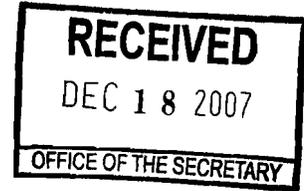


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December 6, 2008

Office of the Chief Council 1031 Replacement Property Solutions  
Attn: Nancy M. Morris  
Division of Market Regulation  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-6628



Re: File No. S7-26-07

To Whom It May Concern:

The draft SEC/NAR proposal is a step in the right direction for providing fees to real estate professionals. The following comments are areas of concern that I see need to be addressed.

**Real Estate Specialists**

Due to the complex nature of each real estate transaction, the real estate industry has professionals that specialize in different areas of real estate such as commercial or residential, and different specializations under each of those categories (retail, office, leasing, single family residence, etc.). Each of these specialists understands the specific nuances of their area of expertise and therefore can provide guidance to their clients. Currently, when a referral is made from one real estate specialists to another specialist there is an agreed upon fee and the referring agent relies on the expertise of the agent whom he referred the client to. This is already a well established practice among real estate professionals.

Under the proposed exemption this already accepted way of doing business would not exist and commercial real estate professionals may be required to provide expertise in areas of real estate transactions and structures that they are not familiar with. Tenant in Common transactions are complex transactions that require knowledge and due diligence on the real estate, but also an extensive knowledge of how the TIC is structured, the various TIC structures, who the sponsor is and general TIC industry knowledge.

The TIC specialist is another specialist under the real estate umbrella and a system should be established similar to what is already in place in the real estate industry. Liability should be with the Broker Dealer and Registered Representative and a fee should be paid to the real estate professional.

**Which Real Estate Professionals should receive compensation?**

Under the current proposal there is a formula to compensate commercial agents who meet a certain criteria. As stated above, I don't believe that the vast majority of commercial real estate agents that meet the criteria you have set forth have all the requirements to completely analyze the various components of a TIC transaction. Fees should be open to all licensed real estate professionals regardless of their specialization and the TIC professional can negotiate the level of fee shared by the value that the real estate professional brings to the transaction.

**Timing of the transaction**

Most TIC transactions are due to an IRS Section 1031 exchange from a property the investor sold. The majority of real estate professionals do not deal with 1031 exchanges on a regular basis and are not knowledgeable on all the specifics and timing of these transactions. As a result, including them equally in the transaction can slow the process and ultimately be detrimental to the investor meeting his/her exchange timeframes.

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### **Harmful to the Investor**

The exemption in it's current form will be harmful to the investor because of several reasons:

1. The aggressive nature of commissioned commercial real estate agents will result in devising schemes that focus on getting a commission instead of focusing on suitability of an investment for the investor.
2. Real estate professionals are not familiar with all of the securities laws and regulations that accompany the TIC offerings. The current exemption would make them responsible for following those regulations. This is a huge potential for investors being misguided.
3. Broker Dealer due diligence would be minimized under the current exemption.
4. If a property "goes south" and there is a lawsuit, the exemption doesn't clearly spell out who is liable. Who does the investor hold liable for this investment?
5. A real estate agent would be able to show an investor a TIC property prior to getting a registered representative involved. If the investor is emotionally attached to this property then they may not be open to looking at the rest of the TICs that are available. Does this mean that the registered representative has liability for this investment even though they were not part of the decision making process? Does the real estate agent work closely with one or two sponsors on a regular basis to achieve this and not show the full TIC market to investors? Real estate professionals could strike an agreement with securities professionals that discount all fees and focuses on only one or two TIC sponsors.
6. What processes will be put into place that will enable the real estate professional to determine suitability? Should this be their responsibility? Having been a commercial real estate agent, and knowing many people that currently are commercial agents, I don't think that industry wants to deal with suitability because it's not part of their day-to-day practice. It would be too difficult to turn that switch on and off where the TIC professional deals with it continuously.

### **Summary**

While I agree that an exemption that would allow a fee to be paid to real estate professionals is the right thing to do, I don't believe the exemption in it's current format should be implemented. TICs are highly specialized areas of real estate and the selling and implementation of these should be left to TIC professionals. Setting up a system that will compensate the real estate professional and letting the TIC professional implement the trade would be a more manageable process and better suit the investor.

Thank you for the opportunity to provide comments.

Respectfully,



David Waal

Omni Registered Representative

Former Commercial Real Estate agent (still currently real estate licensed)

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