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

Reference: File No. S7-26-07
Tenants-In-Common Interests
Request for Exemption from Registration under
Section 15(a)(1) of the Securities Act of 1934
by The National Association of Realtors



Dear Ms. Morris:

I have reviewed the proposal by the National Association of Realtors (NAR) and your Notice and Request for Comment and please find my comments herein.

I have 30 years of investment experience and 17 years of commercial real estate transactional experience. Along with a California Real Estate Brokers license, I hold the CFA and FRM Professional Credentials.

I also belong to the AIR Commercial Real Estate Association in Los Angeles, a commercial broker association of 1800 members. This organization has set the standard for commercial brokerage professionalism, education and ethics and publishes forms used in commercial brokerage transactions which are customized for usage in many states. Many of the members have 50 years of full time commercial transactional experience yet virtually none would be permitted to advise and advocate for their clients under the NAR proposal. There are other professional commercial broker associations throughout the country whose members would also be excluded under the NAR proposal.

The NAR membership is virtually all residential agents who lack the training and experience of a commercial broker. I have experienced this first hand, wherein I had to complete a few transactions on behalf of clients because of their frustration in dealing with residential agents. The 'I can sell anything and just get the deal closed' mentality of residential agents is not acting in the best interests of the clients nor does it come close to the 'Investment Suitability' and 'Know your Customer' Rules for which the Commission has so forcefully advocated.

A real estate broker acts as an advocate and has a fiduciary responsibility to its client. However, the NAR proposal prohibits the real estate broker from negotiating the terms and conditions of a transaction (3)(d) and assisting a client to obtain financing (3)(h). By eliminating the broker's primary advocacy functions, the Broker becomes an administrator.

As to the applicant's definition of 'substantial experience in real estate', it is arbitrary and exclusionary. As proposed, no brokers other than those holding the NAR's credentials would be clearly eligible under the exemption. Who will decide if a broker 'has education and transactional experience that is equivalent to those required to obtain those designations'? How was the dollar value and time experience standards set? Is there any correlation between commissions earned and competence? Are there anti-competitive regulatory issues with setting an arbitrary dollar and time standard? The Federal Trade Commission recently completed consent agreements with multiple realtor boards and has another in progress concerning restraint of trade.¹ The Justice Department has an antitrust action against the NAR.² How does the actions of the NAR and its members benefit the public?

The issue of 'an incentive for commercial real estate professionals to sell TIC securities instead of non-security forms of commercial real estate investments to their clients' is very difficult to address. As part of a broker's fiduciary duty, the broker is to advocate and get the best terms and conditions for the client. By permitting the broker to advise on another investment vehicle will provide the client greater options and should provide better competitive pricing and investment returns for the client. If the broker knows that the TIC syndicator has had investments which did not provide the financial returns as promised, it is very unlikely that the broker would recommend the products of the syndicator. Transparency, disclosure and pricing are more likely to influence the purchase decision than the compensation to be earned.

There is ample precedent for the seller of a financial product to provide compensation to the representative of the buyer of a financial product. Holders of a Series 7 license and Registered Investment Advisors do receive compensation from other Broker-Dealers and Mutual Fund Companies. In commercial real estate the representative of the buyer or lessee normally receives compensation from the property owner, either directly or by splitting the commission with the owner's representative. Most recently, a Federal Judge in Kentucky ruled that the Kentucky 'Turf State Regulations' were unlawful, thereby allowing Marcus and Millichap, a national provider of commercial brokerage services, to provide services for its clients in Kentucky and receive compensation, when cooperating with a Kentucky licensed broker, although not licensed there.

¹For example see In the Matter of Realtors Association of Northeast Wisconsin, Inc.; FTC File No.: 061-0267

² See The US Justice Department Case at <http://www.usdoj.gov/atr/cases/nar.htm>

All of the above comments notwithstanding, there are many competent and professional commercial real estate brokers who would be excellent advocates for their clients and could easily meet a high set of standards.

The NAR proposal should be denied based upon its lack of transparency, arbitrary and artificial standards, monopolistic and exclusionary provisions, and lack of public benefits. Instead, The Commission should engage in a dialogue with the professional commercial broker associations across the country and the state licensing bodies to develop a comprehensive national professional standard and an exemption to Section 15(a)(1) of the Securities Act of 1934 available to all commercial real estate professionals in the public interest and for the benefit and protection of investors.

Thank you for inviting public comment on this issue.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "William M. Bird". The signature is written in black ink and is positioned above the typed name.

William M. Bird, CFA, FRM
WMB:wp