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January 8, 2008

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

Office of Management and Budget
Attn: Desk Officer, Securities and Exchange
Commission
Office of Information and Regulatory Affairs
Washington, DC 20503

Re: 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; File No. S7-26-07

Dear Ms. Morris:

On behalf the 1.3 million members of the National Association of REALTORS® (“NAR”), including over 70,000 commercial real estate professionals of the REALTORS® Commercial Alliance, I am writing in response to the request for comments published by the Securities and Exchange Commission (“SEC” or “Commission”) in SEC Release No. 34-56779 (November 9, 2007) (the “SEC Release”) on NAR’s request for exemptive relief dated October 11, 2007 (the “NAR Exemption Request”). NAR requested that the SEC grant an exemption from the broker-dealer registration requirements of Section 15(a)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”) and from the reporting and other requirements specifically imposed by the Exchange Act, and the rules and regulations thereunder, on a broker or dealer that is not registered with the Commission (except Sections 15(b)(4) and 15(b)(6) of the Exchange Act), pursuant to Sections 15(a)(2) and 36(a) of the Exchange Act, to any licensed real estate agent and/or broker who has substantial experience in commercial real estate (a “Commercial Real Estate Professional”) and the real estate brokerage firm with which such Commercial Real Estate Professional is licensed (a “Real Estate Firm”) (referenced together,

when appropriate, as a “RE Participant”) that receives a fee for providing real estate services (a “Real Estate Advisory Fee”) from a purchaser of an undivided tenants-in-common interest in real property (a “TIC Interest”) that is offered and sold together with other arrangements that cause it to be deemed to be a security under the federal securities laws (a “TIC Security”) in the circumstances and subject to the conditions set forth in the NAR Exemption Request (the “Proposed Exemption”).

NAR urges the SEC to expeditiously approve the Proposed Exemption. We believe that the Proposed Exemption provides a sound workable proposal to address the unique characteristics of TIC Securities, the sale of which are both a securities and a real estate transaction under state securities and real estate laws. We believe that the Proposed Exemption appropriately allocates the responsibilities to the investor between the Commercial Real Estate Professional and securities broker-dealer in a manner that is workable, not unduly burdensome and in the best interests of investors.

RESPONSES TO SEC REQUEST FOR COMMENTS

Is the application’s definition of “substantial experience in commercial real estate” appropriate? Should “substantial experience in commercial real estate” be defined differently? If so, how?

NAR believes the definition of substantial commercial real estate experience contained in the Proposed Exemption¹ is more than adequate to provide guidance to RE Participants in complying with the exemption and in limiting the claim of exemption to those real estate professionals with substantial experience in commercial real estate. Many Commercial Real Estate Professionals have extensive real estate experience encompassing both residential and commercial real estate, and will often shift their focus between the two as market conditions change. In setting transactional thresholds, NAR acknowledges that specific transactional benchmarks in commercial real estate are useful indicia of the experience necessary to provide real estate services in connection with TIC Security properties.² As described in footnotes 34 –

¹ See, footnote 3 of the SEC Release and footnote 41 of the NAR Exemption Request, as follows: “For purposes of this exemption, a Commercial Real Estate Professional will meet the ‘substantial experience’ requirement if the person (1) has received a designation as a CCIM, SIOR, or ALC; (2) has education and transaction experience that is equivalent to those required to obtain those designations; or (3) has participated in at least 5 commercial real estate transactions having an aggregate value of at least \$3 million in the prior five years or at least 10 commercial real estate transactions having an aggregate value of at least \$10 million in the prior 10 years, including 3 transactions in the prior 3 years. A Commercial Real Estate Professional may also meet the “substantial experience” requirement based on a combination of at least two of the following factors: education in commercial real estate; the length of time during which the person engaged in commercial real estate transactions; the dollar value of commercial real estate transactions in which the individual has participated; and the number of commercial real estate transactions in which the individual has participated.”

² We do not believe that the real estate services provided by a Commercial Real Estate Professional to a client in connection with a TIC Security transaction come within the definition of “investment adviser” in Section 202(a)(11)

36 of the NAR Exemption Request, the CCIM, SIOR and ALC designations (as defined in the NAR Exemption Request) are nationally-recognized designations that require completion of both significant analytical course work and actual real estate transactional experience benchmarks that demonstrate objectively that the Commercial Real Estate Professional has “substantial experience in commercial real estate.” The presence of these designations, the achievement of equivalent education and transactional experience through non-NAR designation programs, or the accomplishment of the specific enumerated transactional experience provide objective standards for the Commercial Real Estate Professional to determine whether he or she meets the “substantial experience” requirement. In situations where a Commercial Real Estate Professional does not meet these objective standards, the Professional must nonetheless conclude in good faith that he or she satisfies the “substantial experience in commercial real estate” requirement through a combination of at least two of the four subjective factors contained in the definition.

Should a Commercial Real Estate Professional be considered to have “substantial experience in commercial real estate” if she or he meets a combination of two subjective factors (such as education and dollar value of transactions), or should substantial experience only be demonstrated by the specific education or transactional benchmarks enumerated in the Application?

NAR does not believe that the “substantial experience” requirement should only be demonstrated by the proposed objective standards because not all of the qualified Commercial Real Estate Professionals have education and transaction experience that fit neatly within the objective standards. Therefore, the enumerated four subjective factors are intended to provide standards by which a Commercial Real Estate Professional may determine in good faith that he or she satisfies the “substantial experience in commercial real estate” requirement through a combination of at least two of four subjective factors in situations where the Commercial Real Estate Professional does not have the combination of educational and transactional experience qualifications equivalent to the CCIM, SIOR, or ALC designations and does not have transactional experience that precisely satisfies the objective standards. For example, a Commercial Real Estate Professional may have taken relevant educational courses that were not part of the program of the referenced NAR designations and also have engaged in commercial real estate transactions in a smaller market where property values tend to be lower than larger markets. As stated at footnote 32 of the NAR Exemption Request, more than a thousand universities, colleges and junior colleges offer courses in real estate and that, at some, a student can earn an associate’s or bachelor’s degree with a major in real estate. Moreover, it appears that certain Real Estate Firms have dedicated training departments that provide extensive formal in-house training programs and continuing education.³ We believe that a Commercial Real Estate Professional that completes relevant educational courses or earns a degree in real estate and also has other relevant commercial real estate transactional experience under the four subjective

of the Investment Adviser’s Act of 1940 (the “Act”) and that such services, in any event, come within the exemption provided by Section 202(a)(11)(C) of the Act.

³ See, comment letter of Matthew D. Schwartz (Dec. 11, 2007).

factors may reasonably conclude that he or she satisfies the requirement of “substantial commercial real estate experience.”

Should the quantitative factors included in the application’s definition of “substantial experience in commercial real estate” be periodically adjusted for inflation? If so, how often and which measure of inflation should be used?

The purpose of the benchmarks included in the definition is to demonstrate commercial real estate knowledge through transactional experience. Each real estate market is different, and property values may be volatile regardless of inflation trends. We do not believe that the quantitative factors should be adjusted for inflation as the benchmarks are minimum standards that will continue to demonstrate (regardless of the affect of inflation) that the real estate professional is sufficiently experienced in commercial real estate to provide the commercial real estate services contemplated by the exemption.

Are there education and experience designations from groups other than those affiliated with NAR that would be appropriate to name specifically as evidencing “substantial experience in commercial real estate”?

NAR recommends that designations that provide an objective basis for determining whether a real estate professional satisfies the “substantial experience in commercial real estate” test be limited to certificate or other designation programs that focus on training in the analysis, management, and brokerage of commercial real estate and require the completion of both substantive educational requirements and transactional experience. The CCIM, SIOR and ALC designations are well-established and nationally-recognized designation standards that provide such an objective basis for satisfying the requirement for “substantial experience in commercial real estate.” While the proposed definition would permit a Commercial Real Estate Professional to meet the experience requirement based on “education and transaction experience that is equivalent to those required to obtain . . .” the CCIM, SIOR and ALC designations, we are not currently aware of any other equivalent designation requirements. However, the Exemption Request is not intended to be limited to Commercial Real Estate Professionals who have received the CCIM, SIOR or ALC designations nor solely to members of NAR. We believe that there are other designations (e.g., the “MAI” designation granted by the Appraisal Institute) and, as described above, other relevant educational opportunities, degrees and certifications that may be combined with one of the other subjective factors in order to satisfy the requirement for “substantial experience in commercial real estate.”

Should the exemption include a quantitative threshold to describe when a Commercial Real Estate Professional would be “predominantly engaged” in the sale of real estate other than securities? If so, what should that threshold be? For example, should 85% of the dollar value of

a Commercial Real Estate Professional's sales during one or more prior calendar years be in real estate other than TIC securities in order to meet the predominance requirement?

NAR anticipates that the requested exemption for Commercial Real Estate Professionals will only be relied upon by individual Professionals on an intermittent basis. Therefore, we acknowledge that a Commercial Real Estate Professional whose business activities are more focused on TIC Securities transactions than on non-securities activities should register as an associated person of a broker/dealer and to that end included in General Condition (1).a. on page 13 of the Exemption Request the requirement that the exemption apply only to those Commercial Real Estate professionals "predominantly engaged in sales of real estate other than TIC Securities." On further consideration, and in light of the SEC's reference to the 85% standard in SEC Rule 3b-18 as "85% of the dollar value of a Commercial Real Estate Professionals sales during one or more prior calendar years be in real estate other than TIC securities," we have concluded that the condition is inappropriately narrow. We are concerned that the proposed standard of "sales of real estate other than TIC Securities," particularly if subject to an 85% standard, does not take into account all of the non-securities real estate business activities of a Commercial Real Estate Professional. Such other activities may include Real Estate Firm management, property management and development, appraisal and other property services. Therefore, we recommend that General Condition (1).a. be revised to require that a Commercial Real Estate Professional be "predominantly engaged in real estate business activities other than sales of TIC Securities." We believe that this change would be consistent with the purpose of the condition.

We also believe that the standard for determining whether a Commercial Real Estate Professional is "predominantly engaged in real estate business activities" not related to the sale of TIC Securities should remain a qualitative standard that allows a Commercial Real Estate Professional to compare, as applicable, the number or the dollar amount of non-securities real estate and TIC Securities transactions, the commissions and other fees earned for such transactions and other non-securities real estate business activities, and the time allocated between TIC Securities and non-securities real estate transactions during one or more prior calendar or rolling-12 month periods in order to determine whether the Professional continues to be predominantly engaged in real estate business activities that are other than TIC Securities transactions.

In particular, we believe that a quantitative standard is unnecessary in light of the small number of annual TIC Securities offerings, which make it unlikely that an individual Commercial Real Estate Professional would have the opportunity to provide real estate information on TIC Securities with sufficient frequency to call into question whether the Commercial Real Estate Professional should be registered under the securities laws. As stated in footnote 12 of the SEC Release, there were approximately 312 TIC Securities offerings in 2006, with approximately 17 participants per offering. For analytical purposes, the SEC estimated that an individual Commercial Real Estate Professional may, at most, engage in a TIC security transaction 6.63 times per year. However, such analysis was solely for purposes of estimating the reporting and recordkeeping burden. As stated in footnote 12 of the SEC Release, "The

Commission recognizes that it is highly unlikely that all TIC Security transactions would involve a RE Participant pursuant to the requested exemption in light of the existing broker-dealer sales channel for TIC Securities.”

Should the exemption be conditioned on the buyer’s agent agreement including a representation that the Commercial Real Estate Professionals to sell TIC who receives or shares a Real Estate Advisory Fee has substantial experience in commercial real estate?

As stated at page 18 of the NAR Exemption Request, “We also believe that the Buyer’s Agent Agreement should include a representation by any Commercial Real Estate Professional who is to receive or share in the Real Estate Advisory Fee that the Professional has substantial experience in commercial real estate.” We also, as a related matter, recommended at pages 17 and 18 of the Exemption Request, that the Buyer’s Agent Agreement include other relevant disclosures and suggested language for such disclosures in footnotes 44 – 46.

Is there a possibility that the exemption, if granted, could create an incentive for Commercial Real Estate Professionals to sell TIC Securities instead of non-securities forms of commercial real estate investments to their clients? Are there countervailing factors that would mitigate or neutralize such an incentive? Should the possibility of any such incentive be addressed by one or more conditions, for example, by requiring the Commercial Real Estate Professional to disclose in the buyer’s agent agreement the various fees they would receive for selling TIC Securities and non securities investments? Are there other conditions that could address this incentive?

NAR anticipated that the Buyer’s Agent Agreement would disclose the various fees to be charged by the Commercial Real Estate Professional for providing real estate services to the client in connection with the purchase of the different types of securitized and non-securitized real estate being considered by the client. We understand that such disclosure would be consistent with general practice for the content of a Buyer’s Agent Agreement.

In considering the SEC’s request for comment on whether the Proposed Exemption would create an “incentive” to a Commercial Real Estate Professional to “sell” TIC Securities instead of non-securities forms of commercial real estate, we believe that it is important to recognize that the Proposed Exemption does not authorize a Commercial Real Estate Professional to “sell” a TIC Security to his or her client as this question would imply. The Proposed Exemption permits only a limited role for the Commercial Real Estate Professional to provide real estate analysis and information to his or her client on non-securities and securities properties and, if the client expresses an interest in a specific TIC Security property, would require that the Professional refer the client to a registered broker/dealer who would be responsible for the “sale” of the TIC security to the client. In that context, we believe the existence of the Proposed Exemption will provide an opportunity for a Commercial Real Estate Professional to present information to appropriate clients on the availability of an alternative investment in a TIC Security. However, we do not believe that the Proposed Exemption would provide an incentive for a Commercial Real Estate Professional to offer information to his or her client on TIC Security properties instead of non-security properties. In particular, we believe

that the Real Estate Advisory Fee to be received by a Commercial Real Estate Professional in compliance with the Exemption will not encourage the Professional to offer information on TIC Securities rather than non-securities properties because the Real Estate Advisory Fee structure is likely to favor non-security forms of real estate due to the fact that the commission on TIC Securities properties is generally based on a percentage of the equity invested, whereas the commission on non-security forms of commercial real estate is generally based on the property's total purchase price.⁴

Are the proposed conditions that would impose obligations on registered broker dealers appropriate? Would they be sufficient to accomplish the desired goals, including maintaining investor protection? Should any be eliminated or modified, or should additional conditions be included?

We believe that the proposed conditions on the obligations of registered broker-dealers are appropriate for accomplishing the purpose of the Proposed Exemption.

OTHER COMMENTS

Set forth below are other comments on the Proposed Exemption. These include our recommendations for changes to the Buyer's Agent Agreement, an explanation of the written affirmation process related to the Selling Broker-Dealer's suitability obligation, and our views on the issue raised by other commenters on the responsibility of the RE Participant and Lead Placement Agent or Selling Broker-Dealer for compliance by the other parties.

The Buyer's Agent Agreement

As set forth above, the NAR Exemption Request recommended that the Buyer's Agent Agreement include a representation by any Commercial Real Estate Professional who is to receive or share in the Real Estate Advisory Fee that the Professional has substantial experience in commercial real estate. We also believe that the Buyer's Agent Agreement should include an "accredited investor" qualification questionnaire in order that a Commercial Real Estate Professional may determine whether his or her client, who has expressed an interest in purchasing a TIC Security, is an "accredited investor" under Rule 501(a)(1) of Regulation D⁵ and would qualify to purchase a TIC Security in compliance with the investor qualification requirements of Regulation D. In this connection, as described at page 5 of the NAR Exemption Request, the NAR anticipated that an offering of TIC Securities would comply with Rule 506 of SEC Regulation D. We also believe that such offerings may also in the future be conducted in compliance with proposed Rule 507 of Regulation D.⁶ Proposed Rule 507 would allow sales of

⁴ See, letters of Matthew D. Schwartz (Dec. 11, 2007) and Jack Hanlon (Dec. 4, 2007).

⁵ To the extent that the SEC adopts new Rule 507 of Regulation, the questionnaire may relate to the new standard of "large accredited investor." SEC Release No. 33-8828 (August 3, 2007); 72 FR 45116 (August 10, 2007).

⁶ SEC Release No. 33-8828 (August 3, 2007); 72 FR 45116 (August 10, 2007).

securities to a new category of “large accredited investors,” and would permit an issuer to publish a limited announcement of the offering.

The Suitability Determination and the Customer Affirmation Process

The Proposed Exemption includes an exception to the obligation of the Selling Broker-Dealer to perform a suitability analysis of the TIC Security transaction that would allow the Selling Broker-Dealer to nonetheless sell the TIC Security if the customer provides a written affirmation of his or her election to proceed with the TIC Security transaction notwithstanding the Selling Broker-Dealer’s determination. This customer “affirmation” process was intended to follow the process recently adopted by The Financial Industry Regulatory Authority, Inc. (“FINRA”) related to the sale of variable annuity contracts. New FINRA Rule 2821(c) allows a registered principal of a broker-dealer firm to approve the processing of a transaction if the customer affirms that he or she “. . . wants to proceed with the purchase or exchange of the deferred variable annuity.” As stated in FINRA Notice 07-53 (November 2007), “FINRA emphasizes, however, that the rule does not require broker-dealers to effect trades that they determine are not suitable; rather, the rule permits them to do so under the narrow circumstances discussed above. Thus, the rule has no effect on existing principles of law or contractual terms that allow a broker-dealer to decline the acceptance of an order.” The process in Rule 2821(c) requires that the customer’s affirmation and the registered principal’s authorization be documented and signed. We believe that the customer affirmation process that would be allowed under the Proposed Exemption should conform to that in Rule 2810(c).

The purpose of the customer affirmation process was intended to address the singular circumstances of investments in TIC Securities. In such cases, the investor’s “portfolio” is often largely concentrated in real estate and the purpose of the investment in a TIC Security is to effect a tax-deferred exchange of a previously-sold property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. As stated by FINRA in NASD Notice to Members 05-18 (March 2005), with respect to the suitability obligations of FINRA members under NASD Rule 2310 in connection with the sale of a TIC Interest, “In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of any facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.” We believe that there may be situations where the Selling Broker-Dealer may conclude that a purchase of a TIC Security is not suitable for the investor under the standards of NASD Rule 2310 given the investor’s concentration of investments in real estate. In these circumstances, we believe it appropriate that the investor should have the opportunity to nonetheless make an informed determination to purchase the TIC Security – particularly when the purchase is for the purpose of effecting a tax-deferred exchange.

Broker-Dealer and RE Participant Liability

Comments submitted to the SEC in response to the SEC Release have raised questions about the broker-dealer’s responsibility for compliance by the Commercial Real Estate Professional with the conditions of the Exemption and the effect on the Selling Broker-Dealer or Lead Placement Agent if the Commercial Real Estate Professional does not fully comply with

the Exemption.⁷ A similar question arises as to the RE Participant's responsibility for compliance by the Selling Broker-Dealer and Lead Placement Agent. The requirements of the Proposed Exemption are complex and RE Participants that provide real estate assistance to clients who may purchase TIC Securities and any Selling Broker-Dealer that sells a TIC Security to a client of a Commercial Real Estate Professional that is to receive a Real Estate Advisory Fee and the Lead Placement Agent are expected to establish procedures in order to comply with the requested exemption and to act in good faith to effect such compliance.⁸

We believe that a RE Participant that has procedures in place to comply with the Proposed Exemption should not lose the Exemption and become a "broker" under Section 3(4) of the Exchange Act as the result of any failure to comply with a specific requirement or condition, so long as the RE Participant acts reasonably and promptly to remedy the error upon its discovery. Moreover, any failure by one of the RE Participants should not affect the availability of the Proposed Exemption to any other RE Participant nor the ability of any Selling Broker-Dealer or the Lead Placement Agent to rely on the exemption for purposes of compliance with FINRA rules. Similarly, we also believe that any failure by a Selling Broker-Dealer to comply with the conditions of the Proposed Exemption that are applicable to a Selling Broker-Dealer should not cause a RE Participant to become a "broker" under Section 3(4) of the Exchange Act nor affect the ability of any other Selling Broker-Dealer or the Lead Placement Agent to rely on the Proposed Exemption for purposes of compliance with FINRA rules.

RESPONSE TO REQUEST FOR COMMENTS REGARDING THE PAPERWORK REDUCTION ACT

The SEC Release also requested comments on the impact of conditions of the Proposed Exemption that would require the collection of information. In general, we agree with the Commission's estimate of the maximum impact of the information to be collected by the Commercial Real Estate Professional, the Selling Agent and the Lead Placement Agent as set forth in footnotes 11 through 37 of the SEC Release. Our recommendation that the Proposed Exemption require that the Buyer's Agent Agreement include an accredited investor questionnaire should not change the Commission's analysis of the burden that may be imposed by the Proposed Exemption since it can be anticipated that the Selling Broker-Dealer would obtain a completed accredited investor questionnaire from a potential purchaser in any event. We do not believe that the Proposed Exemption imposes an unreasonable burden on the RE Participant, Selling Broker-Dealer or the Lead Placement Agent.

* * *

⁷ See, for example, Kathy Heshelov, CapWest Securities, Inc. (Nov. 13, 2007); Tom Antonopoulos, CapWest Securities (Nov 14, 2007).

⁸ NASD Rule 3010 requires that each FINRA member must establish written procedures to supervise the types of business in which it engages.

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We believe that the Proposed Exemption is appropriate in the public interest and is consistent with the protection of investors as a result of the policy considerations that recognize the role of real estate in a TIC Security transaction, the limitations on the activities of the Commercial Real Estate Professional, and the mandatory participation of a registered broker-dealer that will perform a suitability analysis before a transaction is effected. We respectfully urge the SEC to promptly approve the Proposed Exemption in the best interests of the investing public.

Very truly yours,

A handwritten signature in cursive script that reads "Suzanne Rothwell".

Suzanne E. Rothwell

cc: Joseph M. Ventrone, Vice President
National Association of Realtors[®]

Ralph W. Holmen, Associate General Counsel
National Association of Realtors[®]