

TO: U.S. Securities & Exchange Commission
FAX: *by attachment*
FROM: Kathy Heshelov
DATE: November 13, 2007
RE: File No. S7-26-07
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 securities licensed registered representative who handles Tenant in Common (TIC) investments and other 'Regulation D' private placements on a daily basis. I am also a commercial real estate broker with about 10 years of experience. I have written and published the first book (and so far, the only one) devoted to the subject of Tenant in Common investments, describing the pros and cons of these investment types, and whose purpose is to educate potential investors to the pitfalls and benefits. I belong to both NAR and TICA, as well as CCIM and other associations that are involved in commercial real estate. I came to the securities world from the commercial real estate world.

I would respectfully like to make several comments during this 'official comment period' on the NAR's request for exemptive relief.

I support the following scenario in its most basic precepts:

Investor X works with a commercial real estate representative and is conducting a 1031 tax deferred exchange (or decides he/she wishes to invest in passive income real estate). A TIC may be a suitable and positive investment choice, but the commercial real estate pro is unable to receive a referral fee, and hence he/she may not refer or suggest this investment type; further, the investor may indeed feel uncomfortable leaving a long-term relationship with the realtor to invest in a TIC through someone else.

By allowing a REFERRAL or advisory fee to be paid to the commercial realtor if and when the investor proceeds with a TIC could be a win-win-win situation: the investor (if qualified and suitable) is able to invest; the commercial realtor is able to receive a referral fee and could share his expertise on commercial real estate; and the TIC industry has gained a new investor (the registered rep, the broker/dealer and the TIC sponsor).

However, I am very concerned about several items in the NAR proposal:

- Item (2) e, page 5 of the **Securities and Exchange Release No. 34-56779; File S7-26-07**

states that a commercial real estate professional may discuss the real estate characteristics of a TIC property and arrange to inspect a property BEFORE introducing the client to the securities Broker/Dealer. I believe this is not at all appropriate. In the aforementioned client scenario, the suggested procedure would be as follows: the realtor would introduce the idea of a TIC investment to the client and if the client is interested in this potential, would sign a Buyers Agreement, and then the real estate professional would contact the securities representative. The securities representative would conduct both a suitability analysis and TIC education to ascertain if a TIC would be appropriate for the investor. Depending on the details of that investor's portfolio, lifestyle, age, goals for the investment, etc., then and only then, would actual properties be presented to the investor for consideration and shared with the real estate professional so that they may opine on the real estate if they wish. The securities professional must correctly and accurately sell a Regulation D investment and properly protect the investor. TIC investments are securities and as such, need to be sold as securities. It seems that many of the procedures and processes of the NAR proposal have the real estate agent handling the transaction from A to Z, but it should be a referral situation – the securities rep should run the transaction and be able to pay a referral fee to the real estate party. Selling a property incorrectly can have implications for the investor, for the sponsor in their offering under Reg D, and for the securities professionals – and by default, the SEC.

- If the Exemptive Relief is going to be granted by the SEC, I would strongly support a fee standardization or standard fee limit suggested by the SEC and NAR; for instance, '15%', or 'up to 15%' of the total commission for a Referral or Advisory Fee. If not, I fear that there will be bidding wars in this arena that will not serve the investor or the securities industry. In addition, this might address one of the questions the SEC raised: *is there a possibility that the exemption could create an incentive for real estate professionals to sell TICs instead of non-securitized real estate.* Standardization (a common referral fee limit) could help to stem this issue, while allowing a realtor to be rewarded for the referral. Clearly, if a commercial realtor believes TICs should become a strong part of their business, they should become securities licensed and sell them directly. Let's not take away the strength of the securities education and compliance issues from the professionals who have gone that route. Further, if the TIC property is sold correctly as a security and a referral fee is paid, then the amount of that fee should reflect the level of a referral fee, not more.
- Regarding the proposed Buyers Agreement between the investor and real estate professional, if the fee is standardized or suggested by the NAR and SEC, it would most likely facilitate the process of the Buyers Agreement. This proposed Agreement is signed before a referral occurs to the securities side and before any property is viewed, so it seems care should be made that a real estate professional doesn't include a fee higher than what could be paid or what may be accepted by the securities side in the agreement. It would seem that the NAR should be asked to craft a standard Buyers Agreement so that both the NAR and the SEC would be satisfied over the language and potential use. Such a standardized Agreement would help everyone involved avoid hazy or unclear situations that could occur and create problems down the road.

- I see no language anywhere in the proposal that the real estate professional shall have an agreement with the securities representative/Broker-dealer about the referral arrangement and fee. The Buyers agreement between the investor and real estate rep has been proposed and is good (with some clarifications); but there also should be a clear written agreement between the securities professional and real estate professional as to the responsibilities, representations and the fee to be paid. (Perhaps this should come from the Broker-dealer). This type of arrangement is common between real estate professionals who make agreements for referral fees, and should not be foreign to them. Further, this would address some of the broker-dealer concerns about procedures, rules and issues related to investor protection.

Realtors operate in the world of ‘buyer beware’ and are NOT trained or involved in such arenas as ‘suitability’ or understanding the overall financials and holdings of their clients. The typical realtor does not typically know the net worth or diversification of the investors portfolio and how investments are viewed in the securities world. I am worried about disservice that could be done to the investors and to our TIC industry. Investor protection is key—care and compliance are a big part of our world. There is risk that the realtor could make any number of misrepresentations or missteps because of this – using such words as ‘guaranteed’, as one example.

- Page 7, item (5) b. states that if a client is not suitable then a waiver can be signed by said client. The fact that the NAR proposal is suggesting this possibility is, I believe, dangerous territory. A client is either accredited and suitable, or is not. Why open the door to incorrect sales practices and investors who can be hurt?
- It is not clear if the real estate professional is able to ask for PPMs directly from sponsors before a client is deemed suitable – I would be strongly opposed to this. It could result in what was previously noted - offerings would be presented before the appropriate time, and they would be shown without knowledge or explanation of the overall structure and securities-related items. This practice could even involve ‘pre-selling’. I firmly believe commercial realtors should not be presenting any securitized TIC deals to their investors – they are simply a referring party and in an advisory role. The securities advisor should take the lead on the process, which starts with qualifying the investor and understanding what goals he has for the potential investment. There are many different kinds of TICs – different asset types, some more aggressive and some more conservative, different sponsor approaches and track records, and many other factors that play into what a securities rep would suggest to an investor.
- Concerning the NAR letter addressed to the SEC dated October 11th, page 18, footnote regarding the Buyers Agreement and suggested description of services, I believe a number of items should be stricken, including ‘locate, identify and obtain information about potential TIC securities properties’ (this should be the responsibility of the securities professional)..., ‘discuss financing alternatives’ (there are no alternatives in TIC offerings –it is not negotiable by the investor and is obtained by the TIC sponsor)... ‘Evaluate documents related to TIC security properties’... and ‘provide general but not legal tax assistance...’

- How shall NAR or the SEC validate the commercial real estate experience of the real estate professional who is submitting to the transaction? I am unclear on this point. If a realtor telephoned me and wanted to discuss working together on his client's investment, how can I know if he has fulfilled the guidelines set out by NAR and the SEC to be qualified to proceed without violating the Exemptive Relief? What controls are being put in place?
- I haven't seen clear language on how the actual advisory fee would be paid – would this run through the securities Broker-dealer and be paid out direct to the real estate professional or would it come directly from the TIC sponsor? I would assume the Broker-dealer? This should be clarified.
- I believe, while the NAR's intent to serve the NAR membership is good, many times they suggest that securities reps may not be able to analyze commercial real estate deals. There is no acknowledgement that a number of top TIC securities representatives are indeed commercial real estate professionals.
- In the same way that the NAR is working for the interests of their membership, I would ask that the SEC do the same and carefully consider these and other points that are being made by securities representatives, including the broker-dealers. We in the securities world take great pains and care to become educated in this field, heavy with law and compliance. As a member of NAR, I appreciate their strength in all realms of the real estate world. As a licensed securities representative, I also appreciate the strength of the SEC and FINRA in representing investors and licensed professionals in the securities realm.

Having come from the real estate world, I can state without question that real estate professionals have absolutely no idea of the securities law, details and regulations – and implications - in which TIC properties are subject to, and I wish to avoid catastrophes that could hurt everyone, most of all the investor.

In closing, if a standardized referral or advisory fee can be paid to commercial real estate professionals, who may wish to opine on the real estate fundamentals in a TIC deal, following the lead of a securities professional in the transaction, then I support the Exemption. If standardization is not implemented nor clearcut rules to safeguard Regulation D investments and SEC rules regarding unlicensed parties, then I believe we may all have serious problems.

Respectfully submitted,

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