

Securities Exchange Commission

Release No. 34-56779; File No. S7-26-07

Response to request for Exemptive Relief from NAR

Request for comments:

Dear Sirs/Madam;

I am writing as a real estate broker from the State of Florida and a Series 7 & 63 licensed individual. I have worked in both fields for several years, having been real estate licensed since 1979 in Indiana then in Florida since 2002. I have been securities licensed since 1982 having started with Merrill Lynch.

I have followed and participated in and studied and researched the 1031 and 1031 TIC industries in depth since 2002-3. I have also researched the various facets of the ancillary companies that serve the industry; those being qualified intermediaries, title companies, and TIC sponsors. I have attended two TICA Association meetings in Salt Lake City and Washington, DC.

My comments for consideration are as follows:

SECURITIES INDUSTRY PROFESSIONALS AND LICENSING

- The TIC industry segment has been expanded significantly since 2002 with the passage of Rev. Proc. 2002-22. At that time various requirements were established that brought the 1031 TIC “product” into being. It was established as a security product requiring licensing as a series 7 or series 22. The total understanding of a Reg-D. type offering was mandatory in order to offer it to “Accredited Investors.” Several additional definitions and clarifications including advertising guidelines have since been implemented. I feel that this is a major cornerstone of the product and one that should continue to be required for those that expect to be paid any compensation going forward. Many commercial real estate brokers (especially those with a CCIM designation) can understand and analyze the commercial real estate segment of the transaction, but very few understand the securities portion of the product. The analysis of a transaction requires that several layers of due diligence take place including loan analysis, TIC sponsor research, whether the sponsor offers a “Master Lease,” and general securities laws understanding, etc. In my opinion, most commercial real estate brokers do not have the education and/or have simply not been exposed to this part of the securities regulation.

STANDARDS AND PRACTICES

- The resistance that takes place in dealing with clients of commercial brokers that are selling property that expect to transition into property through the 1031 process is that of “how do I get paid” and not necessarily what is the just and proper course of action for the client’s assets. I would like to think that the real estate broker is most concerned for the client and the investment objectives, but I truly don’t feel that is the case for all.
- Additionally, I feel that if a strong relationship is forged between commercial real estate brokers and securities brokers, it better serves the public in terms of specialization of professionals. Allow the commercial real estate brokers to do what they do best and the securities professional the same. Having said that, I do agree that since the underlying investment is, in fact, commercial real estate, and as such the real estate professional probably understands it better than most securities brokers, a working relationship with those professionals makes sense as we look to offer investment advise. Adding the compensation issue further adds to the public view that the true orientation of “selling” broker is not necessarily with the clients best interest in mind, but in being compensated.
- I also would say that, as a securities licensed individual (and also real estate licensed broker) the professional standards that are required to be upheld are higher with securities. There is no uniform U-4 type instrument that tracks the long-term history of all individuals in the real estate industry as one example. I feel that the disclosure and analysis of the client’s situation as demonstrated by the suitability analysis done in the securities industry is a major cornerstone in recommending investments. In many instances, the degree of consumer protection is not afforded if the client is dealing in commercial real estate with the reasoning that the commercial real estate buyer should have the resources to watch out for themselves. This is unlike, for example, the disclosure legislation in the mortgage and residential industry.

DUAL LICENSING

- As in the offering of combined products like variable annuities, there exists the requirement to hold both a securities and insurance license since the ultimate product combines aspects of both. I feel that this type of requirement would ensure an understanding of the “combined” product. As I understand, a series 22 license would suffice in demonstrating that the real estate broker has been exposed to the securities segment of the product and has taken the time to do so. Also, as mentioned in the proposed exemption, national registration of real estate professionals would be required. In this scenario, the securities industry could better

- “police” and track these professionals. This eliminates that need for the securities industry to determine whether the individual is “predominately engaged in and has substantial experience in the sale of commercial real estate.”
- There seem so be an extensive set of registration and approval processes that are proposed in this exemption. The policing of this proposal is open for a great deal of interpretation and additional time and effort. This would also “burden” the securities industry and if some real estate brokers “slip through the cracks” or other violations occur, there could exposure to one more black eye for the securities industry. However, if the commercial real estate brokers are required to become fully securities licensed, they will be fully subject to the up-front and on-going registration and licensing as any other securities professional.

To summarize, I do see the benefit of working with commercial real estate professionals to promote the 1031 TIC as a strong alternative to current reinvestment ideas. While my altruistic view of the world says that we, as professionals, ALWAYS do what is best for the client, the real world is open for the occasional “less than professional” dealings. If we, as securities licensed individuals, promote the benefit properly, commercial real estate professionals will understand the benefit for their clients and the compensation issue becomes a non-issue. To go further, if the commercial broker desires to “play” in the securities arena, taking the time and effort to obtain the proper licensing (even if they ultimately plan to work in conjunction with a securities professional) the client can feel comfortable that the real estate broker has enhanced his/her education to incorporate 1031 TIC into the mix of alternative investments.

Thank you for your consideration of comments.

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