April 9, 1970

Re: Chase Manhattan Mortgage And Realty Trust

Mr. John Heneghan, Assistant Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Mr. Heneghan:

It is contemplated that within the next few weeks The Chase Manhattan Bank (National Association) (the Bank) will become investment adviser to a real estate investment trust which is being organized as a Massachusetts business trust with a name closely connected with that of the Bank such as "Chase Manhattan Mortgage And Realty Trust" (the Trust). It is intended that the Trust will qualify as a "real estate investment trust" within the meaning of Section 856 of the Internal Revenue Code and will invest in various ways in real estate, including construction loans and permanent mortgage loans. At the outset the principal portion of the Trust's investments will consist of construction mortgage and other short-term loans, including loans related to mortgage warehousing operations, of the character described
below in this letter. Such investments may be made through
loans initiated by the Trust or through the acquisition of
outstanding loans and commitments.

As discussed in my telephone conversations with
you and Mr. Shreve on March 25, 1970 and with Mr. Shreve on
March 31, 1970, we are setting forth in this letter proposed
uses for proceeds of notes proposed to be issued by the
Trust without compliance with registration requirements of
the Securities Act of 1933 (the Act) in reliance upon the
exemption under Section 3(a)(3) of the Act. The proposed
notes will be commercial paper maturing not more than nine
months from the date of issuance. The notes will not contain
any provisions for extension or renewal or automatic "roll-
over" either at the option of the holder or at the option of
the Trust. The notes may or may not specify an interest rate
and will normally be sold on a discount basis.

The notes will be issued in denominations of not
less than $50,000, but the average denomination is expected
to be substantially greater than this figure. It is expected
that generally the notes will be sold and traded in the usual
commercial paper market. Initially, the notes will probably
be sold through one or more recognized dealers in commercial
paper, although it may be that the notes will be sold from
time to time by the Trust itself. It is anticipated that the
total amount of commercial paper to be sold by the Trust will
have a principal amount of at least $50,000,000 and may reach or exceed $500,000,000.

The proceeds of the notes will be part of the general funds of the Trust and it will not be practicable to identify them specifically with particular portfolio investments. It will be the policy of the Trust, however, that the aggregate amount of the notes outstanding at any one time will not be in excess of the aggregate principal amount of its construction mortgage and other loans to be held for a short-term as described below.

1. **Construction Loans.** The Trust proposes to make loans to finance the construction of industrial, commercial, residential and farm buildings for periods slightly in excess of the construction period. The construction period with respect to smaller buildings may be several months, while the construction period for apartment and industrial or commercial buildings may extend for more than two years. The construction period for an especially large project might extend beyond three years. It is contemplated that most of the construction loans made by the Trust will involve construction periods of less than three years.

In some cases the construction mortgage loans will have a stated maturity generally coinciding with the intended date of completion of construction. More often, however, the construction mortgage loans will have maturities such as 20
or 25 years or, in some cases (e.g., in the case of some FHA insured loans) as much as 40 years. Among the practical and business reasons that construction loans often are evidenced by long-term mortgage notes are the following:

(a) reduction of the number of documents necessary for the making of the construction loan and the long-term loan, the documentation of the long-term loan being the same as the construction loan with a simple assignment of the existing mortgage note upon the purchase by the long-term lender,

(b) avoidance of risks that might otherwise be involved in obtaining execution of new mortgage loan documents when construction has been completed, (c) savings in some jurisdictions on mortgage recording fees and taxes and (d) the necessity of a long-term loan in form in order to obtain the guaranties and insurance benefits provided by various governmental agencies. The construction loan agreements will usually provide that there is a default if the construction is not completed by a specified date. However, whether the stated maturity is short-term or long-term, it will be the plan of operation of the Trust that construction mortgage loans will be paid from the proceeds of loans to be made by long-term lenders or will be sold or otherwise transferred to long-term lenders at or shortly after the conclusion of the construction period.
In many cases there will be a binding agreement (a so-called "take-out agreement") by a financially responsible lender to advance the full amount of the construction mortgage loan upon completion of construction, such agreement being obtained either prior to the making of the construction mortgage loan or sometime thereafter but prior to completion of construction. Where a take-out agreement is not obtained prior to making the initial construction mortgage loan, the Trust may make a commitment (a "standby commitment") to make a long-term loan following completion of construction, such commitment being solely for the purpose of providing a basis for the commencement of construction. In these cases the terms of the long-term loan (e.g., rate of interest, discounts and commissions payable, payout schedule and equity participation) provided by the standby commitment are intended to be substantially more onerous than those which would generally be expected to be available to the borrower at the time the commitment is to be performed and are designed with the intention that the borrower will seek other sources for its long-term financing. In all cases described above, in this paragraph it would be the intention of the Trust that the construction loans would be paid or sold or transferred to long-term lenders at or shortly after the conclusion of the construction period.
The Trust would not treat as a construction loan for purposes of this letter any loan made for the construction period where the Trust intended to retain the loan for any substantial period beyond the completion of construction.

The construction mortgage loans described above are of a temporary or interim nature and do not constitute permanent investments by the Trust. According to SEC Securities Act Release No. 4412 (September 20, 1961) the legislative history of the Act indicates that the Section 3(a)(3) exemption thereunder was intended to apply to negotiable commercial paper issued to facilitate recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks. It is noted that certain construction loans secured by mortgages are eligible for discount by member banks under Federal Reserve regulations now in effect (12 CFR § 201.3(d)). In addition, the Board of Governors of the Federal Reserve System recently issued an interpretation regarding the eligibility for discount of mortgage company notes (12 CFR § 201.109, which appeared in 35 FR p. 527, Jan. 15, 1970). In that interpretation the Board notes that

"(d) In providing for the discount of commercial paper by Reserve Banks, Congress obviously intended to facilitate the current financing of agriculture, industry and commerce, as opposed to long-term investment. Mortgage banking ... is essential to the
construction industry and thus more closely related to industry and commerce."

The Board went on to say that

"notes issued to finance such temporary 'warehousing' of real estate mortgage loans are notes issued for an industrial or commercial purpose and that the temporary holding of such mortgages in those circumstances is not a permanent investment by the mortgage banking company."

Thus notes issued to finance temporary holdings of real estate mortgage loans have been recognized as being of a commercial nature rather than permanent financing.

In the third paragraph of 12 USC § 371, which applies to loans by national banking associations, a distinction is made between "real estate loans", which are limited in amount to a certain percentage of appraised value of the real estate and require certain amortizations on the one hand, and on the other, "ordinary commercial loans", which are not so limited. Such statute provides that the following loans, if made by a national banking association, would be "ordinary commercial loans" rather than "real estate loans":

"Loans made to finance the construction of industrial or commercial buildings and having maturities of not to exceed thirty-six months where there is a valid and binding agreement entered into by a financially responsible lender to advance the full amount of the bank's loan upon completion of the buildings and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed thirty-six months."
Thus, for bank loan purposes, construction loans for as long as 36 months are also recognized as being of a commercial nature rather than "real estate loans" which are viewed as loans for a longer term and of a more permanent nature.

In view of the foregoing, we are of the opinion that the offer and sale of the Trust's notes in the manner described above, when the proceeds are used to finance the construction mortgage loans described above, will fall within the "current transactions" requirement of Section 3(a)(3) of the Act and will, therefore, be exempt from the registration and prospectus requirements of the Act.

2. Mortgage Warehousing Loans. The Trust also proposes to make loans to mortgage bankers and others to enable them to carry temporarily an inventory of mortgage loans pending their "packaging" for sale to permanent investors. Such loans will ordinarily be secured by pledges of the mortgage notes being warehoused by such mortgage bankers and others. In addition, the Trust may perform the mortgage bankers' function and make loans which will be held temporarily in inventory pending their "packaging" for sale to permanent investors. Such loans would ordinarily be held for one year or less.
In view of the above-mentioned interpretation of the Board of Governors of the Federal Reserve System, we are of the opinion that the proposed loans by the Trust in connection with mortgage warehousing operations will fall within the "current transactions" requirement of Section 3(a)(3) of the Act and, therefore, the offer and sale of the Trust's notes in the manner described above when the proceeds are used to finance such loans will be exempt from the registration and prospectus requirements of the Act.

3. One Payout Loans. The Trust proposes to make mortgage loans in order to facilitate purchases of existing structures where the long-term lenders do not have funds currently available to make the loans or where, for various reasons, the long-term loan has not been arranged. Such loans would be made for temporary purposes during the period required to obtain or complete long-term financing. Such loans would not extend for more than one or two years. In most cases a binding agreement by a financially responsible lender to acquire such loan or make new loans (the proceeds of which would be used to satisfy the original loan) would be in existence prior to the making of a loan by the Trust. In any event, all such loans would be made with the intention that they would be transferred to the long-term lender within a relatively short period of time.
While the loans described in the foregoing paragraph will not be made for construction purposes, they are nevertheless of an interim and short-term character and would not constitute permanent financing. Accordingly, we are of the opinion that these loans also fall within the "current transactions" requirement of Section 3(a)(3) of the Act and that the offer and sale of the Trust’s notes in the manner described above when the proceeds are used to finance such loans will be exempt from the registration and prospectus requirements of the Act.

On behalf of the Bank and the Trust, we respectfully request your advice as to whether the Division of Corporation Finance would recommend any action by the Commission if the Trust should proceed with the offer and sale of its notes as described above, when the proceeds are to be used to finance loans by the Trust as described in 1, 2 and 3 above, without compliance with the registration and prospectus requirements of the Act in reliance on the exemption provided by Section 3(a)(3) of the Act.

If you should have any questions, or require any additional information concerning the matters set forth in this letter, please do not hesitate to telephone me collect.

Very truly yours,

Richard A. Stark

RAS/zn

Copy: Mr. Charles Shroevé