The issue in this case is whether shares of stock entitling a purchaser to lease an apartment in Co-Op City, a state subsidized and supervised nonprofit housing cooperative, are "securities" within the purview of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Co-Op City is a massive housing cooperative in New York City. Built between 1965 and 1971, it presently houses approximately 50,000 people on a 200-acre site containing 35 high rise buildings and 236 town houses. The project was organized, financed, and constructed under the New York State Private Housing Finance Law,
commonly known as the Mitchell-Lama Act, enacted to ameliorate a perceived crisis in the availability of decent low-income urban housing. In order to encourage private developers to build low cost cooperative housing, New York provides them with large long-term, low-interest mortgage loans and substantial tax exemptions. Receipt of such benefits is conditioned on a willingness to have the State review virtually every step in the development of the cooperative. See N. Y. Private Housing Finance Law §§ 11–37, as amended, (McKinney Supp. 1974–1975). The developer also must agree to operate the facility “on a nonprofit basis,” id., at § 11–a (2a), and he may lease apartments only to people whose incomes fall below a certain level and who have been approved by the State.\footnote{Eligibility is limited to families whose monthly income does not exceed six times the monthly rental charge (or for families of four or more, seven times the rental charge). N. Y. Private Housing Finance Law § 31 (2)(a) (McKinney Supp. 1974–1975). Preference in admission must be given to veterans, the handicapped, and the elderly. Id., at § 31 (7)–(9).}

The United Housing Foundation (UHF), a nonprofit membership corporation established for the purpose of “aiding and encouraging” the creation of “adequate, safe and sanitary housing accommodations for wage earners and other persons of low and moderate income,”\footnote{UHF is composed of labor unions, housing cooperatives, and civic groups. It has sponsored the construction of several major housing cooperatives in New York City.} Appendix, at 95a, was responsible for initiating and sponsoring the development of Co-Op City. Acting under the Mitchell-Lama Act, UHF organized the Riverbay Corporation (Riverbay) to own and operate the land and buildings constituting Co-Op City. Riverbay, a nonprofit cooperative housing corporation, issued the stock that is the subject of this litigation. UHF also con-
TRACTED with Community Services, Inc. (CSI), its wholly owned subsidiary, to serve as the general contractor and sales agent for the project. As required by the Mitchell-Lama Act, these decisions were approved by the State Housing Commissioner.

To acquire an apartment in Co-Op City an eligible prospective purchaser must buy 18 shares of stock in Riverbay for each room desired. The cost per share is $25, making the total cost $450 per room, or $1,800 for a four-room apartment. The sole purpose of acquiring these shares is to enable the purchaser to occupy an apartment in Co-Op City; in effect, their purchase is a recoverable deposit on an apartment. The shares are explicitly tied to the apartment: they cannot be transferred to a non-tenant; nor can they be pledged or encumbered; and they descend, along with the apartment, only to a surviving spouse. No voting rights attach to the shares as such: participation in the affairs of the cooperative appertains to the apartment, with the residents of each apartment being entitled to one vote irrespective of the number of shares owned.

Any tenant who wants to terminate his occupancy, or who is forced to move out, must offer his stock to Riverbay at its initial selling price of $25 per share. In the extremely unlikely event that Riverbay declines to repurchase the stock, the tenant cannot sell it for more than

---

*CSI is a business corporation that has acted as the contractor on several UHF-sponsored housing cooperatives.
* A tenant can be forced to move out if he violates the provisions of his “occupancy agreement,” which is essentially a lease for the apartment, or if his income grows to exceed the eligibility standards.
* To date every family that has withdrawn from Co-Op City has received back its initial payment in full. Indeed, at the time this suit was filed there were 7,000 families on the waiting list for apartments in this cooperative. In addition, a special fund of nearl
the initial purchase price plus a fraction of the portion of the mortgage that he has paid off, and then only to a prospective tenant satisfying the statutory income eligibility requirements. See N. Y. Private Housing Finance Law § 31-a (McKinney Supp. 1974–1975).

In May 1965, subsequent to the completion of the initial planning, Riverbay circulated an Information Bulletin seeking to attract tenants for what would someday be apartments in Co-Op City. After describing the nature and advantages of cooperative housing generally and of Co-Op City in particular, the Bulletin informed prospective tenants that the total estimated cost of the project, based largely on an anticipated construction contract with CSI, was $283,695,550. Only a fraction of this sum, $32,795,550, was to be raised by the sale of shares to tenants. The remaining $250,900,000 was to be financed by a 40-year low-interest mortgage loan from the New York Private Housing Finance Agency. After construction of the project the mortgage payments and current operating expenses would be met by monthly rental charges paid by the tenants. While these rental charges were to vary, depending on the size, nature, and location of an apartment, the 1965 Bulletin estimated that the “average” monthly cost would be $23.02 per room, or $92.08 for a four-room apartment.

Several times during the construction of Co-Op City, Riverbay, with the approval of the State Housing Commissioner, revised its contract with CSI to allow for increased construction costs. In addition, Riverbay incurred other expenses that had not been reflected in the 1965 Bulletin. To meet these increased expenditures, Riverbay, with the Commissioner’s approval, repeatedly

$1 million had been established by small monthly contributions from all tenants to insulate that those wanting to move out would receive full compensation for their shares.
secured increased mortgage loans from the State Housing Agency. Ultimately the construction loan was $125 million more than the figure estimated in the 1965 Bulletin. As a result, while the initial purchasing price remained at $450 per room, the average monthly rental charges increased periodically, reaching a figure of $39.68 per room as of July 1974.6

These increases in the rental charges precipitated the present lawsuit. Respondents, 57 residents of Co-Op City, sued in federal court on behalf of all 15,372 apartment owners, and derivatively on behalf of Riverbay, seeking upwards of $30 million in damages, forced rental reduction and other "appropriate" relief. Named as defendants (petitioners herein) were UHF, CSI, Riverbay, several individual directors of these organizations, the State of New York, and the State Private Housing Finance Agency. The heart of respondents' claim was that the 1965 Co-Op City Information Bulletin falsely represented that CSI would bear all subsequent cost increases due to factors such as inflation. Respondents further alleged that they were misled in their purchases of shares since the Information Bulletin failed to disclose several critical facts.7 On these bases,

---

6 As the rental charges increased, the income eligibility requirements for residents of Co-Op City expanded accordingly. See n. 1, supra.

7 Respondents maintained that the following material facts were omitted: (i) the original estimated cost had never been adhered to in any of the previous Mitchell-Lama projects sponsored by UHF and built by CSI; (ii) petitioners knew that the initial estimate would not be followed in the present project; (iii) CSI was a wholly owned subsidiary of UHF; (iv) CSI's net worth was so small that it could not have been legally held to complete the contract within the original estimated costs; (v) the State Housing Commissioner had waived his own rule regarding liquidity requirements in approving CSI as the contractor; and (vi) there was an additional undisclosed contract between CSI and Riverbay.
respondents asserted two claims under the fraud provisions of the federal Securities Acts of 1933 and 1934, 15 U. S. C. § 77q (a); 15 U. S. C. § 78j (b), and 17 CFR § 240.10b-5. They also presented a claim against the State Financing Agency under the Civil Rights Act, 42 U. S. C. § 1983, and 10 pendent state law claims.

Petitioners, while denying the substance of these allegations, moved to dismiss the complaint on the ground that federal jurisdiction was lacking. They maintained that shares of stock in Riverbay were not "securities" within the definitional sections of the federal Securities Acts. In addition, the state parties moved to dismiss on sovereign immunity grounds.

The District Court granted the motion to dismiss, 366 F. Supp. 1117 (1973). It held that the denomination of the shares in Riverbay as "stock" did not, by itself, make them securities under the federal acts. The court further ruled, relying primarily on this Court's decisions in SEC v. C. M. Joiner Leasing Corp., 320 U.S. 344 (1943), and SEC v. W. J. Howey Co., 328 U.S. 293 (1946), that the purchase in issue was not a security transaction since it was neither induced by an offer of tangible material profits, nor could such profits realistically be expected. In the District Court's words, it was "the fundamental nonprofit nature of this transaction" which presented "the insurmountable barrier to [respondents'] claims in the federal court." Id., at 1128.9

---

8 Petitioners asserted that the Information Bulletin warned purchasers of the possibility of rental increases, and denied that it omitted material facts. They also argued that prior to occupancy all tenants were informed that rental charges had increased. In any event, petitioners claimed that respondents have suffered no damages since they may move out and retrieve their initial investments in full.

9 The District Court also dismissed the § 1983 claim finding that the "federal securities allegations represent the only well-pleaded underlying basis for jurisdiction under the Civil Rights Act." Id.
The Court of Appeals for the Second Circuit reversed. 500 F. 2d 1246 (1974). It rested its decision on two alternative grounds. First, the court held that since the shares purchased were called "stock" the Securities Acts, which explicitly include "stock" in their definitional sections, were literally applicable. Second, the Court of Appeals concluded that the transaction was an investment contract within the meaning of the Acts and as defined by Howey, since there was an expectation of profits from three sources: (i) rental reductions resulting from the income produced by the commercial facilities established for the use of tenants at Co-Op City; (ii) tax deductions for the portion of the monthly rental charges allocable to interest payments on the mortgage; and (iii) savings based on the fact that apartments at Co-Op City cost substantially less than comparable nonsubsidized housing. The court further ruled that the immunity claims by the State parties were unavailing. Accordingly, the case was remanded to the District Court for consideration of respondents' claims on the merits.

In view of the importance of the issues presented we granted certiorari. 419 U.S. 1120 (1975). As we conclude that the disputed transactions are not purchases of securities within the contemplation of the federal statutes, we reverse.
The Securities Act of 1933, 15 U. S. C. § 77b (1), defines a "security" as:

"any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing." 11

In providing this definition Congress did not attempt to articulate the relevant economic criteria for distinguishing "securities" from "non-securities." Rather it sought to define "the term 'security' in sufficiently broad and general terms so as to include within that definition the many types of instruments that in our commercial world fall within the ordinary concept of a security." H. R. Rep. No. 85, 73d Cong., 1st Sess., 11 (1933). The task has fallen to the Securities and Exchange Commission (SEC), the body charged with administering the Securities Acts, and ultimately to the federal courts to decide which of the myriad financial transactions in our society come within the coverage of these statutes.

11 The definition of a security in the 1934 Act is virtually identical and, for present purposes, the coverage of the two Acts may be considered the same. See Tcherepnin v. Knight, 389 U. S. 332, 335, 342 (1967); S. Rep. No. 781, 73d Cong., 2d Sess., 14 (1934).
In making this determination in the present case we do not write on a clean slate. Well-settled principles enunciated by this Court establish that the shares purchased by respondents do not represent any of the "countless and variable schemes devised by those who seek the use of the money of others on the promise of profits," Howey, supra, 328 U.S., at 299, and therefore do not fall within "the ordinary concept of a security."

A

We reject at the outset any suggestion that the present transaction, evidenced by the sale of shares called "stock," must be considered a security transaction simply because the statutory definition of a security includes the words "any . . . stock." Rather we adhere to the basic principle that has guided all of the Court's decisions in this area:

"[I]n searching for the meaning and scope of the word 'security' in the Act[s], form should be disregarded for substance and the emphasis should be on economic reality." Tcherepnin v. Knight, 389 U.S. 332, 336 (1967). See also Howey, supra, 328 U.S., at 298.

The primary purpose of the Securities Acts of 1933 and 1934 was to eliminate serious abuses in a largely unregulated securities market. The focus of the Acts is on the capital market of the enterprise system: the sale of securities to raise capital for profit-making purposes, the exchanges on which securities are traded, and the need for regulation to prevent fraud and to protect the

12 While the record does not indicate precisely why the term stock was used for the instant transaction, it appears that this form is generally used as a matter of tradition and convenience. See P. Rohan & M. Reskin, Cooperative Housing Law & Practice, §2.01 (4) (1973).
interest of investors. Because securities transactions are economic in character Congress intended the application of these statutes to turn on the economic realities underlying a transaction, and not on the name appended thereto. Thus, in construing these Acts against the background of their purpose, we are guided by a traditional canon of statutory construction:

"that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892). See also United States v. American Trucking Assns., Inc., 310 U.S. 534, 543 (1940).

Respondents' reliance on Joiner as support for a "literal approach" to defining a security is misplaced. The issue in Joiner was whether assignments of interests in oil leases, coupled with the promoters' offer to drill an exploratory well, were securities. Looking to the economic inducement provided by the proposed exploratory well, the Court concluded that these leases were securities even though "leases" as such were not included in the list of instruments mentioned in the statutory definition. In dictum the Court noted that "[i]nstruments may be included within [the definition of a security], as [a] matter of law, if on their face they answer to the

15 With the exception of the Second Circuit, every court of appeals recently to consider the issue has rejected the literal approach urged by respondents. See C. N. S. Enterprises, Inc. v. G. & G. Enterprises, Inc., 508 F. 2d 1354 (CA7 1975); McClure v. First National Bank of Lubbock, 497 F. 2d 490 (CA5 1974), cert. denied, 420 U. S. 930 (1975); Line v. City Investing Co., 487 F. 2d 689 (CA3 1973). See also 3 L. Loss, Securities Regulation 493 (2d ed. 1961) ("substance governs rather than form: ... just as some things which look like real estate are securities, some things which look like securities are real estate.").
name or description." 320 U. S., at 351 (emphasis supplied). And later, again in dictum, the Court stated that a security "might" be shown "by proving the document itself, which on its face would be a note, a bond or a share of stock." Id., at 355 (emphasis supplied). By using the conditional words "may" and "might" in these dicta the Court made clear that it was not establishing an inflexible rule barring inquiry into the economic realities underlying a transaction. On the contrary, the Court intended only to make the rather obvious point that, in contrast to the instrument before it which was not included within the explicit statutory terms, most instruments bearing these traditional titles are likely to be covered by the statutes.14

In holding that the name given to an instrument is not dispositive, we do not suggest that the name is wholly irrelevant to the decision whether it is a security. There may be occasions when the use of a traditional name such as "stocks" or "bonds" will lead a purchaser justifiably to assume that the federal securities laws apply. This would clearly be the case when the underlying transaction embodies some of the significant characteristics typically associated with the named instrument.

In the present case respondents do not contend, nor could they, that they were misled by use of the word "stock" into believing that the federal securities laws governed their purchase. Common sense suggests that peo-

14 Nor can respondents derive any support for a literal approach from Tcherepnin v. Knight, supra, which quoted the Joiner dictum. Indeed in Tcherepnin the Court explicitly stated that "form should be disregarded for substance," id., at 336 and only after analyzing the economic realities of the transaction at issue did it conclude that an instrument called a "withdrawable capital share" was, in substance, an "investment contract," a share of "stock," a "certificate of interest or participation in a profit sharing agreement," and a "transferable share."
ple who intend to acquire only a residential apartment in
a state-subsidized cooperative, for their personal use, are
not likely to believe that in reality they are purchasing
investment securities simply because the transaction is
evidenced by something called a share of stock. These
shares have none of the characteristics "that in our com-
mmercial world fall within the ordinary concept of a se-
name, they lack what the Court in Tcherepnin deemed
the most common feature of stock: the right to receive
"dividends contingent upon an apportionment of profits.")
289 U. S., at 339. Nor do they possess the other charac-
teristics traditionally associated with stock: they are not
negotiable; they cannot be pledged or hypothecated;
they confer no voting rights in proportion to the number
of shares owned; and they cannot appreciate in value.
In short, the inducement to purchase was solely to
acquire subsidized low-cost living space; it was not to
invest for profit.

B

The Court of Appeals, as an alternative ground for its
decision, concluded that a share in Riverbay was also an
"investment contract" as defined by the Securities Acts.
Respondents further argue that in any event what they
agreed to purchase is "commonly known as a 'security'"
within the meaning of these laws. In considering these
claims, we again must examine the substance—the
economic realities of the transaction—rather than the
names that may have been employed by the parties.
We perceive no distinction, for present purposes, be-
tween an "investment contract" and an "instrument com-
monly known as a security." In either case, the basic
test for distinguishing the transaction from other com-
mercial dealings is

"whether the scheme involves an investment of
money in a common enterprise with profits to come solely from the efforts of others." Howey, supra, 328 U. S., at 301. 15

This test, in shorthand form, embodies the essential attributes that run through all of the Court's decisions defining a security. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. By profits, the Court has meant either capital appreciation resulting from the development of the initial investment, as in Joiner, supra (sale of oil leases conditioned on promoters' agreement to drill exploratory well), or a participation in earnings resulting from the use of investors' funds, as in Tcherepnin v. Knight, supra (dividends on the investment based on savings and loan association's profits). In such cases the investor is "attracted solely by the prospects of a return" on his investment. Howey, supra, 328 U. S., at 300. By contrast, when a purchaser is motivated by a desire to use or consume the item purchased—"to occupy the land or to develop it themselves," as the Howey Court put it, 328 U. S., at 300—the securities laws do not apply. 16 See Joiner, supra. 17

15 This test speaks in terms of "profits to come solely from the efforts of others." (Emphasis supplied.) Although the issue is not presented in this case, we note that the Court of Appeals for the Ninth Circuit has held that "the word 'solely' should not be read as a strict or literal limitation of the definition of an investment contract, but rather must be construed realistically, so as to include within the definition those schemes which involve in substance, if not form, securities." SEC v. Glenn Turner Enterprises, Inc., 474 F. 2d 476, 482 (1973), cert. denied, 414 U. S. 821 (1973).

16 In some transactions the investor is offered both a commodity or real estate for use and an expectation of profits. See SEC Release No. 33-5347, 38 Fed. Reg. 1735 (Jan. 18, 1973). See generally [Footnote 17 is on p. 14]
In the present case there can be no doubt that investors were attracted solely by the prospect of acquiring a place to live, and not by financial returns on their investments. The Information Bulletin distributed to prospective residents emphasized the fundamental nature and purpose of the undertaking:

"A cooperative is a nonprofit enterprise owned and controlled democratically by its members—the people who are using its services. . . .

"People find living in a cooperative community enjoyable for more than one reason. Most people join, however, for the simple reason that it is a way to obtain decent housing at a reasonable price. However, there are other advantages. The purpose of a cooperative is to provide home ownership, not just apartments to rent. The community is designed to provide a favorable environment for family and community living. . . .

"The common bond of collective ownership which you share makes living in a cooperative different. It is a community of neighbors. Home ownership, Rohan, The Securities Law Implications of Condominium Marketing Programs Which Feature a Rental Agency or Rental Pool, 2 Conn. L. Rev. 1 (1969). The application of the federal securities laws to these transactions may raise difficult questions that are not present in this case.

27 In Jumper, the Court stated:

"Undisputed facts seem to us, however, to establish the conclusion that defendants were not, as a practical matter, offering naked leasehold rights. Had the offer mailed by defendants omitted the economic inducements of the proposed and promised exploration well, it would have been quite a different proposition." 320 U. S., at 348.

This distinction was critical because the exploratory drillings gave the investments "most of their value and all of their lure." Id., at 349. The land itself was purely an incidental consideration in the transaction.
common interests and the community atmosphere make living in a cooperative like living in a small town. As a rule there is very little turnover in a cooperative."

Appendix, at 162a–166a.

Nowhere does the Bulletin seek to attract investors by the prospect of profits resulting from the efforts of the promoters or third parties. On the contrary, the Bulletin repeatedly emphasizes the "nonprofit" nature of the endeavor. It explains that if rental charges exceed expenses the difference will be returned as a rebate, not invested for profit. It also informs purchasers that they will be unable to resell their apartments at a profit since the apartment must first be offered back to Riverbay "at the price . . . paid for it." Id., at 162a. In short, neither of the kinds of profits traditionally associated with securities were offered to respondents.

The Court of Appeals recognized that there must be an expectation of profits for these shares to be securities, and conceded that there is "no possible profit on a resale of [this] stock." 500 F. 2d, at 1254. The court correctly noted, however, that profit may be derived from the income yielded by an investment as well as from capital appreciation, and then proceeded to find "an expectation of 'income' in at least three ways." Ibid. Two of these supposed sources of income or profits may be disposed of summarily. We turn first to the Court of Appeals' reliance on the deductibility for tax purposes of the portion of the monthly rental charge applied to

15 This requirement effectively insures that no apartment will be sold for more than its original cost. Consistent with the purposes of the Mitchell-Lama Act, whenever there are prospective buyers willing to pay as much as the initial purchase price for an apartment in Co-Op City, Riverbay will repurchase the apartment and resell it at its original cost. See Appendix, at 138a. If, for some reason, Riverbay does not purchase the apartment the tenant still cannot make a profit on his sale. See pp. 3-4, supra.
interest on the mortgage. We know of no basis in law for the view that the payment of interest, with its consequent deductibility for tax purposes, constitutes income or profits.19 These tax benefits are nothing more than that which is available to any homeowner who pays interest on his mortgage. See Internal Revenue Code, 26 U. S. C. § 216; Eckstein v. United States, 452 F. 2d 1036 (Ct. Cl. 1971).

The Court of Appeals also found support for its concept of profits in the fact that Co-Op City offered space at a cost substantially below the going rental charges for comparable housing. Again, this is an inappropriate theory of "profits" that we cannot accept. The low rent derives from the substantial financial subsidies provided by the State of New York. This benefit cannot be liquidated into cash; nor does it result from the managerial efforts of others. In a real sense, it no more embodies the attributes of income or profits than do welfare benefits, food stamps or other government subsidies.

The final source of profit relied on by the Court of Appeals was the possibility of net income derived from the leasing by Co-Op City of commercial facilities, professional offices and parking spaces, and its operation of community washing machines. The income, if any, from these conveniences, all located within the common areas of the housing project, is to be used to reduce tenant rental costs. Conceptually, one might readily agree that net income from the leasing of commercial and professional facilities is the kind of profit tra-

19 Even if these tax deductions were considered profits, they would not be the type associated with a security investment since they do not result from the managerial efforts of others. See Rosenbaum, The Resort Condominium and the Federal Securities Law—A Case Study in Government Inflexibility, 60 Va. L. Rev. 785, 795-796 (1974); Casenote, 62 Georgetown L. Rev. 1515,1524-1526 (1974).
ditionally associated with a security investment. 20 See Tcherepnin v. Knight, supra. But in the present case this income—if indeed there is any—is far too speculative and insubstantial to bring the entire transaction within the Securities Acts.

Initially we note that the prospect of such income as a means of offsetting rental costs is never mentioned in the Information Bulletin. Thus it is clear that investors were not attracted to Co-Op City by the offer of these potential rental reductions. See Joiner, supra, 320 U. S., at 353. Moreover, nothing in the record suggests that the facilities in fact return a profit in the sense that the leasing fees are greater than the actual cost to Co-Op City of the space rented. 21 The short of the matter is that the stores and services in question were established not as a means of returning profits to tenants, but for the purpose of making essential services available for the residents of this enormous complex. 22 By statute these facilities can only be “incidental and appurtenant” to the

20 The “income” derived from the rental of parking spaces and the operation of washing machines clearly was not profit for respondents since these facilities were provided exclusively for the use of tenants. Thus when the income collected from the use of these facilities exceeds the cost of their operation the tenants simply receive the return of the initial overcharge in the form of a rent rebate. Indeed, it could be argued that the “income” from the commercial and professional facilities is also, in effect, a rebate on the cost of goods and services purchased at these facilities since it appears likely that they are patronized almost exclusively by Co-Op City residents. See Casenote, 53 Tex. L. Rev. 623, 630-631 n. 38 (1973).

21 The Court of Appeals quoted the gross rental income received from these facilities. But such figures by themselves are irrelevant since the record does not indicate the cost to Co-Op City of providing and maintaining the rented space.

housing project, N. Y. Private Housing Law § 12 (5) (McKinney Supp. 1974-1975). Undoubtedly they make Co-Op City a more attractive housing opportunity, but the possibility of some rental reduction is not an "expectation of profit" in the sense found necessary in Howey.23

There is no doubt that purchasers in this housing cooperative sought to obtain a decent home at an attractive price. But that type of economic interest characterizes every form of commercial dealing. What distinguishes a security transaction—and what is absent


Respondents assert that if Co-Op City becomes bankrupt they stand to lose their whole investment. But, in view of the fact that the State has financed over 92% of the cost of construction and carefully regulates the development and operation of the project, bankruptcy in the normal sense is an unrealistic possibility. In any event, the risk of insolvency of an ongoing housing cooperative "differ[s] vastly" from the kind of risk of "fluctuating" value associated with securities investments. SEC. v. Variable Annuity Life Insurance Co., 389 U. S. 65, 90-91 (1969) (BRENNAN, J., concurring). See Hannan & Thomas, supra, at 242-249; Long, Introduction to Symposium: Interpreting The Statutory Definition of a Security: Some Pragmatic Considerations, 6 St. Mary's L. J. 96, 126-128 (1974).
here—is an investment where one parts with his money in the hope of receiving profits from the efforts of others, and not where he purchases a commodity for personal consumption or living quarters for personal use.\textsuperscript{24}

\textsuperscript{24} The SEC has filed an amicus brief urging us to hold the federal securities laws applicable to this case. Traditionally the views of an agency charged with administering the governing statute would be entitled to considerable weight. See, e. g., United States National Association of Securities Dealers, --- U.S. --- (1975) (slip op., at 22); Saabe v. Busto, 419 U. S. 65, 74 (1974); Investment Company Institute v. Camp, 401 U. S. 617, 620-627 (1971). But in this case the SEC's position flatly contradicts what appears to be a rather careful statement of the Commission's views in a recent release. In Release No. 33-3347, 38 Fed. Reg. 1735 (Jan. 18, 1973), applicable to "the sale of condominium units and other units in a real estate development," the SEC stated its view that only those real estate investments that are "offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter," are to be considered securities. \textit{Ibid.}, at 1736. In particular, the Commission explained that the Securities Acts do not apply when "commercial facilities are a part of the common elements of a residential project" if

"(a) the income from such facilities is used only to offset common area expenses and (b) the operation of such facilities is incidental to the project as a whole and are not established as a primary income source for the individual owners of a condominium or cooperative unit." \textit{Ibid.}


Several commentators have noted the inconsistency between the SEC's position in the above release and the decision by the Court of Appeals in this case, which the SEC now supports. See Berman & Stone, Federal Securities Law and the Sale of Condominiums, Homes and Homeites, 30 Bus. Law. 411, 420-425 (1975); Note, Condominium Regulation: Beyond Disclosure, 123 U. Pa. L. Rev. 659, 654-655 (1975); Caenote, supra, n. 20, at 628. In view of this unexplained contradictions in the Commission's position we accord no special weight to its views. See Reliance Electric Co. v. Emerson
In holding that there is no federal jurisdiction, we do not address the merits of respondents' allegations of fraud. Nor do we indicate any view as to whether the type of claims here involved should be protected by federal regulations. We decide only that the type of transaction before us, in which the purchasers were interested in acquiring housing rather than making an investment for profit, is not within the scope of the federal securities laws.


It has been suggested that the sale of housing developments such as condominiums and cooperatives is in need of federal regulation and therefore the securities laws should be construed or amended to reach these transactions. See, e.g., Note, Federal Securities Regulations of Condominiums: A Purchaser's Perspective, 62 Georgetown L. J. 1403 (1974); Note, Cooperative Housing Corporations and the Federal Securities Laws, 71 Colum. L. Rev. 118 (1971). Others have disagreed, claiming that the extensive body of regulation developed over more than four decades under these Acts would be inappropriate and unduly costly to the sellers and buyers of residential housing. See Berman & Stone, supra, n. 24; Casenote, supra, n. 20. Moreover, extension of the securities laws to real estate transactions would involve important questions as to the appropriate balance between state and federal responsibility. The determination of whether and in what manner federal regulation may be required for housing transactions, where the characteristics of an investment differ both the costs and benefits of any such regulation. Indeed, in securities are not present, is better left to the Congress, which can assess both the costs and benefits of any such regulation. Indeed only recently, Congress instructed the Secretary of Housing and Urban Development "to conduct a full and complete investigation and study . . . with respect to . . . the problems, difficulties and abuses or potential abuses applicable to condominium and cooperative housing." Pub. L. 93-383, 88 Stat. 740 (Aug. 22, 1974). See also Real Estate Settlement Procedures Act, Pub. L. No. 90-632, 86 Stat. 845 (Dec. 22, 1974); Interstate Land Sales Full Disclosure Act, 15 U. S. C. §§ 1701–1720.
UNITED HOUSING FOUNDATION, INC. v. FORMAN 21

Since respondents' claims are not cognizable in federal court, the District Court properly dismissed their complaint. The judgment below is therefore Reversed.

Mr. Justice Douglas took no part in the consideration or decision of this case.

26 Besides the Securities Acts claims, respondents also included a vague and conclusory allegation under 42 U. S. C. § 1983 against petitioner, the New York State Housing Finance Agency. We agree with the District Court that this count must also be dismissed. See n. 9, supra. The remaining counts in the complaint were all predicated on alleged violations of state law, not independently cognizable in federal court.