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March 2, 1984

Office of Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, DC 20549

Act

ICA-40

Section

3(c)(5)

Public

Availability

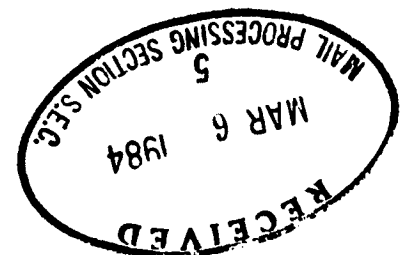
4/19/84

Re: Nottingham Realty Securities, Inc.  
Reference No. 83-210-CC

Gentlemen:

By letter dated June 27, 1983, a request was made that the Division take a "no-action" position with respect to the status of Nottingham Realty Securities, Inc. ("Nottingham") as an investment company. By letter dated July 28, 1983, the Division advised that it would not recommend that the Commission take any enforcement action against Nottingham under the Investment Company Act of 1940, as amended (the "Act"), on the grounds that Nottingham was excepted under Section 3(c)(5)(C) of the Act from the definition of "investment company." A copy of each of the aforementioned letters is enclosed.

Nottingham proposes to issue 2,000,000 shares of adjustable rate cumulative preferred stock through a public offering, as described in a registration statement on Form S-11 (Registration No. 2-89512), filed with the Commission on February 17, 1984.



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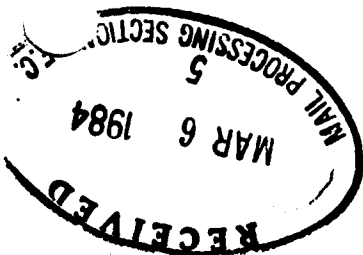
The facts and circumstances relating to Nottingham's operations which were described in the aforementioned letters remain substantially unchanged at this time. One modification to the method of operation has been implemented (as described below) and another is proposed and forms the basis for our further request that the Division advise us that it will not recommend that the Commission take any enforcement action against Nottingham if it proceeds in the manner described herein without registering under the Act.

The modifications to the facts described in the above-referenced letters are:

First, whereas it previously was expected that Nottingham would hold whole mortgages as a permissible form of investment, upon analysis it was determined that the mechanics of obtaining suitable information with respect to such mortgages in order to be able properly to rate the preferred stock to be issued by Nottingham would be so complicated and potentially costly that the concept of holding whole mortgages was abandoned. Second, it previously was expected that if Nottingham held mortgage-backed certificates guaranteed by Government National Mortgage Association ("GNMA Certificates") Nottingham would hold only GNMA Certificates constituting the entire issue of GNMA Certificates with respect to particular pools of mortgages. It now appears that the prospects for Nottingham's future operations and potential profitability would be enhanced if Nottingham were permitted to invest in GNMA Certificates without regard to the percentage of a pool of mortgages represented thereby.

In July 1983, the Staff stated that it would not recommend action against an issuer which agreed to maintain at least 65% of its assets in GNMA Certificates representing 100% of the certificates backed by particular pools of mortgages ("whole-pool GNMA Certificates"). Investors GNMA Trust, Inc., July 22, 1983. In Salomon Mortgage Securities, Inc., November 8, 1983, the Staff took a similar no-action position where the representation was made that the issuer would maintain at least 55% of its assets in whole-pool GNMA Certificates.

Recently, in acting upon an application pursuant to Section 6(c) of the Act, the Commission, on January 31, 1984, entered an Order In the Matter of Guaranteed Mortgage Corporation II, Release No. 13744, which Order, in substance,



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provided that Guaranteed Mortgage Corporation II would be free to issue its debt instruments secured, directly or indirectly, by any GNMA Certificates, without regard to the percentage of the pool of mortgages represented thereby. That is to say, the distinction between whole-pool GNMA Certificates and those GNMA Certificates representing less than 100% of a pool ("partial-pool GNMA Certificates") should not be material in determining whether registration was required under the Act.

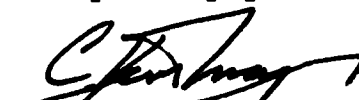
More particularly, it is our opinion that both whole-pool GNMA Certificates and partial-pool GNMA Certificates represent interests in real estate. Each GNMA Certificate represents an undivided beneficial interest in the underlying mortgages. A partial-pool GNMA Certificate is, for all intents and purposes, a tenancy in common in the underlying mortgages with the holders of other certificates backed by the pool.

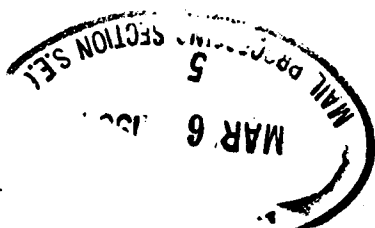
If at least 55% of Nottingham's assets consists of partial-pool GNMA Certificates, it is our view that Nottingham would be primarily engaged in acquiring interests in real estate.

Under the circumstances described above, in our opinion, Nottingham will be a person engaged primarily in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate, and, accordingly, since it will not issue redeemable securities, face amount certificates of the installment type or periodic payment plan certificates, Nottingham will not be an investment company as defined in the 1940 Act.

Based upon the foregoing, we respectfully request that the Division take a "no-action" position with respect to Nottingham's status as an investment company. We request an expedited response to this letter and to that end, we will be pleased to discuss this matter with the Staff at its convenience, either in person or by telephone, and to provide additional information promptly. Please do not hesitate to call me or my associate, Ellen M. Schindler.

Very truly yours,

  
C. Kent May



CKM:ml

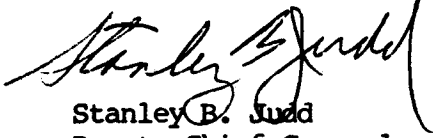
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MAR 20 1984

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 84-75-CC  
Nottingham Realty  
Securities, Inc.  
File No. 132-3

We are unable to advise you that we would recommend no-action to the Commission if Nottingham Realty Securities, Inc. proceeded to invest in GNMA securities in the manner proposed without registering under the Investment Company Act of 1940 or being exempted from the provisions of that act by rule or order. Arlington Investment Company (pub. avail. August 31, 1974). But cf.: American Home Finance Corporation (pub. avail. May 11, 1981) (treating whole pool GNMA's as "mortgages and other liens on and interests in real estate.")



Stanley B. Judd  
Deputy Chief Counsel