

VIA ELECTRONIC MAIL

December 17, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SEC File Number S7-26-07

Dear Ms. Morris:

The National Association of Realtors (NAR) has requested an exemption from the broker-dealer registration requirements¹ to permit certain licensed real estate agents or brokers to receive compensation for the sale of tenant-in-common interests in real property (TIC Securities).² TIC Securities transactions involve the exchange of interests in real property for securities in order to qualify for capital gains tax deferral under Section 1031 of the Internal Revenue Code. The Financial Services Institute³ ("FSI") has significant concerns with NAR's request for exemption ("Exemption Request") and appreciates this opportunity to offer comment.

Background on FSI Members

The Exemption Request is of particular interest to FSI members. The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice with little, if any, proprietary product bias.⁴ IBD members also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

¹ Section 15(a)(2) of the Exchange Act authorizes the SEC to conditionally or unconditionally exempt from the broker-dealer registration requirements of section 15(a)(1) any broker or dealer or a class of brokers or dealers, by rule or order, as it deems consistent with the public interest and the protection of investors.

² See Exemption Request at <http://www.sec.gov/rules/other/2007/34-56779.pdf>.

³ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed in 2004. Our members are independent broker-dealers, often dually registered as federal investment advisors, and their independent contractor registered representatives. FSI's 112 Broker-Dealer members have more than 130,000 registered representatives serving more than 14 million American households and generating in excess of \$13.5 billion in annual revenues. FSI also has more than 8,100 Financial Advisor members.

⁴ Some large independent broker-dealer firms offer proprietary products such as mutual fund, variable annuity, and/or investment adviser products produced by an affiliated or parent insurance company, broker-dealer or investment adviser. Nevertheless, these IBD firms, and their proprietary products, represent the exception to the rule.

In the U.S., approximately 110,000 independent financial advisors practice in the IBD channel.⁵ According to Cerulli Associates, approximately 38% of active financial advisors are independent.⁶ These financial advisors are self-employed business owners and, therefore, independent contractors rather than employees of the IBD firms. Independent financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “Main Street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market for advisors affiliated with IBDs is clients with a net worth of \$250,000. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Most of their new clients come through referrals from existing clients or other centers of influence.⁷ Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

TIC Securities represent a small percentage of the overall business mix of most IBD firms and their affiliated independent financial advisors. Nevertheless, for appropriate investors seeking to defer the payment of capital gains taxes on the sale of income producing real estate, TIC Securities are a valuable tool. Many IBD firms include TIC Securities on their approved product list so that independent financial advisors may offer the products to suitable investors in need. Many of these independent financial advisors have particular tax expertise (e.g., training as a CPA) which assists them in identifying appropriate investors. As a result, IBD firms and financial advisors have a vital interest in protecting the TIC Securities market by insuring investor protection is preserved in the sale of these products.

Concerns with the Exemption Request

The Exemption Request would allow any licensed real estate agent or broker who is predominantly engaged in and has substantial experience in the sale of commercial real estate and the real estate brokerage firm with which her or she is licensed (collectively referred to as RE Participants) to receive a real estate advisory fee from a purchaser of a TIC Security. FSI is concerned that allowing RE Participants to receive compensation for assistance and advice provided to investors contemplating an investment in TIC Securities will significantly detract from the SEC’s customer protection efforts.

Before engaging in securities sales activities, financial advisors must pass applicable securities licensing examinations developed by FINRA and state securities regulators.⁸ Securities transactions, including those involving TIC Securities, are reviewed for compliance by

⁵ Cerulli Associates, Quantitative Update: Intermediary Markets 2006. Please note that this figure represents a conservative estimate of independent financial advisors. In fact, more than 130,000 financial advisors are affiliated with FSI member firms.

⁶ Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04.

⁷ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁸ TIC Securities are typically structured as direct participation programs. As a result, the financial advisors who sell them generally must have passed either the Series 7 or the Series 22 (Limited Representative — Direct Participation Program securities). In addition, most states require the Series 63 State Agent’s license.

appropriately licensed securities principals.⁹ FINRA and SEC record keeping and retention requirements also apply to TIC Securities transactions.¹⁰ In addition, financial advisors are subject to annual firm element and periodic regulatory element continuing education programs.¹¹ These programs insure financial advisors are properly informed of relevant legal and ethical issues which arise in the sale of securities. Financial advisors' business activities are also closely monitored for compliance with state and federal securities laws and FINRA rules by the broker-dealer with which they affiliate.¹² These supervision efforts are subject to audit and review by state, FINRA, and SEC examination staff.

The Exemption Request seeks to allow certain unregistered persons to bypass these important investor protections in order to receive compensation for securities sales activities. Securities licensing requirements, ongoing continuing education, compliance supervision efforts, and regulatory oversight insure that financial advisors are aware of their obligations to investors and provide the means necessary to detect and prevent violations of the securities laws. These efforts are especially important in the offering of complex securities to the investing public. TIC Securities are complex illiquid securities whose proper sale requires detailed knowledge of the requirements of Regulation D¹³, applicable tax law¹⁴, and unique suitability and due diligence requirements. In fact, the sale of these products is so complex that the NASD saw fit to provide additional guidance to financial advisors who offer such products for sale through the issuance of NtM 05-18¹⁵. The NtM reminds broker-dealers of their obligations to comply with all applicable rules in the sale of TIC Securities and highlights the complex suitability and due diligence considerations involved in such transactions.

Clearly, investor protection concerns are heightened in complex securities transactions like these. In light of these heightened concerns, it would be unwise to allow untrained and unsupervised RE Participants to become so deeply involved in TIC Securities transactions for profit. RE Participants who would like to become involved in TIC Securities transactions already have a viable option. By taking the Series 22 and Series 63 examinations and registering with an appropriate broker-dealer firm, these individuals can receive compensation for their participation in TIC Securities transactions. This familiar system is preferable to the granting of the Exemption Request because it insures that those involved in TIC Securities transactions are properly trained, provided with ongoing continuing education, and subjected to firm and regulatory scrutiny of their activities. Investor protection will clearly be best served by preserving the current regulatory structure as it applies to TIC Securities. Therefore, FSI urges the SEC to reject NAR's Exemption Request.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, would welcome the opportunity to discuss these concerns with you further.

⁹ As required by FINRA Rule 3010(d), a TIC Security transaction must be reviewed and endorsed by a qualified principal in accordance with the member's supervisory procedures. A qualified principal for supervising TIC interests must properly licensed as either a General Securities Principal (Series 24) or a DPP principal (Series 39).

¹⁰ Firms must establish appropriate procedures to comply with the applicable requirements in SEC Rules 17a-3 and 17a-4, FINRA Rule 3110, and state requirements.

¹¹ See FINRA Membership and Registration Rule 1120.

¹² For example see FINRA Rule 3010(b).

¹³ See 17 CFR 230.501-508.

¹⁴ See section 1031 of the Internal Revenue Code.

¹⁵ See at <http://www.finra.org/RulesRegulation/NoticestoMembers/2005NoticestoMembers/P013455>.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale Brown", written in a cursive style.

Dale E. Brown, CAE
President & CEO