



December 17, 2007

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. S7-26-07  
Notice of Application of the National Association of Realtors for Exemptive  
Relief under Sections 15 and 36 of the Exchange Act and Request for Comment  
(the "Notice")

Dear Ms. Morris:

Grubb & Ellis Company generally supports exemptive relief that would allow qualified real estate professionals to be compensated for providing support within their experience to investors seeking to purchase real estate that is packaged as a security. We believe that the most important point is that the investments in question are, first and foremost, real estate. While the services and support that are bundled with the real estate are important to the overall investment, the heart of the investment is still the real estate. Investors benefit from being able to select and compensate the licensed real estate professional of their choice along with compensating the licensed securities professional of their choice.

We do have concerns about some of the language in the proposal. Most notably, we have concerns about what could be construed as an "independence requirement" as between the real estate professional and the sponsor of a tenant in common (TIC) program. Similarly, we have concerns about the details of what might be restrictions on a full service real estate brokerage firm that is integrated with a TIC sponsor. Finally, another area of concern is with the standard applied in determining the qualification of a given real estate professional. We respectfully offer our comments on these points and others.

### **About Grubb & Ellis Company**

Following is an extended description of Grubb & Ellis Company (NYSE: GBE). This description provides important context to our comments, as Grubb & Ellis was recently combined with NNN Realty Advisors, Inc., a sponsor of non-traded REITs, Triple Net Properties, LLC, one of the largest sponsors of securitized TIC investments, and NNN Capital Corp., a registered broker-dealer that distributes the securities products of its affiliates. For more information regarding Grubb & Ellis and the merger, please visit [www.grubb-ellis.com](http://www.grubb-ellis.com).

Grubb & Ellis is one of the largest and most respected commercial real estate services companies. With more than 130 owned and affiliate offices worldwide, Grubb & Ellis offers owners, corporate occupants and investors comprehensive integrated real estate solutions, including transaction, management, consulting and investment advisory services supported by proprietary market research and extensive local market expertise. The company and its subsidiaries are leading sponsors of real estate investment programs that offer individuals and institutions the opportunity to invest in a broad range of real estate investment vehicles, including TIC securities and public non-traded REITs.

The recent merger with NNN Realty Advisors, one of the most successful sponsors of real estate investment programs, marked a new chapter in the nearly 50-year history of one of the commercial real estate industry's most recognized brands and paved the way for a *new* Grubb & Ellis – a company equipped with the resources to pursue growth and to provide a broader range of services to a global client base.

Products and services of Grubb & Ellis:

#### Investment Products

As a result of the merger with NNN Realty Advisors, Grubb & Ellis is now the sponsor of two public non-traded real estate investment trusts, Grubb & Ellis Apartment REIT and Grubb & Ellis Healthcare REIT. Triple Net Properties, an indirect wholly owned subsidiary of Grubb & Ellis Company, is a leading sponsor of real estate investment products, including 1031 TIC exchange programs, joint ventures, limited liability companies and additional investment vehicles for individuals and institutions. The company's securities products are distributed through NNN Capital Corp., a registered broker-dealer and subsidiary of Grubb & Ellis.

#### Transaction Services

Grubb & Ellis' Transaction Services group provides a full range of brokerage services to meet the needs of real estate owners, occupants and investors throughout the globe. With one of the nation's largest and most experienced brokerage forces, the company's professionals cover all aspects of commercial real estate, including office, industrial, retail, investment, multifamily and land. In addition to traditional leasing and acquisition and disposition services, Grubb & Ellis' specialty groups focus on the specific needs of private and institutional investors, retailers as well as the growing importance of logistics related to warehouse/distribution space. The company also offers a complete range of consulting services, including valuation and site selection.

## Management Services

Grubb & Ellis Management Services, Inc., is a full service property and facilities management firm providing quality, cost-effective property, facility and asset management, project/construction management, lease administration and business services to institutional and corporate owners of real estate. Grubb & Ellis Management Services manages a broad spectrum of property types, including corporate headquarters, facilities, Class A office properties, as well as retail, industrial, manufacturing, warehousing, data centers and medical facilities.

### **Clarification would be helpful so that real estate professionals in integrated global real estate companies can be confident in using the exemption.**

We are concerned about general language in the Notice reflecting the possibility that the Commission desires complete independence of the “Commercial Real Estate Professional” and “Real Estate Firm,” collectively referred to as a “RE Participant,” from a sponsor of TIC real estate programs in order for the exemption to be available.

For instance, it is proposed that the obligatory buyer’s agent agreement would require a representation that the RE Participant (both the individual professional and the firm) will solely represent the client in connection with the purchase of a TIC security. “Solely,” construed narrowly, is simply not possible where the Commercial Real Estate Professional is part of a Real Estate Firm that is itself the sponsor of the TIC program. Similarly, under a strict interpretation of the restricted conduct in the proposed exemption, both the Commercial Real Estate Professional and the Real Estate Firm would be unable to, among other things, advertise, handle customer funds or participate in the structuring of TIC offerings.

### **(a) The standard of care required of the Commercial Real Estate Professional should be clarified beyond mere “sole representation.”**

In the past, the Commission has recognized similar difficult issues of large integrated entities such as national bank affiliates offering retail securities in their branches and large securities firms that offer trading services and investment banking and research services. These kinds of issues and conflicts have been addressed successfully by combinations of investor disclosure, physical separation, information barrier procedures and other means.

Given the challenges, we first suggest that the buyer’s agent agreement be required to identify material conflicts of interest such as the conflict of interest where the Commercial Real Estate Professional is affiliated with a TIC investment sponsor. This would be similar to a dual agent

disclosure, whereby a real estate professional represents both the buyer and seller of a given piece of real property.

Second, we suggest that instead of requiring “sole” representation in the buyer’s agent agreement, there should be an obligation for the Commercial Real Estate Professional to have reasonable grounds for believing that the recommendation is suitable for the investor upon the basis of the facts, if any, disclosed by such investor as to his other real estate holdings and as to his financial situation and needs. The Commercial Real Estate Professional also should be required to make reasonable efforts to obtain information concerning the investor’s financial status, tax status, investment objectives and such other information used or considered to be reasonable by such Commercial Real Estate Professional in making recommendations to the customer. We believe that if a Commercial Real Estate Professional is not willing to live up to this or a similar standard, then the Commercial Real Estate Professional should not receive the benefit of this proposed exemption. This standard is superior for investor protection and, at the same time, does not restrict Commercial Real Estate Professionals who are affiliated with integrated Real Estate Firms from qualifying for the exemption.

**(b) The restrictions on conduct of the Commercial Real Estate Professional and the Real Estate Firm should be separated and clarified so as to not create an unlevelled playing field between non-integrated Real Estate Firms and Real Estate Firms with TIC Sponsor affiliates.**

As noted above, the Notice proscribes multiple activities by the “RE Participant,” including: 1) advertising that the RE Participant represents clients in connection with the purchase of TIC securities, 2) handling customer funds in a TIC transaction, and 3) participating in the structuring of a TIC offering. Because the term RE Participant includes both the Real Estate Firm and the Commercial Real Estate Professional, these requirements would necessarily make it impossible for an integrated Real Estate Firm, that is itself a sponsor of securitized TIC investments, to ever avail itself of the proposed exemption. To preclude, automatically, thousands of Commercial Real Estate Professionals of an integrated Real Estate Firm from operating under the proposed exemption would, in effect, defeat its purpose.

Accordingly, we suggest that the “Restrictions on Conduct” of the Commercial Real Estate Professional and the Real Estate Firm be segregated and separately specified. This will allow the Commission to restrict the activities of individual Commercial Real Estate Professionals, while at the same time allowing for the sponsor and securities affiliates of an integrated Real Estate Firm to continue to operate on a leveled playing field. Alternately, we urge the Commission to recognize the ability of a Real Estate Firm to segregate its real estate brokerage activities from its affiliated sponsor and broker-dealer activities by means such as investor disclosure, physical separation and information barrier procedures.

Because it is our goal to help the Commission understand the challenges, we think that it would be helpful to illustrate some possible business scenarios. Grubb & Ellis, through its subsidiaries, sponsors and distributes TIC securities through an existing network of third-party registered broker-dealers much like any other packaged securities product is distributed. This will continue. Separately, with the recent completion of the merger, Grubb & Ellis intends to license some of its real estate professionals as securities registered representatives through its broker-dealer subsidiary, NNN Capital Corp. In that situation, there is obviously no need for the proposed exemption because the real estate professionals will in fact be securities licensed and qualified to do all that a registered representative is qualified to do.

For practical reasons it would be less than ideal to simply register all of the Grubb & Ellis real estate professionals given that their focus is real estate and we anticipate limited participation in securitized TIC transactions by most of our real estate professionals. In our view, it makes little sense to create a large broker-dealer with individuals who participate as real estate advisors in an occasional TIC transaction. What makes more sense is to have individual Grubb & Ellis Commercial Real Estate Professionals avail themselves of the proposed exemption (by complying with the exemption and limiting their conduct) in order to provide counsel on the real estate aspects of the TIC deal and hand-off the details of the securities transaction to a separate securities professional at NNN Capital Corp, our affiliated broker-dealer. In this way, the investor receives the real estate advice, plus the protections of the securities professional, all without unnecessary impediments in the system. This also maintains a leveled playing field between non-registered Grubb & Ellis real estate professionals and other Commercial Real Estate Professionals who chose to remain non-registered.

**Clarification of the standard of being a qualified Commercial Real Estate Professional is necessary; application of a “predominantly engaged” and “substantial experience” tests will be difficult. At the same time, certain objective standards could be skewed by single large transactions. Ultimately, investors should be able to choose their representation without unnecessary arbitrary standards.**

Grubb & Ellis believes that if a real estate professional is qualified to earn compensation on a whole piece of real property, that same person should be qualified to earn compensation on a TIC interest in the same real property. Simply because a TIC interest may be a security should not preclude an otherwise qualified real estate professional from being compensated for providing counsel on the real estate.

Unfortunately, the above “qualified as to the whole, qualified as to a part of the whole” approach leads straight back to state real estate licensing schemes. Real estate licenses generally do not vary by type of real estate; a licensed professional could broker a small condominium residence one day and a high rise office tower the next. Coupling this fact with the variety of real estate in

different TIC programs (variety as to type and variety as to location) makes for an exceedingly complex determination of whether or not a given real estate professional is actually qualified to give counsel on a given piece of property.

While we are addressing real estate professionals above, the Commission should recognize that a securities licensed professional faces the same questions about his or her qualification to advise on any particular TIC deal under the current licensing and registration system. Beyond the objective test of whether or not a particular real estate professional has a license, and beyond the objective test of whether or not the securities registered representative is in fact registered, we believe that the investor should have their own choice as to the real estate professional(s) selected to provide real estate counsel and their own choice as to the securities firm and registered representative selected to effect the transaction.

While we hope that the argument above persuades the Commission to adopt a clear and simple licensing test, we feel compelled to address some of the other elements of the proposal in this area. Footnote 3 of the Notice contains a number of objective measures that may not accurately answer the subjective question about whether or not the real estate professional is qualified to give advice on a specific TIC property. If the whole question comes back to subjective tests, who should make that determination? We submit that the only person who should make that judgment is the investor – and that the investor should not be second guessed by the real estate participants or the securities participants. Inflation adjustments, professional designations, etc., all should be abandoned.

One of the specific requests for comment asks about the “predominantly engaged” standard and mentions an “85% test.” The problem with such hard percentage tests, besides determining exactly what goes in which bucket, is that they can be skewed by large transactions that are not infrequent in the world of commercial real estate. This could create a situation whereby one Commercial Real Estate Professional could participate in 10 small TIC transactions for multiple investors, while another Commercial Real Estate Professional could lose the ability to rely on the exemption if he participated in a large transaction or series of transactions for one single investor.

**Disclosure should generally be provided early in the process as opposed to at closing of the real estate transaction.**

We are in general agreement with other commentators that disclosure, including the buyer’s agent agreement, should be delivered early in the process. Waiting until closing is impractical and could penalize an investor if a problem is discovered after the investor’s identification period under IRC Section 1031 has lapsed.

**Commercial Real Estate Professionals should receive a portion of the selling commission compensation disclosed in the private placement memorandum (“PPM”); payment of compensation to the RE Participants should not increase the overall cost paid by the investor.**

We have heard of other commentators requesting that the compensation paid to the RE Participants be excluded from FINRA compensation limits. We disagree with this and believe that the proposed exemption should specify that any compensation paid to RE Participants should be deducted from the disclosed selling commission. This proposed exemption should not create a loophole that could lead to an increase in the load to investors.

**Real estate professionals should not be restricted from receiving PPMs. Real estate professionals should have the ability to learn about TIC deals available in the marketplace and should not be restricted to receiving only limited real estate disclosure.**

We have heard of other commentators proposing to restrict real estate professionals from receiving PPMs from sponsors or selling dealers because of general solicitation concerns. Regulation D prohibits general solicitation of these Rule 506 offerings – and it prohibits such general solicitation by everyone, including both real estate and securities professionals.

We disagree with the suggestion by certain commentators that the provision of a PPM to a real estate professional automatically violates the general solicitation restrictions of Regulation D. Here again, this fails to distinguish the position of the real estate professional from the securities professional. We find no basis for an implication that the real estate professional is somehow less trustworthy than the securities professional in complying with Regulation D requirements against general solicitation.

It is disingenuous for securities professionals to attempt to convince the Commission that registered securities representatives are the lone bastions of investor protection. To suggest that Commercial Real Estate Professionals would do a substantially worse job than registered representatives in qualifying accredited investors for suitable real estate offerings is not logical. Economically, broker-dealers and their registered representatives have far more motivation to “push” a particular TIC security than Commercial Real Estate Professionals who have both TICs and non-securitized real estate available to satisfy 1031 exchange needs. We should not accept the argument that, without the expert guidance of registered securities representatives who normally sell traditional securities products, there is no protection from unscrupulous Commercial Real Estate Professionals whose only motivation is to sell TICs to their clients, regardless of the quality of the offering or the suitability of the offering for their client.

Some commentators have suggested limiting real estate professionals to some sort of alternative real estate disclosure document rather a full PPM. We believe that it makes no sense to create

another disclosure document that is necessarily a subset of the information available in the PPM. Will this document be a half of a PPM or a quarter of a PPM? We submit that a PPM is nearly all real estate anyway: description of the property, leases, cash flows, tenants, etc., etc. Even the bundled management services that cause the TIC to be a security are really a real estate item. Here again, securities broker-dealers should not be trying to unfairly limit the dissemination of information merely to secure their place in the transaction. Real estate professionals are at least as qualified as securities professionals in examining the real estate aspects of a PPM.

There is also a strong argument that limiting the Commercial Real Estate Professional to a small excerpt of a PPM makes it nearly impossible for the Commercial Real Estate Professional to truly earn his or her compensation. If the Commission believes that the Commercial Real Estate Professional is being brought into this mix for the purpose of giving real estate advice, the real estate professional should receive the full PPM at the outset and not be handicapped by being cut off from necessarily material information at the outset. We believe that there should be a level playing field and parity of information between the securities professional and the real estate professional.

**Any suggestion that a sponsor-affiliated broker-dealer is not qualified to fully participate as both Lead Placement Agent and Selling Broker-Dealer should be flatly rejected as anti-competitive. Similarly, there should not be a requirement to interposition an unaffiliated selling broker-dealer into a transaction.**

The most disturbing comments that we have witnessed imply that a sponsor-affiliated broker-dealer is somehow not qualified to directly service an investor and real estate professional. This proposition must be rejected out of hand and the motivations of any commentator making that claim must be questioned. Sponsor-affiliated broker-dealers are registered and qualified just the same as other broker-dealers. Sponsor-affiliated broker-dealers are competent and have directly serviced investors in the past; any call at this time to add restrictions under the cover of this proposed exemption should be disregarded. This flatly anti-competitive behavior by certain retail broker-dealers and their service providers is a thinly veiled attempt to require that they be unnecessarily interpositioned so that they are guaranteed compensation irrespective of investor choice.

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We appreciate the opportunity to offer these comments and commend the Commission and Staff for publishing the Notice rather than simply issuing the exemption. If we can be of any service in providing additional input or providing information on the practical mechanics of these transactions, please do not hesitate to telephone Kevin K. Hull, Esq. or Richard D. Gann, Esq. at (714) 667-8252.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin K. Hull". The signature is fluid and cursive, with the first name "Kevin" and last name "Hull" clearly distinguishable.

Kevin K. Hull  
President & CEO  
NNN Capital Corp.