Your Business is Our Business
CHRYSALIS CAPITAL

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December 11, 2007

VIA: email to rule-comments@sec.gov
To: U.S. Securities & Exchange Commission (SEC)
From: Cheryl A. Lane
RE: File No. S7-27-07
Notice of Application of the National Association of Realtors for Exemptive Relief under Sections 15 and 36 of the Exchange Act and Request for Comment.

Dear Sirs,

I am a finra registered principal and investment advisor (series 27, 24, 53, 31, 7, 65 & 63), a California Real Estate Broker, a Certified Public Accountant with an MBA in Taxation, a Commodities Trading Advisor, a Certified Business Intermediary and an insurance agent who has been providing advice, performing due diligence studies and executing transactions related to businesses, commercial properties and syndicated real estate for more than 30 years. I am a member of TICA (Tenant in Common Association), and The National Association of Realtors (NAR), the two trade organizations who have invested considerable effort in developing this Application for relief, as well as most of the other trade associations related to my various licenses. I am the president of Chrysalis Capital Group LLC, a finra broker-dealer, specializing in private placement programs such as the TIC properties that are the subject of this Request for Comment. All of the registered representatives of our firm are also real estate licensees. Several of these dual licensees are also attorneys and accountants with extensive experience advising sophisticated real estate transactions.

We have great respect for this proposal's attempt to address this portion of our growing concern related to an ever increasing number of unregistered finders raising capital for unregistered private placement investments (including but not limited to TICs, LLCs, Limited Partnerships and other fractional interests of real estate and business enterprises) without regard to the safeguards put into place by the various securities rules and regulations designed to protect the interests of investors. Because of conflicts between state and federal laws related to securitized real estate a large percentage of these unregistered persons happen to be selling these private placements under their real estate licenses.

The regulatory environment as it exists today not only prevents various advisors from being adequately compensated for the expertise they bring to a client's transaction, it actually prohibits advisors from working together for their client's best interest. The time has come for the various regulating agencies to work together to develop a system that will resolve these licensing conflicts and provide a procedure under which all of an investor's expert advisors can work in concert towards the best interests of their client. A collaboration that is especially necessary in

1031 exchange transactions in order to make sure the investor is made aware of the full spectrum of choices (including TIC interests) that are available to them as replacement properties during that very short 45 day period the Internal Revenue Code allows him for identification.

I have reviewed the NAR Application for Exemptive Relief, the SEC's Notice of Application and Request for Comment, as well as all of the public comments published to date. On behalf of our firm I am submitting my own comments in response to each.

PROBLEMS WITH AND SOLUTIONS FOR THE CURRENT STATUS OF THE INDUSTRY AS THE RELATE TO THE NAR REQUEST FOR EXEMPTION RELIEF.

"When the only tool you have is a hammer, all problems begin to look like a nail."

The client/investor is not being well served under the current conditions in the Tenant In Common industry for the following reasons:

REAL ESTATE LICENSEE (REL) AS FIRST POINT OF CONTACT. The option for a 1031 exchange is generally introduced to the real estate investor by his tax advisor or Real Estate Licensee (REL) at or prior to the time a prospective client lists his original (relinquished) property for sale. It is not intuitive for a client to seek out a stockbroker for advice on the consequences of his real estate transaction.

Section 1031 of the Internal Revenue Code only gives a seller of investment property 45 days from the sale of his original (relinquished) property to identify a replacement property that will qualify him for deferral of the tax on his transaction. He has 180 days to close on the property, but the property he closes upon must be one that was formally identified during that first 45 days. On a straight real estate acquisition, it is very difficult to perform an adequate level of due diligence for possible replacement property(ies) during that short 45 day period. If the replacement property(ies) falls out of escrow after his 45 days expire the IRC does not allow him to go back and identify alternative properties for purchase even if his 180 days deadline has not expired. The investor is stuck paying a substantial tax liability that could have been avoided if he had been able to identify an appropriate replacement property during that first 45 days.

The REL is aware of this crucial time line and begins collecting important information related to his client's financial status, future income needs and credit worthiness to help him investigate replacement alternatives concurrently as he markets the client's original property. The REL is chasing a moving target as he does not know exactly how much money he has to work with until his client's relinquished property closes. Nor can he be certain what financing terms will be available to client on the target replacement property until its identity and timing for acquisition is confirmed. As he sorts through and presents potential replacement properties to his client, he becomes intimately aware of his client's risk tolerance and investment criteria.

TICs are a valuable solution to this timing problem as they are pre-packaged with financing and other contractual rights and obligations in place. Securitized TIC's have been through several layers of due diligence and provide through its PPM a high degree of disclosure in a standardized format that the SEC requires for the protection of the investor.

If the attributes of a TICs underlying real estate are comparable or better to those of a direct real estate purchase, if the structure of the investment is suitable to the client's needs, if due diligence on material issues meets or exceeds disclosure that he can gather during straight real estate investments within that 45 day identification period there is a higher probability that the client can close on the identified property before his deadline. He should be able to include securitized TICs among his investment. Under the current system the REL, the client's real estate trusted advisor, may not know about and can not introduce to his clients securitized TIC investments nor does the compensation system encourage the REL to assist with the analysis of the TICs underlying real estate when the securitized TIC investment is introduced by someone else. The regulatory system that shuns the client's real estate advisor and puts this analysis in the hands of a stockbroker without a real estate background is not in the best interest of the client.

Timely identification of an appropriate investment that a real estate investor can close on before his 180 day deadline requires a tremendous amount of time and work that a REL can only commit to if he is compensated for his services. The REL can only present his client with alternatives that he is aware of and competent to advise upon. The laws of his state may or may not allow him to sell a commercial TIC to his client, but federal laws will over ride his state's law on this matter and will prohibit him from selling his client a TIC investment. If he is prevented from presenting securitized TICs, his client may be denied a valuable investment choice that could solve his 1031 dilemma.

The chronology of how the TIC investment will be introduced to a client and the timing for when the REL would assist with his analysis of the investment as described in the NAR proposal needs to be adjusted. But the exemptive relief sought in the NAR application would allow the REL to team up with a finra Registered Representative (RR) who is properly licensed to explain the pros and cons of a securitized TIC investment and who has been trained to perform the due diligence and client suitability procedures required by Regulation D and the policies and procedures of the RR's broker-dealer.

The primary concern expressed in the comment letters that I have read from finra members was that the REL would be allowed to replace or dilute the responsibility the RR is currently required to provide to his investor client. The NAR description of the proposed exemption clearly states the that the RR will be required to treat any client introduced to them by a REL as if they were a client that the RR acquired without the RELs assistance and does not contemplate having the REL replace the RR, disrupt his adherence to his policies and procedures or reduce his responsibility to the customer as it currently exists except for the recommendation that the REL's client could override RRs advice and his finra firms suitability policies and procedures by letting the RR sell the client an unsuitable TIC investment the client gives him written permission.

The suggestion that a RR would be able to put his client into an investment that the RR believes would be unsuitable by accepting written permission from that client should never happen. The finra firm's policies and procedures related to the offering of private placement would prohibit the RR from presenting the client with an unsuitable investment in the first place. A RR is also not allowed to present an investment to a client unless it is on his firm's approved product list. The RR and his responsibilities to protect his clients

would be sabotaged if the REL can get around the RR's mandated responsibility to protect investors by if the REL advises his client to sign a written authorization to sell the client a TIC after the RR has determined it to be unsuitable. Under the finra broker-dealer system a client should not be presented an investment that the RR has determined to be unsuitable for that client.

As long as the REL is not recommending that the client purchase an investment deemed unsuitable by the RR, an arrangement such as the one described in the NAR request would be in the best interest of the client as it gives the investor a broader number of qualified choices that will be delivered to him with the expertise of two professionals whose differing knowledge of deal structure and available products can compliment one another to provide a more complete comparison of his alternatives.

The NAR proposal will keep the self interest of the REL on the same side as his client's interest as it will allow a REL to be compensated for the expertise and effort he contributed to the client's transaction no matter which type of qualified replacement property he recommends. This compensation plan will encourage the REL to seek out TIC investments that may be more appropriate replacement property choices then the direct real properties he has been able to find within his 45 day deadline. To qualify for the exemption the REL must work with a RR who with the knowledge of securities policies and procedures that will be necessary to complete the transaction. This arrangement will provide better protection for the client than if the REL works alone presenting only the alternatives available to him under his real estate license.

REGISTERED REPRESENTATIVE (RR) AS FIRST POINT OF CONTACT. Another frequent way that a client may become familiar with 1031 and TIC investments is through a Registered Representative who either has a pre-existing relationship with the client as their financial advisor or who met the client through some sort of general solicitation.

While anyone that is a series 7 or 22 registered representative is properly licensed under federal law to sell TIC investments, only a handful have adequate analytical skills to due diligence the real property or business aspects of these private placement investments. Unless they also hold a real estate license, they may not be properly licensed in some states to advise upon or execute a transaction where the underlying asset of the security is a business or is real property. Often RRs know so little about the product they are recommending to their client, they just introduce their client to a wholesaler who makes the sale. Thereby, providing the client with only one choice of property to satisfy their 1031 replacement property and no personal suitability analysis or comparison to other properties.

Finra firms must perform due diligence on TIC investments on a property by property basis. Even if a RR has the expertise to analyze these transactions they are only allowed to work with TIC investments after their firm has approved the investment and signed a selling agreement for a particular property. A firm's Selling Away concerns prohibit the RR from referring his clients to a more knowledgeable person outside of the firm. And a client working solely with a RR will be denied access to other acceptable investments that are not available on his firm's approved product list.

In many cases even if a client is already working with an RR to find a TIC that will qualify for his replacement property, as soon as his relinquished property is listed, the client will start hearing from RELs who will propose that the investor make a direct purchase from one of the REL's listings. In order to adequately serve his client the RR must be competent to review and compare the alternative investments being presented by the RELs with the recommendations he is allowed to make from his firm's approved product list. And the RR may not be competent or appropriately licensed to make these comparisons.

The sale of his investment real estate may be the largest transaction that a client will make in his life. It is not in a client's best interest under the current state of the law to limit his access to TIC investments by forcing him to work alone with an advisor who: a.) may not be properly licensed under his state law to show him replacement properties (including TICs) for his 1031 exchange, or b.) if he is properly licensed, but can only show him the one or two (and sometimes even zero) TIC properties on his firm's approved products list, or c.) if he is properly licensed and can discuss plentiful choices but he does not have adequate analytical skills to evaluate the critical elements of the underlying investment, or d.) is not properly licensed to review suitable real estate choices that are not structured as securities or approved by his firm and d) is prohibited from referring client to competent professionals outside of his firm.

Although the chronology of how the TIC investment will be introduced to an investor and the timing for when the REL would assist with his analysis of the investment as described in the NAR proposal needs to be adjusted, the exemptive relief sought in the NAR application would give the RR a chance to team up an REL who is properly licensed to explain the pros and cons of a all of the Real Estate investment opportunities that are being reviewed by their clients (including but not limited to the limited choices that may be available through the RR's broker dealer). This proposal allows an REL to deliver the real estate expertise that the RR is missing without putting the RR in the position of selling away.

The exemption will allow a REL to help his client find an RR whose firm's approved product list contains TICs that qualify to fulfill the client's replacement property needs and help him look for another RR if a firm's approved product list does not contain an acceptable product. But the exemption can not force the RR to assist client with acquisition of a TIC investment that he believes to be unsuitable for the client.

The primary concern expressed in comment letters that I read from RELs was that RRs without adequate real estate knowledge would be allowed to sell TIC investments to their client without the expertise of an experienced REL who has the ability to explain the pros and cons of real estate replacement properties, both direct and TIC. This concern is very valid and the approach of teaming the two professionals up to work towards the mutual benefit of their joint client will address the worries about the damages their clients could suffer without adequate real estate advice.

The RR concerns that the RELs can sabotaged their responsibility to protect their client according to securities law is valid, if the exemption allows an REL to have his client sign a written authorization forcing the RR to sell investors TIC properties that the RR considers to be unsuitable.

In a case where a REL is working with a neophyte RR, he absolutely deserves to be compensated for the added protection that his expertise provides to his client. Without adequate compensation, it is difficult to encourage the REL to take the time and effort to necessary to provide real estate investors with the missing expertise required to review all of their available choices.

DUAL LICENSED REGISTERED REPRESENTATIVES (RR)S AND REAL ESTATE LICENSEES (REL)S. Many full time advisors obtain both their securities registration and real estate licenses. This arrangement insures that the advisor is properly licensed under both the state and federal laws. Dual licensing also mitigates the effect that self-interest might play upon the recommendations the RR/REL may give to his client, as RR/RELs will be compensated whether the client chooses a direct real estate purchase or securitized TIC(s) as his replacement property. When the RR/REL is the listing agent for the relinquished property, he develops a substantial relationship with his client over the extended period of time it takes to market the client's relinquished property, which give him fairly long advance notice to find alternatives for his client's replacement property. RR/RELs are more likely to work for a broker-dealer that keeps larger inventories of TIC investments on their approved product lists. The RR/REL's dual expertise allows him to perform very in-depth and thorough analysis for both direct real property investments as well as securitized TICs.

RR/REL's understand the cultural and procedural difference between their two professions and are well positioned to assist other REL's with their comparisons of direct real estate investments to securitized TICSs. But the current state of the industry prohibits these RR/RELs from working with their non-registered REL colleagues and from compensating them for the assistance the RELs provide to a mutual client through out the purchase decision process.

While dual licensing is a good solution for full-time private placement advisors, a dual licensing requirement would place and undue supervision burden on the finra firm and undue limitations on the professional activities of the RELs who will be making occasional TIC sales as contemplated by the NAR request.

When a REL becomes a RR and registers with a finra broker-dealer, the broker-dealer must approve his real estate activities as an outside business and will impose substantial restrictions upon the RELs activities in his real estate practices in order to exercise the firm's supervisory responsibilities and to prevent the RR/REL from "selling away". The obligation to supervise the outside activities of an REL who will may or may not occasionally participate in the sale of a TIC investment will place an excessive burden on the finra broker/dealer.

The restrictions that the finra firm must place on the REL's outside real estate transactions would be too burdensome to allow him to freely operate his profession which is primarily the brokerage of direct real estate transactions and who may only occasionally contemplate the purchase of a TIC investment for one of his clients.

The exemption proposed by NAR will be in the best interest of real estate investors, as it would allow clients access to the continued expertise of their trusted advisor who may be an REL who engages in so few TIC transactions that the finra broker-dealer could be accused

of parking the REL's RR license. It would be in the best interest of the investor if his expert advisors team up and use their combined expertise to review all possible replacement property alternatives on behalf of their client. It is unlikely that finra broker dealers (BD)s will recruit, license and supervise RELs if it will put an undue burden on the finra broker-dealers supervisory responsibilities or put them in a position of parking RR licenses. Excessive restrictions that would be imposed upon the REL's real estate activities discourage the REL who only recommends an occasional TIC sale from becoming an RR. Only an exemption such as the one described in the NAR request can put the RR and REL together to strengthen the protection provided to real estate investors

RELS ARE ALREADY SELLING TICS. While Real Estate Licensees (RELs) are not properly licensed to sell securitized TICs, they are currently selling billions of dollars worth of TIC investments that are being packaged as real estate interests and sold through RELs outside of the oversight of the SEC and other securities regulators.

Although these programs share many of the attributes found in the "Howey" case that might cause them to be "investment contracts" and therefore securities, none have applied for a no-action opinion from the SEC. Because the SEC has not provided clear guidelines on which elements of an investment structure removes a transaction from the "Howey" definition of a security, uncertainty remains as to whether these programs are Real Estate interests as described in their documentation or really securities under the "Howey" case and federal securities law.

Because these TIC programs are not being marketed as securities, they are generally not structured according to the same standards as the securitized TICs. As non-securities they are not required to provide the same level of disclosure to their investors as would be required under securities law. And the RELs selling these TICs do not have any requirement similar to that of an RR that requires them to determine whether these TICs are suitable investments for their clients. The investors who are prospected for investment into these TICs are not required to meet the Regulation D requirements of accredited investors. There is no requirement for RELs to establish a substantial pre-existing relationship with an investor prior to selling them one of these real estate TICs. And there are no restrictions on how these TICs can be marketed to investors. If these TIC programs are in fact real estate transactions, the investors in these programs have none of the protections provided by securities laws. If these programs turn out to be securities, the RELs selling them are violating securities law by selling them with their real estate licenses. RRs can not sell these programs without a real estate license. To avoid the possibility of "selling away", most finra broker dealers prohibit their RR/RELs from selling these non-securitized TICs with their real estate licenses.

Under either interpretation, it is highly unlikely that the errors and omissions insurance a REL has through their real estate firm covers TIC transactions.

It is in the best interest of investors that RELs be brought into a system that allows them to provide TIC investments that come under the oversight of securities laws and to encourage RELs to work with RRs who can help them provide their clients with TIC properties that meet the high standards of disclosure required under securities laws and to subject the sales process to the policies and procedures that securities firms have put into place to insure compliance with the protections required by securities laws and to the requirement to

determine client suitability for the contemplated investment under the finra and SEC standards.

As long as the REL is not allowed to recommend that his client purchase an investment deemed by the RR to be unsuitable, allowing RELs to receive compensation for assisting a RR under the exemption as contemplated by the NAR application will not dilute the securities industries' oversight over TIC transactions. On the contrary it will decrease the dilution that already exists, because RELs will be allowed (with the assistant of a RR) to include securitized TICs among the investment properties they may present to their clients.

By allowing RELs to get paid for giving advice on the underlying real estate aspects of securitized TICs, it will reduce RELs reliance upon TICs that are being sold as real estate outside of SEC and finra oversight and jurisdiction. Application of this exemption will increase the probability that clients can be afforded the protections designed for them under securities law. Because the conditions for meeting the proposed exemption will require the REL to work with a finra RR. It will also require the RR to perform the same standards of due diligence and suitability determination as if the RR had acquired the client without the assistance of the REL.

The recommendation that the RR will be allowed to sell the client an unsuitable investment with written permission from the client is based upon the invalid assumption that the client can be provided information with which he can become knowledgeable about a particular program prior to the time the RR makes his recommendation. This issue will be discussed further in the following section relating to cultural differences between the two professions.

CULTURES, BUSINESS PRACTICES AND STANDARDS OF CARE DIFFER BETWEEN THE TWO PROFESSIONS. This is the one area where the recommendations contained in the NAR application for exemptive relief misses the boat. The recommendations for who would qualify for the exemption and in what order the transaction would be considered and vetted by the various parties, demonstrates an ignorance of how a private placement makes it way through the chain of command at the typical broker-dealer and at what point the RR and various advisors are allowed to apply the real estate analysis skills required to evaluate a 1031 exchange transaction.

LICENSING RESPONSIBILITY DIFFERENCES. Typically RELs represent the seller and they must be licensed in the state in which the property is located it does not matter where the buyer of the property lives or who pays his fees. Most states will allow licensees to pay referral fees to RELs licensed in other states.

Securities law is designed for the protection of the investor (buyer), the RR represents and is responsible for protecting the investor and he must be licensed in the state where the investor lives. It does not matter where the property is located or who pays the fee.

NAR Notice: Paragraph III (B) (1) General Conditions require the REL to be "appropriately licensed in compliance with the applicable state real estate laws, and is identified in the Buyer's Agent Agreement"

Is it contemplated that this provision will put the REL on par with the RR and if the REL has an exclusive Buyers Agent Agreement with a client who lives in the state where the REL lives he will be properly licensed for purposes of representing a client as described in this exemption? If so, why not just say so. The SEC is not required to follow state real estate law to grant this exemption and can just say the REL must be licensed to sell real estate in the state where his client resides. If not, who will be responsible for determining whether a REL is appropriately licensed to represent his buyer in a particular transaction? It can not be the responsibility of the finra broker-dealer or RR to interpret the real estate laws of the various states to determine whether the REL may or may not be appropriately licensed.

COMPENSATION PAID TO BOTH THE RELS AND RRS ARE TYPICALLY PAID BY THE SELLERS (ISSUERS) AND DISCLOSED TO THE ALL INTERESTED PARTIES.

NAR Notice: III (A) Request for Exemption 2nd paragraph. The proposal that the buyer set the compensation limit for commissions that may be paid by reducing the compensation paid to the managing broker-dealer (MBD), the soliciting broker-dealer (SBD) and RR is not adequately thought out and leaves too much room for manipulation by the RR and REL and create the misunderstanding that this is a finders fee as opposed to a fee for advisory services related to the underlying real estate.

The Real Estate Advisory Fee should be determined by and paid by the TIC sponsor (issuer), defined as an amount calculated by applying a set % to the amount of equity invested into the TIC interest. It should be fully disclosed in the Private Placement Memorandum (PPM) in the same manner as all of the other fees described in the "Plan Distribution" section of the PPM. The percentage and manner for payment of the Real Estate Advisory fee to the qualifying REL should be included the MBD and SBD agreements with the sponsor (issuer). The same percentage fee should be paid to all RELs for the advise they give TIC members and the same percentage commissions should be paid to all members of the selling group. The sponsor should pay the Advisory Fee to the RELs real estate brokerage firm at the same time it sends the commission payment to the SBD that executed the related transaction. A REL/RR that is properly licensed to perform both the Real Estate Advisory services and to execute the TIC transaction may collect both the Real Estate Advisory Fee and the RR commission related to his client's transaction through their respective firms.

This arrangement would be in the best interest of the client as it provides a means to compensate the REL of his choosing for his assistance in analyzing the underlying real estate aspects of a TIC. The fee will be disclosed to the client when he is presented the PPM. The client will agree to the amount and payment of the fee, at the same time and in the same way that he agrees to the payment of amount of commission the sponsor will pay to the RR. A RR who is properly licensed, but not experienced in the analysis of real estate will be encouraged to work with a REL because the REL can be compensated for providing his real estate expertise without reducing the compensation due to the RR or his firm. There will be no room for people to manipulate the relationship through the negotiation of fee splits as they will be preset and determined by the sponsor. Everyone is paid the same as others providing the same service to the same sponsor (issuer).

APPROACH AND ORDER OF TASKS IN THE SEARCH FOR INVESTMENTS. In the real estate culture, the REL will shop for his client's replacement property and does not need to disclose his activities to his supervising broker until the acquisition has fully negotiated, all of the terms and conditions have been agreed to, the financing is committed and the purchase documentation has been completed and presented to his broker.

This is exactly opposite of the approach and order of tasks that are followed by the finra broker-dealer system. In the broker-dealer system, a sponsor(issuer)s TIC property is submitted to the broker-dealers compliance department. The compliance department vets each individual TIC deal and determines which properties they will add to their approved products list. They sign a selling agreement with the seller (issuer) and grant their RRs permission to sell that particular property.

The RR is not permitted to obtain or discuss information on specific TIC products unless or until the firm approves the property and signs a selling agreement with the sponsor (issuer). The RR must establish a substantial relationship with his client and determine his suitability. Then he must match the suitability criteria of his client to the features of TIC investments on the firm's approved product list. It is not until then that the RR may discuss the TIC program with any non-broker-dealer person(s). If the client's first contact with the RR was through a general solicitation the RR may not sell him a TIC that was available or contemplated on the date that they met.

In a securitized TIC program the terms and conditions of contracts are negotiated prior to the TIC program's offering. The terms and the consequences of those terms are described in the PPM. All investors must sign a document attesting that they read and understood the information contained in the PPM. Any changes to the information contained in the PPM must be disclosed in a supplement. The supplement must be distributed to all TIC investors and explain how those changes will affect them. Changes to TIC benefits must be approved by the TICs existing investors. Therefore individual investors into TIC programs will not renegotiate the terms of the offering as described in the PPM.

After the RR completes the account application and sales documents the transaction must be approved by his supervising principal and a member of his firm's compliance department before it will be executed.

The procedures described in III (B) (2) (a-e) of the NAR notice will result in the REL investigating property investments, meeting with issuers, and even inspecting properties before he introduces his client to a RR who might not have that property on his firm's approved product list. The RR would be guilty of selling away if he discusses a property that has been investigated by a REL that is not on his firm's approved product list or if the REL's property is on the RR's approved property list and available or anticipated prior to the date that the client met his RR via a general solicitation. The RR's firm might never sign a selling agreement for the particular property that the REL has recommended to his client.

In order for the relationship with the REL to work with the policies and procedures that finra broker-dealers set up to comply with securities laws and meet their responsibilities to

protect their investors the introduction of a REL into the current system must be rearranged to accommodate the RRs mandated due diligence procedures.

I suggest the introduction to the RR proceed as follows:

As the REL works with his client to sell his original property, he will get his client to sign an exclusive Buyers Agent Agreement authorizing him to get paid for providing advice on the acquisition of a suitable replacement property. This agreement should not specify TIC investments as it should cover all appropriate replacement properties direct or TIC and should not be biased toward the TIC investment. Most standard real estate forms packages have such an agreement.

While the REL is working with his client on the sale of his original property and establishing his substantial pre-existing relationship, he should be educating the client on the full spectrum of properties that would meet his client's needs including a generic description of TICs. He should explain that these TICs are securities and in order to purchase one they must work together with a RR.

It would be inappropriate for the REL to interview sponsors before the RR is allowed access to those sponsors. And REL can not renegotiate any of the terms of an offering on behalf of his client.

The REL and his client meet with an RR. Prior to the meeting the REL provides the RR with copies of his Buyers Agent Agreement, evidence that the REL has the credentials that make him eligible for the exemption, along with a description of when and how the REL and client met and a copy of an accredited investor questionnaire. The client signs the acknowledgment that he understands the information set out in III (C) items 1-3 of the NAR application and that he understands the roles played by the REL and RR as well.

The RR will work with the RR in much the same manner as he would work with a client's account, attorney or other advisors.

Together they chose a suitable TIC from the RR's inventory of approved products that that did not become available until after the time the REL met his client. The RR will provide the REL with approved due diligence materials and sponsor contact information so that he can perform his own independent review on behalf of his client.

The REL reviews the TIC takes all of the steps he considers appropriate to analyze the underlying property, which may include interviewing sponsors, reviewing documents and agreements and visiting the property. If the REL recommends that the client purchase the TIC, then the transaction would proceed according to the broker-dealers standard policies and procedures. Copies of the document identifying the REL as the client's real estate advisor will accompany the purchase paperwork and after the transaction clears all of levels for approval, the transaction will close and both RR and REL will be paid according to the terms set out in the PPM and firm selling agreements.

If the REL can not find an acceptable TIC program for his client from a particular RR, he may interview other RRs at firms with a different inventory of TICs on their approved product lists. They may not however, circumvent a finra firm's policy and procedures by getting their client to submit a written approval to him an unsuitable product or a product not included on his firm's approved product list.

WHO SHOULD QUALIFY FOR THE EXEMPTION? The NAR description of who should qualify for the exemption is far too narrow and overly biased towards a narrow designation of commercial real estate brokers. There are many other Real Estate Professionals (REP)s whose skill sets equal or exceed the qualifications of those set out in the request for exemptive relief.

1031 exchange rules require that both the relinquished and replacement properties be used in a trade or business or held for investment. The code does not require either of these investments be "Commercial Property". Under 1031 either the relinquished or replacement properties could include single-family homes or a one-to-four-unit residential properties that would be excluded from qualifications for the exemption according to footnote 5 of the NAR request. There is no requirement that either the relinquished or replacement property meet the definition of "Commercial Property" as described in the NAR request nor do all of the underlying properties in securitized programs real estate programs required to meet this "Commercial Property" definition. In fact, some securitized real estate programs bundle up single family homes under a master lease and sell them as securitized replacement properties for 1031 exchanges. And yet the RELs who would have the expertise to analyze this type or property are excluded from the CREPs covered in NARs request for exemption.

The exemption should be available to any REL who sold the client's original property. This REL developed a substantial relationship with the client in order to get the listing for and throughout the sales process for the relinquished property. This is the REL the client has entrusted with the information needed to determine the client's financial status, creditworthiness and the timing of their needs for income from the identified replacement property. This is the REL that their client has entrusted with the sensitive financial information related to the type of replacement property they are looking for and how they want that replacement property to provide for themselves and their families. The client will expect the REL who helped him sell his original property to help him identify his replacement property. The client will rely upon this RELs opinion about whether to include TIC investments among his choices for suitable replacement properties. This REL can steer the client into direct investments of real estate or non-securitized TICs that exist outside the oversight of finra and the SEC. This REL has just used his expertise to help his client sell an investment property of exactly the same size as the replacement property being contemplated. Using his real estate license he has the ability to help his client purchase any replacement property except the ones that would require him to use a finra RR to assist him with the investment and suitability analysis. Excluding these RELs from the exemption will only encourage them to recommend alternatives that are direct property investments or nonconforming TICs and cause him to exclude securitized TICs from the menu of choices presented to his client. This REL's client will be blocked out of the system that can provide him with the protections provided by SEC and other security regulator's oversight. It is not consistent to believe that a REL a skill level that is adequate for him to advise a client all by himself about non securitized real estate investments, but his skills do not transfer over to an expertise great enough to help a RR analyze the underlying real estate aspects of a securitized TIC.

How can it be possible for a REL to have the appropriate credentials to analyze all of the important aspects of a real estate deal all by himself in the "buyer beware" environment of direct purchases in investment real estate, when that very same REL can not be trusted to apply his same skills to advise his client on the underlying real estate aspects related to a securitized TIC, even though securities laws (including this contemplated exemption) will require him to team up with a RR who will supply him with substantial due diligence materials for him to study including a PPM describing all of the risks a sponsor can anticipate related to the ownership of the property and who can help him qualify his client as a suitable investor?

It is customary in the real estate industry for a REL who does not have adequate expertise to competently execute a transaction to partner with a REL who has the requisite experience and to be compensated for his assistance with the transaction. This gives the inexperienced REL an opportunity to participate in transaction where he can protect his client and begin to accumulate their expertise in these types of transaction.

There are many Real Estate Professionals (REP)s with credentials and/or experience that equal or exceed the expertise of the CREPs described in the NAR request. The expertise of these REPs bring substantial value to the analysis of real estate investment opportunities, but their expertise has been omitted from the definition of the CREPs who would qualify for the requested exemption. For example REPs omitted from the exemption include: attorneys, accountants, advisors holding MBAs, people who own and operate real estate for their own portfolios, people with experience on corporate acquisition teams, business brokers and business intermediaries, and M&A advisors. The exemption also did not include RELs who are dual licensed as finra registered representatives or as real estate licensees who also hold any of the other REP licenses or designations listed above.

We agree with NAR that it is in the best interest of a real estate investor to have continuing access to the advice he has been receiving from his trusted real estate advisor through out the series of transactions necessary to complete a 1031 exchange. We also agree that without expert advice on the underlying real estate of a TIC, the client can not get an unbiased comparison of the full spectrum of investment properties available to satisfy his 1031 exchange. Under existing law, the REL is only allowed to present direct real estate and non-securitized TIC properties and the RR is only allowed to present his client with securitized TICs as investment alternatives. But Commercial Real Estate Licensees are not the best or only experts qualified to give such advice and other important real estate experts have been excluded from the exemption as contemplated by NAR's application for exemptive relief.

In order to improve the protection to the investors the law needs to be changed to provide a system that will encourage REPs to continue their involvement in their client's decision making process, to insure their continued involvement would require an exemption that would allow them to earn compensation for providing their expertise by including them as a class of professionals who are eligible for the exemption requested in NARs application for exemptive relief.

EXEMPTION SHOULD INCLUDE REL WHO SELLS THE UP LEG IN A 1031 EXCHANGE. The most important REL to the real estate investor is the REL who sold his relinquished property. It is not in the best interest of a real estate investor to require him to change RELs to fit some arbitrary definition for who is competent to assist an RR with the RELs client. The person best suited to assist him with the overall analysis of replacement properties is the REL who has already been working with him for several months while listing and marketing his original relinquished. It is not in the client's best interest to deny him the expertise of the REL who he has come to rely upon for advice and analysis on how to purchase a replacement property that will suit his needs. If a REL sold the relinquished property for his client, he has already spent months searching for replacement properties through out the listing period. The REL who listed his original property has just sold an investment property in the price range of the new property the client is seeking. He is the REL who is best suited to make a side by side comparison of the real estate attributes of a securitized TIC to the attributes of the other direct and non-securitized TIC properties that his client is considering. Because he is the person who found the properties other properties being included in the client's comparison, it is his input on his client's decision that is valuable to the best interest of the investor. The exemption must include the services of the REL who assisted with the up-leg of the 1031 exchange to insure that he will continue to provide his expertise and continue to be involved with his client's analysis of all appropriate real estate investments including securitized TICs. In order to encourage the client's chosen Real Estate Advisor to continue to serve the best interests of his client after the TIC opportunity is introduced, he must be included as one of the RELs who can be compensated under the NARs request for exemptive relief. Allowing him to be compensated for his value will help him keep his advice about his client alternatives unbiased.

Of all people the REL who assists his client with the up leg of his 1031 exchange should be included as a REL eligible for the real estate advisor's exemption. It would clearly not be in his client's best interest to have him excluded from the client's decision making process just because a securitized TIC becomes one of the client's choices. It makes no sense whatsoever to have him replaced by some CREP who does not know the client or the other properties being vetted by the up-leg REL just because the CREP has a few more letters behind his name.

EXEMPTION SHOULD INCLUDE OTHER REAL ESTATE PROFESSIONALS (REP)S WITH SUBSTANTIAL EXPERTISE IN REAL ESTATE TRANSACTIONS. There are a number of other Real Estate Professionals (REP)s who have credentials or expertise that match or exceed those of the CREPs described in the NAR request. Attorneys, certified public accountants, and certified financial planners are REPs who should be included in the exemption request as REPs who are eligible to collect Real Estate Advisory fees when they provide advice to their clients on TIC transactions.

Other RELs have completed additional education, or have completed a substantial credentialing program and/or experience that matches or exceeds the expertise of the CREPs described in the NAR exemption request. These REPs include business brokers, certified business intermediaries, merger and acquisition advisors, RELs who actively own and operate their own real estate investments, RELs who have served on corporate real

estate acquisition teams, and RELs who are also MBAs, RELs who are also finra RRs. These REPs should also be included in the exemption request as REPs who are eligible to collect Real Estate Advisory fees when they provide advice to their clients on TIC transactions.

Attorneys, certified public accountants, and RRs who are also dual licensed as RELs should be included as REPs who are eligible to collect the Real Estate Advisory fees described in the NAR request for exemptive relief when they provide advice to their clients on TIC transactions.

The REPs listed above are already trusted professionals who investors hire to assist them with a financial analysis for their investment decisions including the pros and cons of purchasing a TIC investment as replacement property for their 1031 exchanges. In the current environment the clients of these REPs pay them a fee in additional to the fees and commissions paid through the finra. Investors who retain these REPs end up paying more for the purchase of their TIC investments then those who rely on the sole advice of their RR. If the SEC allows an exemption as described in the NAR request for exemptive relief without including the above-described REPs, they would be encouraging investors to abandon these most competent and unbiased advisors for the advice of CREPs, because it will be less expensive for the client to use a CREP for his investment advice instead of their trusted and competent attorney or CPA. It would be in the best interest of investors to include these professionals as REPs who will be allowed to receive a Real Estate Advisory Fee under the exemption requested by the NAR, thus making the cost of purchasing a TIC investment equal no matter which of these REPs they choose to work with.

<u>RELS WHO DO NOT QUALIFY UNDER THE NAR REQUESTED EXEMPTION.</u>
III (3) (b) precludes a REP from sharing a "Real Estate Advisory Fee with any person not permitted to receive such Fee under the requested exemption". This prohibition is not in the best interest of real estate clients.

Under the real estate system an inexperienced agent may not execute a transaction "outside their field of competence unless they engage the assistance of one who is competent". An inexperienced REL with a strong client relationship will often partner up with an experienced REL who can compensate his jr. partner for assisting the experienced REL on his client's transaction. Under this provision the CREP would be prohibited from compensating his jr. partner and may prevent the jr. partner from seeking help on anything except the direct real estate or non-securitized TICs opportunities where he can be paid. It would be in the interest of the investor to allow CREPs to compensate their jr. partner RELs for assisting them in providing the Real Estate Advice subject to the exemption. The exemption could be similar to that paid on real estate transactions to licensed sales assistant

<u>EXEMPTION SHOULD NOT BE BASED UPON A DOLLAR AMOUNT.</u>
Using a dollar amount would be an arbitrary and non-comparable measure for judging a RELs competence to examine any particular transaction: a) it would take an REL on either coast only one or two transactions to meet a dollar requirement that would require multiple transactions for a REL in less populated areas of the country. b) investment property sales

have long lead times and an experienced and competent broker may not do a lot of transactions, and c) the larger and more complicated transaction the more likely it will be that the parties will have their own in house due diligence teams and RELs on large transactions might actually get less involved in the due diligence activities of a property transaction then the REL involvement required for smaller transactions.

It is far more important to look at the strength of the REPs relationship to his client (such as the REL who sold the up-leg of a 1031 transaction) and the quality of his skill set than how many transactions the REL has closed and at what dollar amount over some 10 year period.

THERE IS NO BRIGHT LINE TEST FOR WHETHER A PROPERTY QUALIFIES FOR 1031 TREATMENT. II (B) (1) (b) of the NAR request that the **"**TIC must qualify as a 'replacement property" for purposes of the IRC Section 1031 exchange, regardless of whether the client is purchasing the TIC Security for that purpose." Who is going to make that determination? 1031 practitioners depend upon legal opinions to determine the level of risk an investor will be exposed to. These legal opinions provide varying levels of confidence for whether a property or TIC will qualify as 1031 replacement property. These lawyers might tell us the property could of, should of, would of, more likely will or will not, but they never say the investment will "definitely" qualify as replacement property. Part of the due diligence performed by the RR is to explain to what extent a client can rely on these legal opinions.

The General Conditions of whether a REP can participate and receive compensation as a Real Estate Advisory to a TIC investment can not require that the TIC must qualify as a "replacement property" for 1031 purposes.

EXEMPTION SHOULD APPLY TO MORE TYPES OF SECURITIZED REAL ESTATE TRANSACTIONS: TICs are only one type of real estate investment subject to different treatment between state laws and federal securities. The same rules that will be put into place for RELs selling TIC investments should apply to the other private placement investments that RELs believe they can sell with their state real estate licenses even though even though federal securities laws require a sales person to be registered with through a finra broker-dealer.

The NAR request for exemptive relief should be expanded to include REPs who advise upon and sell real estate investments that are membership interests in Delaware Statutory Trusts, multiple properties that are packaged as securities and sold to a single investor, single properties that are packaged as securities and sold to a single investor, membership interests in Limited Liability Companies, Partnerships, S Corporations or any other fractional interest in business or real properties that they are allowed by their state laws to sell under their real estate licenses but are investment contracts or private placements investments under federal securities law.

WHAT IS A SECURITIZED TIC? When this exemptive relief is granted to REPs the quality of advice provided to real estate investors on securitized TICs will improve exponentially. The major problem with this application is that the exemption will apply rules for selling a product that has never been clearly defined.

How can a REP tell whether he is vetting a securitized TIC which will require him to follow the rules set forth in the Real Estate Advisor exemption, will require him to limit his discussions related to this TIC to people who qualify as accredited investors, which will require him to enter a Buyers Agent Agreement and to work through a finra RR according to the provisions of the SEC's Real Estate Advisors exemption.

How can a REP tell whether he is vetting a non securitized TIC where he is not subject to the oversight of securities laws, where he can operate under his real estate license? How can he be sure he has a real estate transaction that allows him to work with non-accredited investors, to work directly with the TIC sponsor? Can the REP be certain that he is not required to provide to and study with his client volumes of written due diligence materials that must be delivered with securitized TICs?

In some respects it is easier for the RR who is not also a REP. He is only allowed to sell securitized TICs that can be found on his firm's approved selling list. He can sure that those TICs are securities and that he is allowed to sell them? I is harder to tell when a TIC is not a security. What happens when the RR is approached as a REL by a TIC sponsor who claims that his TIC property is not a security? Can the RR/REP work under his real estate license on a TIC program whose sponsor provides him with a legal opinion written by a very large and well respective law firm that the TIC program is not a security that must be marketed through the finra broker-dealer network? What are the responsibilities of his broker dealer, his compliance department, and his supervising principal for the RR/REP's sales activities related to a TIC can not be brought into, reviewed and sold by firm because it is being sold as real estate and has been approved for sale as real estate by his real estate firm? Is it in the clients' best interest for finra BD's to prohibit their RR's from selling what might be a real estate good alternative because they don't know whether to believe these legal opinions?

Notwithstanding the legal opinions, many of these TIC programs resemble the definition of an "investment contract" under the "Howey" case. The only No Action Request asking the SECs for an opinion about whether their NNN arrangement prevented them from being classified as a security was turned down. The non-securitized TICs that are being sold through REPs do not ask for SEC No Action Letters. So there are no clear guidelines about what kind of a structure clearly creates a non-securitized TIC. Because of these uncertainties RRs don't trust the legal opinions associated with non-securitized TIC programs and their firms prohibit them from selling non-securitized TICs even in their outside businesses. Because they are structured as real estate with big time legal opinions realtors sell them instead of chasing down securitized TICs. Neither is situation good for the investor who is being denied access to a full spectrum of available real estate programs, due to his advisors licensing conflicts.

To approve this exemption request without giving us a definition that can help us to tell when we are working with a securitized TIC only touches the tip of the ice berg. In anticipation of the approval of this exemption request, several large non-securitized TICs are preparing to switch over to the securitized TIC platform. But new non-securitized TIC sponsors are already marketing heavily to REPs and RR/REPs trying to replace the void that will be created by those who are leaving the non-securitized platform. They are entering the market using the same legal arguments trying to work around "Howey".

Unless and until the SEC provides some guideline telling us which elements of the "Howey" structure could be revised or omitted to confidentially create a non-securitized TIC, REP's do not have the information they need to adequately represent their clients as their advices relates to non-securitized TICs. And it is impossible to determine the consequences to their clients.

In order to provide better guidance about how to resolve licensing conflicts for REPs who sell TICs and to create a regulator system that encourages RRs and REPS to work together to better protect their clients, the RRs, REPs and their firms need to be able to identify a non-securitized TIC when they see one. We ask the SEC to include a clear definitive of a non-securitized TIC as a case study with their approval of this request for exemptive relief.

CONCLUSION: We support the National Association of Realtors Request for Exemption from Registration Under Section 15(a)(1) of the Securities Act of 1934. We believe that it would be in the best interests of real estate investors to encourage experienced REPs to advise their clients on securitized real estate transactions including TICs and to be fairly compensated for the services they provide. In this letter of comment, I have made several suggestions that I believe will make the implementation of this exemption work more smoothly between the differing cultures of the real estate and securities industries and provide better protections for investors.
We respectfully submit our recommendations along with the reasoning upon which we based these recommendations. Although NARs request was thorough and well thought out, it contains some misunderstandings about how the securities industry works. NARs exemption was clearly drafted with protection of real estate investors in mind and I agree with all of the points contained therein but for the revisions that I discussed through out my comment letter.

It is in the best interests of real estate investors to allow their REL's and RR's to work together using a system similar to the one I described in this comment letter to deliver unbiased investment choices to their clients.

We ask the Commission to consider our comments and approve an exemption that would allow REPs (as defined in this comment letter) and their firms to receive Real Estate Advisory Fees (as defined in this comment letter) as soon as possible. We thank you for your consideration on this matter.

Sincerely,

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Cheryl A. Lane
DocuSigned By: Cheryl A. Lane

Cheryl A Lane, President
Chrysalis Capital Group LLC