PACIFIC WEST
FINANCIAL GROUP

December 14, 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:

Pacific West Securities, Inc. appreciates the opportunity to submit comments to the Securities and Exchange Commission ("SEC") regarding a request by the National Association of Realtors ("NAR") for an exemption from the broker-dealer registration and other requirements, as described in the above referenced release.

Pacific West Securities, Inc. ("Pacific West") is a broker-dealer registered with the SEC and Financial Industry Regulatory Authority ("FINRA"), and has approximately 350 registered representatives located in 28 states. Pacific West has been active in the tenant in common ("TIC") industry since 1999. Pacific West employees and registered reps have been very involved in the promotion of healthy, orderly, and compliant growth of the TIC industry. Activities of Pacific West registered representatives employees include (i) two individuals serving a total of three terms as a Board Member of the Tenant in Common Association ("TICA"), (ii) Co-Chair of the Due Diligence and Compliance Committee of TICA, (iii) Current Vice-Chair of the Legislative and Regulatory Committee of TICA, (iv) two TICA "A Champion of Excellence" award winners (2006 winners in the broker-dealer and registered representative categories), and (v) Task Force Chair of the TICA Best Practices Committee, among other activities.

Pacific West is generally in favor of the concept of a limited exemption from registration for Commercial Real Estate Professionals ("CREP") which would be consistent with past SEC no action letters related to finder's fees and referral fees. However, we believe the NAR request, as written, is far too broad and is not consistent with the protection of investors. We believe the conditions of the request could be narrowed to make an exemption from registration workable, as discussed below.

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The activities of the CREP should be limited to that of a "finder" or "referrer" consistent with past SEC guidance.

As written, the requested exemption would be a dramatic departure from SEC guidance through no action letters on finder's and referral fee arrangements to date. While in the 1970's and 1980's, certain "finder" and "referral" arrangements were granted no action relief by the SEC (Victoria Bancroft, Landmark Securities, Crossland Investors, Paul Anka), these scenarios involved activities of the finder which were extremely limited, and interaction with the investor of any consequence was limited, particularly if it involved any form of discussion about the security. The activities requested in the NAR letter go far beyond past SEC guidance. Since the SEC felt it in the investing public's best interest to require broker-dealer registration for anything more than limited finder activities in the past, the much more broad activities of the CREP in the NAR exemption request (which include some activities that were highlighted as not permitted without registration in the letters) would seem inconsistent with the investor protections stances previously taken by the SEC. Thus, it would seem appropriate to narrow the permitted activities from those requested by NAR in any exemption request granted.

The CREP would be considered a seller of the security and would be subject to considerable securities regulations and liability with which he/she is not familiar.

Despite the notion that the CREP may only advise on the real estate aspects of a TIC security and any compensation would be named a Real Estate Advisory Fee, federal and state securities regulations would consider the activities of the CREP (which may include presentation of the specific materials related to the securities offering and advising on aspects such as master leases and proformas and the like) would be an "offer" of a security. This is particularly pertinent since the activities of the CREP would be done with the goal of receiving transaction-based compensation in connection with the sale of the security.

Indeed, paragraph one of page 19 of the NAR request states that "The **sales activities** of a RE participant together with the receipt by a RE participant of a Real Estate Advisory Fee in connection with the sale of a TIC security generally would require that the real estate participant register as a broker..." [emphasis added]. Thus, it seems clear the CREP would be involved in the sale of the TIC security.

Since the CREP would be considered a seller of the TIC security, this would expose him/her to securities laws regarding disclosure, although he/she would not likely know it. A CREP is accustomed to the real estate requirement to disclose all KNOWN information, but would actually be subject to the securities requirement to disclose all MATERIAL information. This would expose the CREP to risks they may not be aware of or be equipped to address. This risk can come from both regulation and civil lawsuits. In addition to FINRA and SEC rules on disclosure, state securities acts also require disclosure of all material facts in the sale of a TIC that is a security. For example, both Oregon and Washington have issued "Alerts" on sales of TICs. The Washington State Alert discusses the requirement that "Investors receive full disclosure of all material information about the investment". The Oregon Alert (also referenced in the NAR exemption request) states "Investors must receive full disclosure of all material information about the investment".

In addition to obligations with regard to disclosure, the CREP would also be subject to the prohibitions on general solicitation of Section 502c of Regulation D. FINRA Notice to Members 05-18 describes in detail the restrictions on advertising. In addition, SEC no action letters such as Bateman Eichler, HB Shane, and EF Hutton describe the need to have a pre-existing substantive relationship with a client prior to making an offer and the requirement for the offeror to meet various requirements involving contemplation periods and/or waiting periods. These concepts and procedures are quite complex and would likely be

foreign to a CREP that, pursuant to the exemption conditions, is not subject to securities licensing and education, but also not predominantly involved in the sale of TICs.

Thus, it is quite likely that a CREP, through no ill-intent, could violate numerous securities regulations and be subject to significant civil and regulatory liability as a result.

Allowing the CREP access to specific TIC property information and to present that information to a prospect prior to the introduction to a selling broker-dealer is problematic because of the likelihood of a violation of the prohibition on general solicitations of Regulation D, Section 502c.

As described above, the CREP would be considered to be making an offer of a security and would not likely be versed in the complex restrictions on general solicitations. In addition, there is no supervisory structure to ensure the CREP is aware of and follows the general solicitations prohibitions. A real estate broker may be in a supervisory role over a CREP (though the CREP could be the broker and there would be no supervision), but the real estate broker would not be trained in or be required to supervise the CREP on these securities regulations.

With no requirements for licensing, supervisory structure related to securities matters, nor training on securities regulations, it is reasonable to assume that a CREP may unknowingly run afoul of these regulations. The implications to this are grave since a violation of Regulation D by any seller could result in the loss of that security's exemption from registration. If this were to happen, the liability to the registered representative, broker-dealer, sponsor, as well as the CREP would be massive since they would be deemed to have sold an unregistered security.

Allowing the CREP access to specific TIC property information and to present that information to a prospect prior to the introduction to a selling broker-dealer is problematic because it detracts from the ability of the registered representative and selling broker-dealer to fulfill their obligations of suitability review.

Details of the TIC offering, including documents that create an investment contract, such as the master lease, may be provided by the CREP and advice may be provided by the CREP related to these documents. Since an offer has been made and information relating to specific properties has been presented before the CREP must introduce the client to the broker-dealer, the sale is nearly complete in the mind of the prospect. This has all occurred before any person trained in, or responsible for, suitability has had the opportunity to understand the client's financial circumstances, sophistication, investment objectives, risk tolerance, or other suitability related information. Since the opportunity and obligation for suitability analysis does not occur until the sale is emotionally complete or nearly complete, investor protections set forth in the typical securities regulatory structures of FINRA, States, and SEC is eroded, detracting from investor protections.

Furthermore, since the CREP can (per the exemption request footnote #45) select a B/D that is offering that particular security, the CREP is therefore able to direct the client into a particular property. This ability to direct the client to a particular broker-dealer selling a particular TIC offering shows the high degree of control the CREP has in the exemption request scenario. With this level of control over investor choice, investor exposure to additional TIC offerings and the suitability and know-your-customer protections of a registered representative are reduced. This further erodes the ability for suitability determination to be done.

The selling broker-dealer should not have any supervisory responsibilities over the CREP in connection with their involvement in the TIC transaction.

Since the selling broker-dealer has no authority over or ability to supervise a CREP, it would be unreasonable for the selling broker-dealer to have any obligations to ensure the CREP is following securities regulations.

This is particularly important given the 1971 Woodmoor Corporation SEC no action letter (which was granted relief by the SEC Staff), in which, in connection with the sale of townhomes which were also a security, real estate agents and licensed securities agents "would distribute Woodmoor's securities in conjunction...". The letter describes that "the securities salesmen and the real estate brokers would work together both in the sales efforts and in the closing of transactions." In its response, the SEC provided the following guidance: "... if the securities are sold jointly by a registered broker-dealer and a real estate broker, the broker-dealer would be required to have sole responsibility for their sale, inasmuch as the components of the investment contract are not separable. Such sales would have to be properly reflected on the books and records of the broker-dealer, and he would be responsible for making all confirmations of sales. Such broker-dealer would also be responsible for the supervision of all others participating in the sale of Woodmoor's securities, including the real estate broker. In this connection, it would not in our view be appropriate for any communication to a potential investor, in person or otherwise, to be made by the real estate broker alone. Absent such responsibility, recordkeeping and supervision, the real estate broker or any other person participating in the sale of the securities may be required to register with the commission as broker-dealers." Thus, in the Woodmoor letter, the SEC granted positive relief in a case very similar to that which is requested by NAR, but relief was granted only on the condition that the broker-dealer supervise the activities of the real estate broker and that the real estate broker could not communicate with the potential investor in any way without a broker-dealer representative present to supervise. If the NAR exemption request were granted in its current form, would the selling broker-dealer need to supervise the CREP in the same fashion as the Woodmoor letter would suggest? Alternatively, should the activities of the CREP be restricted to those not requiring supervision?

Purchase of securities, including TICs, should be suitable for the investor.

Condition 5B of the NAR exemption request provides a mechanism whereby the transaction may occur even though the selling broker-dealer has determined it is not suitable. This runs contrary to investor protection, public interest, FINRA regulations, state regulations, and just and equitable principles of fair trade.

The final paragraph of page 19 of the NAR exemption request states that "...the participation in any such TIC Security Transaction in which a RE Participant receives a Real Estate Advisory Fee of a registered broker-dealer that WILL perform a suitability analysis before the transaction is effective" creates safeguards [emphasis added]. However, under Condition 5B of the NAR request for exemption, the suitability analysis can be circumvented if it comes out negative. This seems contrary to investor protection.

Under the exemption request, the selling broker-dealer is brought into the fold too late.

Since the buyer/broker form is not required to be provided to the selling broker-dealer until closing, which may be several weeks after the suitability determination and order approval was done by the selling broker-dealer, the selling broker-dealer may not be aware of an arrangement struck between the buyer and the CREP. Thus, the selling broker-dealer is subject to performing its suitability, servicing, processing, record retention, and acceptance of risk associated with the transaction, but may not be aware that compensation will be lower than expected until weeks later.

In addition, this arrangement, whereby a commission may be reduced in connection with an agreement between the CREP and the client, would change the compensation due to the selling broker-dealer under the selling agreement with the sponsor. Therefore, the selling agreement is essentially being modified by parties that are not a party to the selling agreement.

The selling broker-dealer, lead placement broker-dealer, and the sponsor do not have the ability to ensure the CREP meets the qualifications required by the exemption.

Both qualitative and quantitative qualifications may allow the participation of the CREP under the exemption request. If a CREP meets the qualification through a specific dollar amount or number of commercial real estate transactions within a specified time period, a selling broker-dealer, lead placement broker-dealer, and the sponsor have no ability to ensure this is correct. Furthermore, any attempt by the CREP to provide supporting documentation would be onerous to gather and present and may also cause confidentiality problems with regard to the clients of the prior transactions.

Any qualitative qualifications would be nearly impossible for a selling broker-dealer, lead placement broker-dealer, or sponsor to evaluate.

Since the selling broker-dealer, lead placement broker-dealer, and sponsor do not have the ability and may not be qualified to determine the qualifications of the CREP, they should not have any obligation to ensure the qualifications are met.

While the CREP can add value to the investor in connection with a TIC offering, the proposed format in the exemption request has significant problems, as noted above. However, the concept is viable with some changes.

We suggest the following. The CREP would be able to discuss TIC topics in general with a prospect, but not discuss a specific offering or property. If the prospect is interested in the TIC concept, a "referral fee" agreement is initiated with the prospect and an introduction of the prospect to the selling broker-dealer is made, likely through a registered representative.

After reviewing the referral fee agreement, an additional written agreement should be required to be entered into by the selling broker-dealer and the CREP ("BDRE Agreement"), as discussed below. After the agreements are in place, the registered representative presents specific TIC offerings to the prospect. At any time, the prospect may request of the CREP advice on the real estate characteristics of the property as discussed in the exemption request. The CREP may provide this advice (provided they meet the qualification requirements outlined in the request), but may not provide advice related to the securities components. When a prospect decides to move forward with a particular offering, it is submitted to the selling broker-dealer for suitability review as required by FINRA regulations. When sent on to the lead Placement Agent and/or Issuer, the Referral Fee Agreement is included. This provides instruction to the issuer to pay the stated amount to the CREP directly.

This arrangement eliminates concerns of the CREP violating 502c since he/she does not have access to the information. It also reduces the concern of the need to supervise the CREP since the sales activities of the CREP are reduced to a referral role. This arrangement, while still an expansion from SEC no action letters on referrals, is much more consistent with prior guidance and would reduce the "slippery slope" concern of securities sales activities by non-securities-licensed professionals. This arrangement should provide some assurance from the SEC that there is no obligation by the broker-dealer or sponsor to supervise the CREP and no liability to the broker-dealer or sponsor if the CREP does not follow the exemption conditions. In addition, the sponsor and broker-dealer should be provided some assurance

from the SEC that any Regulation D Rule 502c problems potentially created by the CREP will not create liability for the sponsor or broker-dealer.

If granted, the exemption request should be narrowed as follows.

1. The CREP may not discuss a specific TIC offering or property with a prospect until after that particular offering has been presented to the prospect by a licensed registered representative.
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 broker-dealer. Since FINRA regulations already require the selling broker-dealer to do a suitability determination, sending a written affirmation to the lead placement broker-dealer, 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. The broker-dealer should not be permitted to accept a TIC transaction it believes to be unsuitable.
4. The buyer-broker agreement between the client and the CREP should be renamed a "Referral Fee" agreement.
5. An additional BDRE Agreement should be entered into at the time the CREP introduces the client to the selling broker-dealer. The BDRE Agreement should memorialize the agreement among the parties and will allow the CREP to make appropriate certifications necessary to qualify for the exemption. The BDRE Agreement should:
    a. certify qualification of the CREP,
    b. certify no statutory disqualification of the CREP,
    c. identify all CREPs,
    d. establish fees for the transaction,
    e. allocate liability between the selling broker-dealer and the CREP,
    f. certify that there was no general solicitation by the CREP,
    g. specify record retention requirements,
    h. specify the limited activities to be undertaken by the CREP, and
    i. include a copy of the executed Referral Fee Agreement
6. The exemption should provide that the selling broker-dealer and lead placement broker-dealer are entitled to rely on a certification from the CREP, including any certifications set forth in a BDRE Agreement, and the determination of the "qualification" of the CREP should not be the responsibility or obligation of the selling broker-dealer or the lead placement broker-dealer.
7. The exemption should provide that, in the event the CREP fails to qualify for the exemption, the selling broker-dealer and the lead placement broker-dealer should not have any liability for such failure based upon their reliance on the CREP's representations and certifications.
8. The exemption should provide that there is no duty of the selling broker-dealer and the lead placement broker-dealer to supervise the CREP.
9. 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.
10. The Referral Fee Agreement should only be amended to add additional CREP(s) with the written consent of the client.
11. Payment of any Referral Fee may only be made to those CREP's who have executed the BDRE Agreement.
12. Any violations of Regulation D by the CREP should not subject a selling broker-dealer or lead placement broker-dealer to sanctions by the SEC or other regulatory bodies and should not cause an offering to lose its exemption from registration under Regulation D.
13. The requirement in the exemption that the TIC Interest must qualify as "replacement property" under Section 1031 should be deleted

In conclusion, Pacific West is generally in favor of the concept of a limited exemption from registration for Commercial Real Estate Professionals ("CREP") which would be consistent with past SEC no action letters related to referral fees. However, we believe the NAR exemption request, as written, is far too broad and is not consistent with the protection of investors. While we believe a real estate professional can play a valuable part in assisting a client in a TIC evaluation and purchase, we believe the conditions of the request should be narrowed. We further believe that gravity of the issues discussed above suggest that if the exemption request is not appropriately narrowed, the exemption would not be consistent with the public interest and the protection of investors.

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 (888) 236-7979.

Sincerely,

Shahon Ford
President