

December 16, 2007

Office of the Chief Council
Attn: Nancy M. Morris
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-6628

Re: **Security & Exchange Commission's Request For Comments On Release #34-56779 File #S7-26-07**

To Whom It May Concern,

Thank you for the opportunity to comment on the captioned proposed exemption. I am a licensed California and Hawaii real Estate Broker and hold Series 66 and 7 FINRA Designations. My broker dealer is OMNI Brokerage, Inc. and I am also an Investment Advisor Representative with Registered Investment Advisor, Collaborative Wealth Strategies Group. As an active member of the Tenant-in-Common industry since 2002 and the Commercial Real Estate Industry for over 25 years, I offer the following for your consideration.

Introduction

In general I feel that the commercial real estate industry should be allowed to participate in the sale of securitized Tenant-in-Common transactions since in order to qualify for a 1031 exchange under IRS Revenue Procedure 2002-22, the securitized Tenant-in-Common investment must meet certain requirements and be considered real estate.

- It is my understanding that the securities regulations requiring a Tenant-in-Common transaction to be sold as a security were put in place due to the nature and structure of the securitized offering and the need to make sure that investors are properly protected.
- I think that any comments and action taken by the SEC regarding this exemption must first and foremost make sure that at the end of the day, the investor's protection must be the foremost factor to consider including the suitability of the investment for the investor and the accurate and factual disclosure of information related to the sponsor, financing, underlying property and related aspects of the investment.
- The exemption must insure that it does not provide language that could be interpreted as allowing Qualified Real Estate Professionals to engage in activities related to pre-selling and general solicitation of securitized Tenant-in-Common investments.
- The final language of the exemption must stress and support the underlying purpose of the current security regulations which in my opinion is to protect the investor's best interest.
- The exemption must be drafted in such a way that it contains safeguards that will prevent Qualified Real Estate Professionals from conducting their business, related to the sale of securitized Tenant-in-Common investments, in a way that creates increased liability and security compliance issues for Registered Representatives, Broker-Dealers and Sponsors as a sole result of the actions of the Qualified Real Estate Professional.

The following comments are in response to the Request for Comments on pages 9-11 of the release.

1. Is the Application's definition of "substantial experience in commercial real estate appropriate? Should "substantial experience in commercial real estate" be defined differently?

- One of the keys to having an effective exemption is to have specific enough criteria for the qualifications, responsibilities and actions of the Qualified Real Estate Professional that are objective and easily quantifiable.
- The Applicant's definition of substantial experience in commercial real estate includes many different ways of determining what this experience should be. The only effectual way to ensure the experience is easy to understand and quantifiable by the real estate marketplace, the security marketplace and most importantly the investor, is to have it be based on something that is objective and not subjective in nature. The only way to do this is to base it on a designation, such as the CCIM, SIOR, or ACL.
- Any other attempt to establish the commercial real estate broker's experience or proficiency in commercial real estate will be fraught with problems since it will be difficult to determine if the Qualified Real Estate Professional meets the requirements. Who's going to check their experience? Who's going to look at their transactions done? How will this information be communicated to the investor? If the Qualified Real Estate Professional has one of the above designations, it will be relatively easy to verify.
- One item not addressed in the exemption, is where the Qualified Real Estate Professional must be licensed as a real estate professional. Will it be the state of residence of the investor and/or the state the Tenant-in-Common investment is located in?

2. Should the quantitative factors included in the Application's definition of "substantial experience in commercial real estate" be periodically adjusted?

- The designations should be current and the person should be in good standing with the organization that has issued the designation noted above.

3. Are there education and experience designations from groups other than those affiliated with NAR that would be appropriate to name specifically as evidencing "substantial experience in commercial real estate"?

- There are other groups in the industry that may have education experience and designation, but it is NAR that is specialized and focused specifically in real estate and has developed specific designations that are earned and issued based on very specific educational and professional criteria that relate directly to the purchase, financing, development, management, operation, disposition, and leasing of commercial real estate, which are the CCIM, SIOR, and ACL designations noted previously.
- While these other education and experience designations may be available, I recommend that the exemption be based strictly on the Qualified Real Estate Professional having a valid and current CCIM, SIOR, or ACL designation.

4. Should there be a quantitative threshold to described when a Qualified Real Estate Professional would be "predominantly engaged" in the sale of real estate other than Tenant-in-Common securities?

- I do not feel that it is necessary for the exemption to include a quantitative threshold to describe when a Qualified Real Estate Professional would be predominantly engaged in the sale of real estate other than Tenant-in-Common securities.
- In order for a Qualified Real Estate Professional to be predominantly selling Tenant-in-Common securities, they most likely would be a Registered Representative, in which case, securities regulations would cover this as it relates to outside activities and the requirements of the Registered Representative's Broker Dealer they would be affiliated with.
- I believe having a Qualified Real Estate Professional who is involved in the sale of Tenant-in-Common securities, and decides to specialize in Tenant-in-Common securities and work primarily with Registered Representatives and their Broker-Dealers, as is proposed under the exemption, would actually benefit the investor in the long run.
- A Qualified Real Estate Professional specializing in the sale of Tenant-in-Common securities would provide the investor with a more experienced Qualified Real Estate Professional who has access to all of the resources and information systems that commercial real estate brokers traditionally have that registered reps in the securities industry do not have as easy access to, such as property comp information, listing information, market data and related information.

5. Should the exemption be conditioned on the buyer's agent agreement including a representation that the Qualified Real Estate Professional who receives or shares a Real Estate Advisory Fee has substantial experience in commercial real estate?

- The exemption should be conditioned on the buyer's agent agreement, including a representation that the Qualified Real Estate Professional who receives or shares in the real estate advisory fee has substantial experience in commercial real estate.
- It should include the designation that they have as well as how long they have had the designation and what their specific area of expertise is.
- It should be noted that in the commercial real estate industry, not all Qualified Real Estate Professionals have knowledge regarding all commercial real estate properties. Typically they are very specialized.
- Someone who has experience in the retail marketplace regarding shopping centers and so forth, will not necessarily have the expertise needed to analyze a multi-story high rise class A office building with multiple tenants and lease roll-overs.
- By disclosing the Qualified Real Estate Professional's designation and experience in the buyer's agent agreement, it will let the investor know whether or not they need to get another Qualified Real Estate Professional involved regarding a specific property type.
- As long as the other Qualified Real Estate Professional also has one of the required designations, there would be no reason why they could not come under the buyer's agreement. I do not think the exemption should allow a real estate professional who does not have one of the designations to be paid a portion of the Advisory Fee
- Fees that the real estate professional typically receives for the sale of traditional real estate, as well as those for securitized Tenant-in-Common offerings, should be disclosed in the buyer's agent agreement. This is typically done in the commercial real estate world as a matter of course.
- In the commercial real estate industry, fees are negotiated all of the time and there are no set standard fees. In the securities world, fees that can be paid or built into the offering are controlled by security regulations, i.e., they cannot exceed a certain percentage of the total equity raised. This is different than the real estate marketplace, which is subject to the market.

6. Is there the possibility that the exemption, if granted, could create an incentive for Qualified Real Estate Professional to sell Tenant-in-Common Securities instead of non-security forms of commercial real estate to their clients?

- This is definitely a possibility under the exemption, but as stated above, in the long run it would most likely be in the investor's best interest since the investor would be working with a more experienced Qualified Real Estate Professional in the area of securitized Tenant-in-Common offerings.
- It should also be noted that many of the large commercial real estate firms in the country have specifically indicated to their real estate brokers and agents not to sell Tenant-in-Common investments, whether or not they were real estate securities or in some other way get involved in the market because of the issues surrounding the sale of securitized investments without being licensed as a securities rep.
- An exemption, as proposed by the Applicant, would allow these larger more established Commercial Real Estate firms to enter the market and provide the investor with more choices and a larger base of commercial real estate expertise to draw upon.

7. Are the proposed conditions that would impose obligations on registered broker-dealers appropriate?

- Regarding the conditions that would impose obligations on registered broker dealers, in addition to what broker dealers are already required to do in the securities industry, I believe they are sufficient.
- Of a bigger concern would be the conditions imposed on the real estate professional.
- I believe it is equally important that the Real Estate Broker of record also have the responsibility to maintain records as they relate to the securities industry regulations by making sure that any information the Qualified Real Estate Professional, [who is typically under a Real Estate Broker], has that is related

to the securitized Tenant-in-Common investment or that they review with the investor, is forwarded to the Registered Representative and the Registered Representative's Broker-Dealer who is representing the securitized side of the transaction.

Additional Comments

A. Buyer's Agent Agreement and Introduction to Selling Broker-Dealer

- The Qualified Real Estate Professional should have to get a buyer's agent agreement and have an agreement with a Registered Representative before the Qualified Real Estate Professional can get access to specific Tenant-in-Common investments and addresses. Otherwise pre-selling and general solicitation violations will greatly increase.
- Currently the sponsors of a Tenant-in-Common transaction must have a selling agreement with a Broker-Dealer. If the sponsor is allowed to enter into an agreement with the Qualified Real Estate Professional, the Qualified Real Estate Professional will gain access to specific investment information with no control over who the information is given to and no involvement with a Registered Representative or Broker-Dealer who has a selling agreement for the specific Tenant-in-Common investment.
- The increase in the compliance and regulatory burden for the Registered Representative and their Broker-Dealer has to be balanced with additional responsibility and involvement being required by the Qualified Real Estate Professional's Real Estate Broker of Record.
- The investor, Broker-Dealer and Registered Representative should not have to become enforcement and compliance focused as to the validity of the Qualified Real Estate Professional's qualifications to be paid an Advisory Fee, nor should they have to be responsible for determining if the actions of the Qualified Real Estate Professional complies with securities' regulations for the sale of a securitized Tenant-in-Common.
- The buyer's agent agreement must protect the investor and not expose the Registered Representative or their Broker-Dealer to additional liability as a result of actions by the Qualified Real Estate Professional.
- A key consideration for the buyer's agent agreement is the issue of the liability and investor protection that is contained in security regulations and Reg D offerings, but not present in real estate offering or real estate regulations other than as they relate specifically to the property. Real estate professionals are not charged with non-property specific disclosure, initial and ongoing suitability analysis for investments they offer to their clients and subsequently sell to their clients or the level of due diligence and disclosure that a Reg D offering, and those that sell such offerings are subject to. This must be addressed by the exemption and it is not, as currently written.

B. The Real Estate Advisory Fees

- I strongly recommend that the Registered Representative's Broker-Dealer must approve the buyer's agent agreement and any fee reductions that will be necessary in order for the Qualified Real Estate Professional to receive an Advisory Fee. The reason for this is that ultimately it will be the Broker-Dealer and Registered Representative who will have liability to the investor.
- The Qualified Real Estate Professional would have their agreement with the Broker-Dealer and potentially as the exemption is written, multiple Broker-Dealers which has its own issues since currently Registered Representatives of different broker dealers cannot receive compensation for the sale of a security their Broker-Dealer does not have a selling agreement with since it would be "Selling Away" and a violation of security regulations.
- If the Qualified Real Estate Professional goes directly to the sponsor, I believe there will be a miss-use of the exemption to the detriment of the investor since the Qualified Real Estate Professional will have even less regulatory oversight.

Conclusion

- I think there is a valid argument to be made that having the experience of a Qualified Real Estate Professional involved in the sale of a securitized Tenant-in-Common as it relates to making additional alternatives and expertise available is a benefit to investors considering or involved in a 1031 Exchange
- Many investors do not know about the Tenant-in-Common alternative because the real estate professionals they are working with do not want to lose the opportunity to make a sale for the replacement property. As a result many investors do not do a 1031 Exchange or do not complete their exchange due to a lack of alternatives for replacement property.
- I think the exemption (though not in its current form as evidenced by my comments above) has the potential to benefit the industry as a whole as long as it does not sacrifice the investor's best interest in the process or weaken the current regulatory environment in which securitized tenant-in-Common investments are sold to investors.
- Since it is likely that the SEC will amend and revise the exemption, I trust that there will be a second opportunity for public comment. Investor protection is far too important for there not to be a discussion about the potential for unintended loopholes in the revised regulations.

Thank you for the opportunity to provide comments.

Respectfully submitted,

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