S-11 registration statement to be used by issuers of mortgage-related securities, and clarified who can act as registrant of such securities.

#### Blind Pools

Part of the registration statement required by the Commission consists of a prospectus which must be furnished to investors at the time of the offering. The prospectus must include sufficient information concerning the offering and its sponsors to enable investors to make informed investment decisions.

In the past, our position had been that a mortgage-backed security prospectus had to include identifying data on the actual mortgages in the pool backing the security. No "blind pool" registrations for private mortgage-related securities had been approved by the SEC. Registrations of "blind pools" of marketable securities are not uncommon, and tax-exempt mortgage revenue bonds, which are exempt from the Commission's registration requirements, have regularly been issued in blind pool form. The TIMs initiative has led us to change our policy and accept such filings for private mortgage-related securities. The Commission has agreed that the prospectus need only describe the mortgages to be delivered to the pool in generic

terms, accompanied by appropriate undertakings. Actual pool data would be provided to investors in later 8-K or other periodic reports.

### Post-Effective Amendments

Until recently, our position had been that any information relating to a new series of mortgage pool certificates had to be filed with the Commission by post-effective amendment. This procedure had the unintended effect of extending the sponsor's holding period risk -- the time between the mortgage pool's creation and sale of its securities -- because sale of a security is not considered final until the Commission has an opportunity to review a post-effective amendment. The Commission's revised procedure collapses the time in which an issuer can have a final sale of a mortgage-backed security by providing for an effective registration via a supplement, effective on mailing.

As an example of the application of the decision, the Commission has permitted Banco Mortgage Company, a large mortgage banking entity, to register its mortgage pool certificates by describing, in general terms, the various types of mortgage offerings it intends to conduct. Thereafter, a prospectus supplement will be prepared with respect to each mortgage pool series, which will contain approximate information as to the mortgage loans to be acquired for the mortgage pool, the type of property securing the loans, the original terms of the mortgage loans, the estimated pass-through interest rate and estimated yield to be paid on the pool certificates, and other pertinent information concerning the offering. Both the core prospectus and the series supplement will be distributed to investors at the time of the offering. Specific information respecting the actual contents of the mortgage pool would be contained in a Form 8-K report to be filed at a later time with the Commission, and furnished to investors in the pool.

The use of a general core prospectus, a supplement describing planned pool composition and disclosure of actual pool data in periodic 8-K reports, has the advantages of cost-savings, flexibility, and allowing the offering of certificates while simultaneously obtaining their "investment grade" rating. The advantages of this revised procedure has become immediately apparent since several prominent sponsors have already elected to use it.

### Shelf Registration

Mortgage-backed security issuers may wish to issue a series of similar securities over several months. A question had arisen, particularly where each series of mortgage-backed securities represents interests in a separate trust (or other legal entity), whether such securities could use the Commission's recently adopted Rule 415 shelf registration procedure. The Commission has agreed to permit the application of the streamlined Rule 415 shelf registration procedures to private mortgage securities so that issuers can offer several series of mortgage pool certificates over a period of up to two years, pursuant to a single registration statement. These Rule 415 procedures have already been used by Banco Mortgage Company, Merrill Lynch MBS, Inc., and General Electric Mortgage Securities Corporation in registration statements covering shelf offerings of private mortgage pool certificates.

As a result of these changes, mortgage pool sponsors are now able to conduct their shelf offerings of private mortgage pool certificates without having to go through the time consuming and costly step of filing new registration statements, or post-effective amendments to existing registration statements, to cover the offering of each series of mortgage pool certificates.

### Periodic Reports

After an offering has been sold, the periodic reporting provisions of Section 15(d) of the Securities Exchange Act of 1934 would apply. Thus, public investors will continue to have access to reliable information concerning the operation of a mortgage pool for a period of at least one year, or longer in the even there are in excess of 300 certificate holders. The Commission contemplates that such mortgage pools will be permitted to file modified periodic reports which would be tailored to their unique activities, rather than the more expansive reports required of most users. Although public trading in such private mortgage pool certificates currently is very limited, the availability of reliable periodic information concerning such securities, as required by the Exchange Act, may enhance the possibility that such public trading will develop in the future.

A private mortgage pool eventually might become subject to registration under Section 12 of the 1934 Act in the event either its investment certificates are listed on a national securities exchange, or, at the end of a fiscal year, it has assets in excess of \$3,000,000 and 500 or more holders of its certificates. Registration under Section 12 would theoretically subject a TIMs to all the provisions of Section 13, 14 and 16 of the 1934 Act dealing with, among other things, periodic reports, tender offers, proxy statements, and insider reporting and trading. However, to the extent consistent with the public interest, the Commission expects to exercise its authority under Section 12(h) to exempt mortgage related securities from these additional requirements.

Among the other issues under study as a result of the TIMs process are a safe harbor for TIMs sponsors from investment advisors and broker/dealer requirements of the securities laws, and a limited exemption of private mortgage-backed securities from the requirements of the Investment Company Act of 1940.

Finally, we are considering ruling that mortgage-related securities are non-convertible debt for purposes of broker's net capital rule requirements and requiring only a single rating organization to rate such securities under that rule. This provision should facilitate development of secondary market trading in these instruments.

We believe that the above-described registration and periodic reporting procedures and other changes being considered under the federal securities laws represent a responsible method for issuers of private mortgage securities to offer their securities to the public in a timely and cost-efficient fashion, while at the same time providing public investors with the protections afforded by existing laws.

We are delighted to have been able to participate in taking these steps in response to the TIMs initiative. The Commission supports this effort to expand the ability of the private capital

markets to meet housing credit needs through the issuance and sale of private mortgage-backed securities.

Sincerely,

Barbara S. Thomas,  
Commissioner