MICK
& ASSOCIATES, P.C., LLO
ATTORNEYS AT LAW

December 17, 2007

Sent via email – rule-comments@sec.gov
Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: NAR Exemption Request
File No.: S7-26-07

Dear Ms. Morris:

I am the President and sole shareholder of Mick & Associates, P.C., LLO, a law firm based in Omaha, Nebraska. Our firm represents approximately 95 independent securities broker-dealers from Tampa, Florida to San Diego, California. I have been a real estate development, finance and transactional lawyer for approximately 15 years in private practice, and was also general counsel for a securities broker-dealer involved in Reg. D commercial real estate transactions. I have been performing outside due diligence, consistent with FINRA Notices to Members 2003-71 and 2005-18 (and fully compliant with 2005-48) for almost six years for the independent broker-dealer community.

My firm, which is comprised of six lawyers with advanced degrees, four underwriters with decades of experience, and capable support staff has reviewed approximately 370 tenant-in-common ("TIC") transactions, and has approved, with certain qualifications, approximately 270 of these transactions. Of the 270 which our firm has performed complete and independent financial underwriting, to my knowledge, 268 of these are performing at 90% or better of the sponsor's pro forma projections. We have suggested that our clients refuse to do business with TIC syndicators who have poorly underwritten TIC offerings. In many cases, TIC offerings in which our firm recommended against participating in the selling group are now in foreclosure, workout or capital call status. There are hundreds, if not thousands, of TIC investors throughout the country that the SEC defines as smart and capable (i.e., accredited under Reg. D) that are suffering financial losses due to overloaded and poorly underwritten TIC transactions. Unfortunately, depending upon how the Securities and Exchange Commission ("SEC") issues final no-action guidance on the request by the National Association of Realtors ("NAR"), this trend of non-performing TIC investments could accelerate.

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My primary concerns regarding the NAR's exemptive request ("ER") are as follows:

1. The ER effectively removes the general solicitation and prior existing relationship investor protections that are the bedrock of Reg. D private placement transactions. As written, a Commercial Real Estate Professional ("CREP") would be allowed to utilize any and all instrumentalities of interstate commerce (internet, cold-calling, other media advertising, etc.) to solicit prospective TIC investors by simply advertising that his or her firm is a specialist or expert, whether or not the CREP has ever been involved in a 1031 exchange transaction, (and any additional puffery to circumvent FINRA advertising restrictions) in "Section 1031 exchanges" and even "real estate tenant-in-common transactions." Unfortunately, the investing public, which has been protected by your oversight and a plethora of statutory and case law from and after the Securities Act of 1933, will not distinguish between "securities" and "non-securities." The NAR's presumed response will be that such securities protection will be available in the second leg of the transaction, i.e., when the newly solicited TIC investor is introduced to a broker-dealer ("BD") and registered representative ("RR") with whom such investor has no prior relationship. As stated in the following points, this notion borders on fallacy.

2. Besides gutting fundamental securities law protections that have been available to investors for decades, an even larger problem is presented by the ER as drafted. This problem is two-fold. First, it is apparently the SEC's assumption, if not direction, that a "lead placement agent" is required or mandated by the ER. A majority of TIC offerings that our firm reviews, and a substantial majority of other direct private placement products in the oil and gas, equipment leasing, private equity, and other real estate segments, are properly structured, fully syndicated and have performed well without a managing broker-dealer ("MBD"). Several of our important and ethical clients are MBDs in TIC offerings, and the independent MBDs provide a valuable function, but in too many cases we see an MBD performing an overlaid sales function to push a suspect TIC offering, rather than engage in a very healthy and investor protective function of negotiating deal structure, negotiating sponsor profit, guiding restrictions on sale practices, and assuring proper documentation and processing of the investment. Another factor is the additional 100-200 basis point fee charged in the transaction, which is ultimately borne by the TIC investors. The MBD process also becomes superfluous and creates an additional profit center when the MBD is controlled by the TIC sponsor.

My second concern created by the ER has already come to pass before and during this pending SEC comment period. Commercial real estate firms are already creating their own captive MBDs. If the SEC approves the ER as substantially proposed, the SEC will create an environment in the securitized TIC industry whereby a CREP can obtain prospective TIC clients by any means whatsoever, deliver the TIC clients to the captive MBD with its Series 22 licensed RR, and simply process the paperwork without any meaningful due diligence, suitability analysis or, most importantly, the crucial negotiation, fee restructuring, and independent underwriting in a

thorough analysis of the economics and risks involved that is produced by an effective independent MBD, independent selling group members and, in many cases, assistance of outside selling group counsel and its financial underwriters. While this statement may be deemed protectionist by the undersigned, and without pretending to be condescending to a lack of historical and institutional knowledge within the organization and your esteemed professionals, the ER structure is exactly the structure that led, in part, to the abuses of the tax shelter syndications that were rampant in the mid-1980s.

3. Subsection 5(b) of the ER states that the Selling Broker-Dealer may effect the TIC Security transaction if it obtains the customer's written affirmation that the customer wants to proceed with the transaction notwithstanding the Selling Broker-Dealer's determination that the investment was unsuitable. Again, this provision is directly contrary to NASD Rule 2310, established case law, and the SEC's requirement to provide an exemption consistent with the protection of investors. Even if the investor fully understands the concentration, diversification, liquidity, and other issues that would prevent a suitability determination in a particular case, and in light of the number of unsuitable transactions that have, no doubt, been effected to date in the securitized TIC industry, to allow CREPs to conspire in the process and for the SEC to legislate protection for both the CREP and RR is highly inappropriate.

4. Regarding the practical applicability of the ER guidance, there are several logistical issues. For example, subsection 4(a) requires the RE Participant to deliver a copy of the buyer's agent agreement to the Lead Placement Agent "at closing." The delivery of this document must be at least 48 hours prior to closing to ensure that the title/escrow company involved in closing the transaction can properly disclose the commission payment, whether or not it is paid from settlement funds or outside closing (commonly notated as "POC" on a HUD-1 Settlement Statement or variation thereof).

Regarding the SEC's request for comments to the particular issues stated on pages 9 and 10 of the ER, we submit the following:

1. We submit the "substantial experience in commercial real estate" definition, including both the quantitative and qualitative definitions (footnote 3 of the ER) are wholly inadequate. For example, even if the CREP meets the quantitative definition of footnote subparagraph (1), an Accredited Land Consultant in Atlanta, Georgia, hardly allows the potential purchaser of a TIC Security to benefit from the real estate expertise of a CREP regarding a TIC Security offering in a retail strip center in Boise, Idaho. Likewise, an SIOR designee in Phoenix provides marginal additional benefit to a multi-family TIC security transaction in Nashville. In fact, many of the BDs in our client base are requiring collaborative or case-sharing arrangements between RRs with a substantial track record of TIC security transactions to partner with less experienced RRs to ensure the client receives the best education and advice. In my opinion, the official designation that provides the greatest knowledge and, therefore, benefits the ultimate TIC

security client is the CCIM designation. Although we are not in favor of the transactional definition, if you were to institute the same, I would be inclined to apply a ten-year experience rule and a gross valuation of $50-100 million as a buyer's agent.

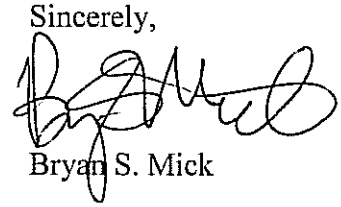
2. You should apply a "predominately engaged" threshold to prevent a CREP from engaging in general solicitation activity and focused brokering of TIC securities without proper registration. The 85% requirement cited in the ER would be acceptable.

3. Regarding the question of whether an exemption be conditioned on the buyer's agent agreement, including a representation that the CREP has substantial experience in commercial real estate, in our view that would be the minimum requirement and such buyer's agent agreement should include liability and indemnity to the TIC Security purchaser for negligence, misrepresentation, misconduct, and fraud.

In summary, although the ER would institute a practice of first impression (allowing non-registered firms and individuals to receive compensation in a securities transaction, well beyond prior "finder" decisions), an exemption with substantive changes to the ER could help create a larger more stable market with greater competition and, hopefully, better structured TIC Security offerings. I believe most of my clients would welcome participation by CREPs if the MBDs and Selling Broker-Dealers remained independent of the real estate sponsor, stringent qualification requirements and fee-splitting limitations were imposed, and the CREP had an equivalent measure of liability to the TIC Security investor as the BD and RR. Unfortunately, as proposed by the NAR, the ER could well result in the antithesis of public interest and investor protection. The best and simplest solution may well be to keep the responsibility and liability with licensed BDs and RRs, and allow payment of a referral or finder's fee to the CREP.

I appreciate the opportunity to provide the foregoing comments. If you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,



Bryan S. Mick

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