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December 21, 2007

By Electronic Mail

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

Re: **File No. S7-26-07**
Release No. 34-56779; 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 Ms. Morris:

This letter is submitted on behalf of Spectrus Real Estate Group ("Spectrus"), one of the largest originators and marketers of Tenant-in-Common ("TIC") securities, in response to the request by the Securities and Exchange Commission (the "Commission") for comments on its above-referenced November 7, 2007 release.

We appreciate this opportunity to comment on the proposed exemption (the "Exemption"), which would allow a licensed real estate agent or broker who is predominantly engaged, and has substantial experience, in the commercial real estate market, and the real estate brokerage firm by which such agent or broker is employed, to receive compensation for the sale of a TIC security without registration as a broker-dealer under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

GENERAL

TIC securities stand at the intersection of real estate and securities investments. As an economic and financial matter, they are an important element of many real estate investors' portfolios, as they provide a means to achieve diversification and mitigate risk in what otherwise are large and "lumpy" investments.¹ As a regulatory matter, TIC securities implicate federal securities laws as well as state real estate regulations.

Spectrus favors the proposed Exemption and believes that, in crafting it, the Commission's staff (the "Staff") has adroitly bridged the regulatory gap between the real estate and securities industries, and has achieved an appropriate balance, taking into account their respective regulatory interests, as well as the needs and preferences of industry participants and investors. If adopted, the proposed Exemption would afford TIC investors the protections of the federal securities laws, while at the same time affording them access to professionals having the specific real estate expertise that is invaluable to investors in making informed investment decisions. Providing a method by which real estate professionals may participate in the sale of TIC securities without concern that they are violating the federal securities laws will provide a number of benefits to investors and the industry alike.

First, the Exemption can be expected to increase the number of investors investing in TIC securities by making the expertise of real estate professionals available to a class of investors who heretofore have avoided TIC investments because they were not aware of the existence or availability of TIC securities, or by whom TIC securities were never seriously considered because their real estate advisors had no incentive to explore TIC securities with them. In a similar vein, the effectiveness of existing TIC investors will be enhanced as they gain the benefit of access to and counsel from real estate professionals with greater expertise than their own. Finally, as noted above, the ability of real estate investors to achieve broader diversification and greater risk mitigation through investment in TIC securities can be expected to increase investor satisfaction overall. All of these changes should dramatically increase the efficiency of the market for TIC securities, as well as the overall breadth of that market, with concomitant benefits to both real estate and securities professionals and the overall real estate market.

INVESTOR PROTECTION

Spectrus is aware of the concern raised by some current participants in the TIC securities industry—that permitting real estate professionals who are not registered securities broker-dealers to participate in this market would expose investors to additional

¹ By purchasing TIC securities, a real estate investor can, for example, buy ten separate 10% interests in ten different properties, rather than one 100% interest in one property. This means that, for any given aggregate dollar investment, an investor can achieve a breadth of diversification—by location, property type or otherwise—and mitigate risk, in a way that is simply not possible through whole property or other direct real estate investments.

(and undue) risk and set the stage for potential abuse. In light of the contours of the proposed Exemption, Spectrus does not believe that such concerns are well-founded. The proposed Exemption is narrowly crafted to achieve its stated purpose. It is true that the Exemption would permit real estate professionals and their brokerage firms to receive compensation from TIC securities transactions without requiring broker-dealer registration under Section 3(a)(4)(A) of the Exchange Act, but that would occur *only if* these real estate professionals otherwise meet its requirements. Significantly, all *other* provisions of the Exchange Act and of the Securities Act of 1933 would continue to apply to TIC securities transactions without regard to the Exemption. These provisions include, among other things:

- Restrictions on general solicitation;
- Requirements as to investor suitability;
- Minimum qualifications for purchase of private placement securities; and
- Best execution requirements.

Perhaps most importantly, the anti-fraud provisions of the federal securities laws will remain in full force and effect.

The protections inherent in these and other applicable statutory and regulatory provisions have been developed and refined by the Commission over the last seven decades. Spectrus believes that, even absent broker-dealer registration, and in light of the other requirements of the proposed Exemption, the investor protection purposes of the federal securities laws will continue to be amply fulfilled. In fact, the Exemption would provide a new level of investor protection by making available to potential TIC securities investors a reservoir of knowledge and experience in real estate matters to which they do not now have any practical access. Such access is critical for the informed and effective evaluation of TIC securities, as well as other sorts of real estate investments and, therefore, for the effective functioning of these markets.

RESPONSES TO SPECIFIC REQUESTS FOR COMMENT

1. Definition of “Substantial Experience”

The Staff has asked for comment as to the appropriateness of the proposed definition of the term “substantial experience in commercial real estate.” Spectrus believes that in order for the Exemption to achieve the proper balance of regulatory interests, it must provide a clear and objective standard against which to measure real estate professionals’ experience. Spectrus also believes that such a standard must take into account the significant differences between residential and commercial real estate transactions.

Either of the proposed alternative definitions of “substantial experience in commercial real estate” appropriately recognizes the centrality of *commercial* real estate experience. However, in the interest of clear application, Spectrus believes that the first

alternative definition—receipt of a Certified Commercial Investment Member designation or equivalent experience, or past participation in the specified array of commercial real estate transactions within the stated time periods—is preferable. In addition, in Spectrus’ view it is important to build into the definition sufficient flexibility to permit its application over an extended period of time and changing economic conditions, including inflation and other changes in price levels. To that end, Spectrus believes that it would be appropriate that the quantitative factors embedded in the definition—number and dollar value of transactions over a stated period to time—be subject to revision every few years (perhaps ten), in accordance with an appropriate real estate index. Such periodic updating would be consistent with the schedule of reassessments in most local tax jurisdictions and, therefore, would take into account changes in property values as they affect the Exemption’s “substantial experience” definition without the need for additional rulemaking.

Finally, Spectrus believes it important that the definition of the term “substantial experience” be based upon broad and well-established standards. The National Association of Realtors (“NAR”) is the nation’s largest trade association for real estate professionals and, as such, has long and extensive experience in developing professional standards. Therefore, in Spectrus’ view it is appropriate to look to NAR’s standards as the basis for the “substantial experience” standard under the proposed Exemption and that reliance on the standards of other groups is neither necessary nor, in the interest of clarity and consistency, desirable.

2. Definition of “Predominantly Engaged”

One of the threshold requirements of the proposed Exemption is that a Real Estate Advisory Fee only may be paid to a Real Estate Professional who is “predominantly engaged in the sale of real estate other than TIC Securities.” However, the text of the proposed Exemption does not define this phrase or provide a threshold against which to measure the predominance of real estate sales, although the Commission’s release does request comment on whether as definition is appropriate. Spectrus believes that a clearly defined standard is critical because it will provide a bright line for, and therefore eliminate any guesswork in, determining eligibility under this criterion. However, in Spectrus’ view, the 85% standard included by way of example in the Request for Comment would be unduly and unrealistically restrictive. Instead, Spectrus believes that a Real Estate Professional should be deemed to be “predominantly engaged” in the sale of real estate other than TIC Securities if non-TIC real estate transactions accounted for more than 50% of such Professional’s net real estate-related commissions earned during the preceding 12 months. In Spectrus’ view, this standard is sufficiently strict to ensure an appropriate level of engagement and experience in the non-TIC securities real estate market, but is not so stringent as to prevent reliance on the proposed Exemption and, therefore, participation in the TIC securities industry, by a large number of well-qualified real estate professionals.²

² See, e.g., 12 C.F.R. §701.34 (2007) (defining the term “predominantly” as a “simple majority”).

3. Commercial Real Estate Professional's Representation

The Staff has asked for comment as to whether the Exemption should be conditioned on the inclusion, in the buyer's agent agreement, of a representation that the Commercial Real Estate Professional ("CREP") who is to receive or share a Real Estate Advisory Fee has substantial experience in commercial real estate. In Spectrus' view, inclusion of such a representation is an appropriate mechanism to ensure compliance with the substantial experience condition of the proposed Exemption, while not placing an undue burden on TIC transactions.

4. Exemption as an Incentive to Favor TIC Securities

The Staff has noted that the Exemption, if granted, could create an incentive for CREPs to sell TIC securities instead of non-security forms of real estate to their clients and has asked for comment on various ramifications of such an incentive. Spectrus expects that the most important factor weighing in favor of adoption of the Exemption is that it will, for the first time, provide CREPs with the ability to expose their clients to TIC securities. As noted above, TIC securities provide real estate investors with a vehicle to enhance the diversification of their portfolios and mitigate investment risk; the availability of the Exemption should open TIC securities real estate investments to a broader range of investors than has been the case previously. At the same time, the Exemption will ensure that TIC securities investors enjoy the important investor protections available under the federal securities laws. To the extent that, for market reasons (including differential commissions and fees), non-TIC assets represent a "better" investment, this fact should effectively neutralize any preference for TIC securities. Spectrus strongly believes that the matter of the level of fees on TIC and non-TIC products should be left to determination by the market.

5. Broker-Dealer Obligations

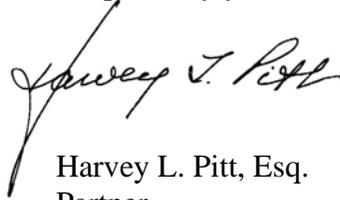
The Staff has asked for comment on whether broker-dealers' obligations under the proposed Exemption are appropriate or should be modified. As noted above, in Spectrus' view the Staff has arrived at an appropriate balance among the competing interests of federal securities regulation, state regulation of real estate professionals, and TIC investor access to the advice of real estate professionals. Therefore, Spectrus does not believe that there is any need to modify the obligations of either securities or real estate professionals as set forth in the proposed Exemption.

CONCLUSION

Spectrus believes that adoption of the proposed Exemption is critical to real estate investors. It will ensure the application of the protections of the federal securities laws to investors in TIC securities, which in turn provide investors with an important tool for diversification and risk mitigation. Spectrus is supportive of the Commission's efforts and looks forward to the prompt adoption of this exemptive relief.

Should the Staff have any questions concerning this submission, please feel free to contact me at 202-721-0000 or John Sampson at 908-601-5251

Respectfully yours,



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Partner
Kalorama Legal Services, PLLC