

Tenant-In-Common Association
Two Meridian Plaza
10401 N. Meridian Street
Suite 300
Indianapolis, IN 46290

December 17, 2007

Nancy M. Morris
Secretary, Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 35-56779; File No. S7-26-07

Dear Ms. Morris:

The Tenant-In-Common Association (“TICA”) appreciates the opportunity to submit comments to the National Association of Realtors (“NAR”) request for an exemption pursuant to Sections 15(a)(2) and 36(a) of the Securities Exchange Act of 1934 (“Exchange Act”) from the broker-dealer registration requirements of Section 15(a)(1) and the reporting and other requirements of the Exchange Act. TICA is a national trade association that represents the interests of sponsors, broker-dealers and other industry participants in the promotion of tenant in common (“TIC”) offerings. There are 634 primary members of TICA that represent approximately 1200 industry professionals. The members include sponsors, broker-dealers, registered representatives, real estate brokers, attorneys, third party due diligence firms, title companies, qualified intermediaries, and other professionals.¹ The views expressed in this letter represent the position of TICA as determined by its Board of Directors. However, this letter does not necessarily reflect the views of all members of TICA.

TICA is in favor of an exemption for qualified commercial real estate brokers. However, we believe that certain revisions should be made to the exemption. Our principal concerns relate to (1) the time at which the Selling Broker Dealer is required to determine the suitability of the investor; and (2) the relationship between the Selling Broker Dealer and the RE Participant at the time the client is introduced to the Selling Broker Dealer by the RE Participant.

¹ More information is available about TICA at our website, <http://ticassoc.org>.

Procedures

We have carefully considered the proposed timing and procedures relating to the introduction of the client to the Selling Broker Dealer set forth in the exemption request filed by NAR. TICA believes that it is important that the Selling Broker Dealer be involved as early as practicable in a RE Participant's relationship with the client as it relates to the client's interest in acquiring a TIC Security property. On the other hand, we recognize that the RE Participant can provide useful information and analysis to the client. Investor protection is best served if both RE Participants and Selling Broker Dealers are involved early in any potential sale of a TIC Security.

1. We propose that the exemption provide the following rules concerning the exchange of information about TIC Securities:

(a) We believe the RE Participants would first make a determination as to whether the client is accredited. This determination can be made in the Buyer's Agent Agreement or in a separate certification.

(b) The RE Participants would be able to distribute to their clients limited information concerning TIC Security properties that they have obtained from either Selling Broker Dealers or sponsors. We believe that the SEC should provide specific guidance on what information can be provided so as not to constitute a general solicitation and so as to be in compliance with applicable securities laws.

(c) No additional information could be shared by the RE Participant with the client or provided by the sponsors or the Selling Broker Dealer concerning the TIC Security prior to introduction of the client to the Selling Broker Dealer.

(d) If there was interest by the client, the RE Participants would then introduce the client to the Selling Broker Dealer and the Selling Broker Dealer and the RE Participants would enter into a BDRE Agreement (as discussed below).

(e) The Selling Broker Dealer could then provide additional information concerning the property to the client. Although a complete determination of suitability is required before any TIC Security is sold, the Selling Broker Dealer and the RE Participant would be able to jointly provide additional information concerning the TIC security property to the client prior to a determination of suitability.

(f) If the client desires to visit a property that is the subject of a TIC Security, the visit would be arranged through the Selling Broker Dealer. The RE Participant would assist the client in such visit if desired by the client.

(g) If the client expresses interest in acquiring a specific TIC Security, the Selling Broker Dealer would then make a determination of suitability.

(h) The Selling Broker Dealer would not release a private placement memorandum (“PPM”) if the investment is not suitable for the client. A client should not have the option to waive suitability, as discussed below.

(i) After the client has received the PPM and desires to acquire a particular TIC Security, then the Selling Broker Dealer would complete the suitability analysis as it relates to the selected investment.

This proposal would provide the following benefits:

- It permits information concerning a TIC Security property to be provided to a RE Participant so that the RE Participant can determine if a client is interested in acquiring a TIC Security.
- It requires the Selling Broker Dealer to be inserted into the process as early as possible, which will protect investors by making suitability an integral part of the client’s investment decision. However, the client could be shown property information before a suitability determination is made.
- It allows the RE Participant to provide advice to the client on the real estate aspects of the TIC Security throughout the process, but without “conditioning” the client to acquire a particular TIC Security.
- It would eliminate the need to determine suitability before showing a client any TIC Security property when there may be no interest in any of the TIC Security properties by the client after viewing the TIC Security properties.
- It will allow the RE Participant and the Selling Broker Dealer to work together to provide the client full information with respect to a TIC Security.

2. The proposed exemption requires the Selling Broker Dealer to perform a suitability review and to send notice of that review to the Lead Placement Agent. Since FINRA regulations already require the Selling Broker Dealer to do a suitability determination, sending a

written affirmation to the Lead Placement Agent, who has no supervisory responsibility over the Selling Broker Dealer, does not provide any added protection. In addition, this requirement creates unnecessary paperwork and expense. This condition should be eliminated.

3. We do not believe that the client should be permitted to waive suitability. If a client is not qualified to invest in a TIC Security, how can he or she be qualified to determine if he or she can waive suitability? If an investor that is not suitable is allowed to invest in a TIC Property, it may have a negative impact on other investors in the TIC Security property who are investing on the assumption that all of the investors are suitable. If a waiver of suitability remains in the final exemption, it should be conditioned upon a release of liability of the Selling Broker Dealer, the Lead Placement Agent and the sponsor. This liability should shift to the RE Participant who is advising the client to proceed with the transaction when the client is not suitable to acquire the TIC Security. In addition, the waiver should be made after the time a suitability determination is made and prior to the time the client enters into the purchase agreement with the sponsor to buy the TIC Interest. It is not practical to obtain the waiver at closing.

Arrangement Between the Selling Broker Dealer and the RE Participant

1. We believe that an additional written agreement should be required to be entered into between the Selling Broker Dealer and the RE Participant (“BDRE Agreement”) at the time the RE Participant introduces the client to the Selling Broker Dealer. The BDRE Agreement should memorialize the agreement among the parties and will allow the RE Participant to make appropriate certifications necessary to qualify for the exemption. The BDRE Agreement should:

- (a) certify qualification of the RE Participant,
- (b) certify no statutory disqualification of the CREP,
- (c) identify all RE Participants,
- (d) establish fees for the transaction,
- (e) allocate liability between the Selling Broker Dealer and the RE Participant,
- (f) certify that there was no general solicitation by the RE Participant,
- (g) specify record retention requirements,
- (h) specify the limited activities to be undertaken by the RE Participant, and

- (i) include a copy of the executed Buyer Agent Agreement.

2. The exemption should provide that the Selling Broker Dealer and Lead Placement Agent are entitled to rely on a certificate from the RE Participant, including any certifications set forth in a BDRE Agreement, and the determination of the “qualification” of the RE Participant should not be the responsibility or obligation of the Selling Broker Dealer or the Lead Placement Agent. The exemption should also provide that, in the event the RE Participant fails to qualify for the exemption, the Selling Broker Dealer and the Lead Placement Agent should not have any liability for such failure based upon their reliance on the RE Participant’s representations and certifications. Further, the exemption should provide that there is no duty of the Selling Broker Dealer and the Lead Placement Agent to supervise the RE Participant.

3. The proposed exemption requires the CREP to represent to the Lead Placement Agent that it is not subject to any “statutory disqualification”. We believe that it is preferable for the Selling Broker Dealer to enter into the relationship with the RE Participant. The relationship between the Lead Placement Agent and the Selling Broker Dealer is governed by a soliciting dealer agreement. It is not practical for the Lead Placement Agent to enter into a relationship with a RE Participant for every client.

Fees

1. We believe that the representation that the CREP is not subject to “statutory disqualification” should occur upon introduction of the client to the Selling Broker Dealer. It is not practical for the certification to occur upon “closing” of the TIC transaction.

2. FINRA Notice to Members 05-18 states that specific no-action letters would be required from the SEC in order for any non-registered person to be exempt from FINRA Rule 2420. We believe that the exemption should be revised to provide a specific clarification that any FINRA member paying advisory fees to a qualified RE Participant would be expressly exempt from being required to obtain a no-action letter from the SEC.

3. Any fee paid to a RE Participant in connection with a TIC Security should not count as compensation under FINRA rules regarding overall compensation paid in a securities transaction.

Qualification of RE Participants

1. The opening paragraph (and the Summary of the Application) requires the real estate broker to be:

- (a) Predominantly engaged in the commercial real estate market; and
- (b) Substantial experience in the commercial real estate market.

In “(1) General Conditions” the CREP must be:

- (c) Predominantly engaged in sales of real estate.

We believe that this inconsistency should be resolved and that the language in the “General Conditions” should be revised to state “Predominantly engaged in the commercial real estate market.”

2. With respect to the questions raised by the SEC regarding the experience necessary for a CREP to be qualified, we believe that this determination should be made by the SEC after receiving input from the real estate community.

Buyer’s Agent Agreement

We believe that the Buyer’s Agent Agreement should only be amended to add an additional RE Participant with the written consent of the client and that upon any such amendment the BDRE Agreement should also be amended.

Regulation D

1. Violations of Regulation D by the RE Participant should not subject a Selling Broker Dealer or Lead Placement Agent to sanctions by the SEC or other regulatory bodies and should not cause an offering to lose its exemption from registration under Regulation D.

Other Issues

1. We believe that the requirement in the exemption that the TIC Interest must qualify as “replacement property” under Section 1031 should be deleted. There is no such concept under Section 1031. We do not believe that it is necessary for this determination to occur. If such a requirement is included in the final exemption, we believe the appropriate requirement would be that there is a tax opinion which specifies the portion of the TIC Interest that qualifies as “real estate” under applicable tax law.

2. We believe that the exemption should clarify that a qualified RE Participant cannot serve as a “middle man” for nonqualified RE Participants.

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With the exception of the issues raised above, TICA favors the exemption and appreciates the opportunity to comment. Thank you for your consideration of these comments. If you have any questions or wish to discuss them further, please do not hesitate to contact me at (317) 616-4005.

Sincerely,

Gregory R. Ellis
Director of Government and Regulatory Affairs