

December 13, 2007

Dear Ms. Morris:

I am a NAR member and a Series 7 securities registered representative with OMNI Brokerage, Inc. My credentials and contact information are as follows:

## JEFFERSON F. RIDDELL

Board Certified Real Estate Attorney (JD)  
Certified Senior Advisor (CSA)  
Certified Estate Advisor (CEA)  
Certified Exchange Specialist (CES)  
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Licensed Florida Real Estate Broker  
Licensed Florida Mortgage Broker  
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My comments regarding the proposed exemption and Notice of Application are as follows:

1. After becoming an attorney in Michigan in 1973, I became a partner in a lawfirm heavily involved in real estate limited partnership (RELP) tax shelter syndication legal work, including preparation of private placement memorandums (PPMs)--this was long before Regulation D. Because of my background, I was granted a securities law designation by the Florida Bar when I moved to Florida in 1983. While In Michigan, I became an affiliate member of NAR's Real Estate Securities and Syndication Institute (RESSI). My last RESSI membership certificate is dated June 1981 (copy enclosed). I am not sure how much you know about RESSI, but it was the Realtor specialty group (much like CCIM, SIOR or ALC) whose NAR members assisted buyers to purchase limited partnership interests in real estate projects, mostly apartment buildings, some of which were HUD/FHA or State Housing Finance Agency assisted and some which were "conventional." Realtors thought their expertise could provide a benefit to the buyers of RELP interests, and of course there were commissions involved. Does this remind you of the NAR exemption request? Probably so, but the big difference was that the Realtors who wished to receive commissions on RELP sales were willing to obtain a securities license (usually a Series 22). It worked then; and this assured that all sellers of RELP real estate securities were not only trained in securities laws and practice, but also were under the SEC's jurisdiction as well as the jurisdiction of NASD (and they also had real estate licenses). Investor protection was well served by this dual licensing. If it worked then, why not now? CCIMs, SIORs, etc. all have to put in a great deal of time and effort to obtain and maintain their certifications and designations, and some Realtors have multiple certifications/designations. Why is it better now to exempt Realtors from the securities laws relative to the sale of TIC real estate securities than to have those who are sufficiently interested and motivated obtain the training, take the tests and become securities licensed? At least one broker-dealer (Welton Street) already specializes in Realtors who wish to become securities licensed and sell TICs. In this modern world it is undoubtedly easier to be exempted from doing work or fulfilling requirements to get properly licensed, but is the investing public well served by such an exemption? I don't think so. Assuming the SEC disagrees and intends to issue the exemption, my other comments follow. SUMMARY: THIS EXEMPTION IS

## UNNECESSARY SINCE COMMERCIAL REAL ESTATE PROFESSIONALS CAN OBTAIN SECURITIES LICENSES JUST LIKE IN THE RELP ERA.

2. I understand that NAR's request is premised on the argument that a commercial Realtor (Commercial Real Estate Professional) can help a client intelligently choose a property to purchase, either as a 1031 exchange replacement property or just as an alternative real estate investment for portfolio diversification, and that the menu of property choices is incomplete unless the Realtor can include securities TICs. I think this is true. TICs should be included and, as most people realize, companies like Spectrus and SCI have been filling this need for years by marketing their TICs through Realtors. But I believe that the sequence of events should be more like this: (a) Realtor has a client (1031 or not) who is interested in participating in rental real estate, (b) Realtor introduces the entire menu of rental real estate choices (traditional properties, whole ownership triple net (NNN) properties and tenant-in-common (TIC) properties), (c) Realtor provides client with generic information about TIC properties (along with information on non-securities real estate investment opportunities), (d) and finally if the client prefers TIC properties or wants more details, Realtor contacts a TIC securities registered representative who takes the handoff to qualify the client for a securities TIC purchase (accredited, suitable, etc.). From that point, the securities registered representative should take the lead on TIC sale aspects of the client's decision to purchase a real estate investment even though the Realtor may continue to take the lead relative to traditional or NNN properties that the client may still be considering, and the TIC securities registered representative should be the only one who can introduce the client to specific TIC properties that are available for purchase. If a TIC is the client's choice, the Realtor may certainly counsel the client about the real estate investment aspects including comparing various PPMs made available through the registered representative (projections, assumptions, demographics, location, etc.)--in fact, if the Realtor's broker (Real Estate Firm) is a major company, the company may have internal due diligence data about a property in a particular location that could be invaluable, especially if the broker company also has offices or agents near to the property location with knowledge and information that will allow the "team" to drill down to a property specific analysis, including property visits by such local agents if the TIC purchaser is unable or unwilling to make the trip. If a particular TIC is chosen by the client, the securities registered representative should be in charge of filling out the subscription documents and processing the actual purchase through closing. This is a model that would truly add value for a TIC purchaser, and would keep the client from losing sight of other non-securities real estate investment choices until a final, informed decision can be made. I hope this is the model that is being described in the "Notice of Application." Of course, in a 1031 situation, the time frame to make a decision may be compressed, but the principles still apply. **SUMMARY: PARTNERING BETWEEN SECURITIES REGISTERED REPRESENTATIVES AND COMMERCIAL REAL ESTATE PROFESSIONALS (WHO MAY SHARE COMMISSIONS) COULD ASSIST INVESTORS TO MAKE INFORMED DECISIONS REGARDING TIC PURCHASES.**

3. Regarding your question whether anyone with commercial real estate experience other than NAR affiliates should be included in the exemption, I believe it is important to remember that, unlike FINRA for securities licensees, NAR membership is not mandatory in order to be a state licensed real estate broker or salesperson. If the goal is to assist investors to make proper and informed decisions about real estate investments, why should NAR membership have anything to do with it? Substantial commercial real estate experience does not depend on NAR membership. Real estate specialists of all kinds can be brokers and salespersons without being NAR members. I realize that NAR requested the exemption and that most real estate licensees are NAR members, but in my opinion this should not be the issue, and I hope that the "Notice of Application" does not imply that NAR membership is a prerequisite for receiving a Real Estate Advisory Fee. Putting the issue of NAR membership (affiliation) aside for the moment (which, based upon my reading of the Notice of Application, does not appear to be a prerequisite to qualify as a Commercial Real Estate Professional anyway), I am wondering why the exemption would be limited to professionals who have a broker or salesman's license issued by a state real estate licensing agency? After all, SEC does not require a securities registered representative to have a real estate license to sell TICs. If I were a potential TIC office building fractional interest

buyer and Sam Zell was my friend--and he was willing to help me and act as my consultant--why should he be denied compensation under this exemption if he does not have a real estate license? Anyone who can satisfy the "substantial experience in commercial real estate" requirement and is willing to help a potential TIC investor make an informed decision "would allow a potential purchaser of a TIC Security to benefit from the real estate expertise" of such a person. How would a commercial Realtor be more helpful than, for instance, someone who has actually owned and operated commercial properties over many years and has in-depth hands on knowledge and experience (which even most CCIMs do not have)? **SUMMARY: ASSUMING THAT COMMERCIAL REAL ESTATE COUNSELING FOR TIC BUYERS IS THE GOAL, SO LONG AS THERE IS NO REAL ESTATE LICENSE REQUIREMENT FOR TIC SALES BY SECURITIES LICENSEES, NEITHER NAR MEMBERSHIP NOR REAL ESTATE LICENSURE SHOULD BE A PREREQUISITE FOR A PERSON WHO CAN QUALIFY AS HAVING SUBSTANTIAL COMMERCIAL REAL ESTATE EXPERIENCE AND RECEIVE A COMMISSION UNDER THE EXEMPTION.**

4. I find your request for comment that starts "Is there a possibility that the exemption, if granted, could create an incentive" to sell TICs instead of other real estate very interesting because I have been thinking that the opposite may be true. If a Realtor can sell a \$1 million traditional property (commercial often has a 10% commission) and splits the commission with the listing broker, his/her commission is \$50,000 on the \$1 million purchase price (even the referral fee on a whole ownership non-security triple net property (Walgreens drugstore, etc) is likely to be at least 2% of the total purchase price, i.e., \$20,000 for a \$1 million property. On the other hand, a typical 7% securities commission on a \$1 million TIC sale (paid on equity only, not on the entire purchase price—assume a 2/3rds mortgage which is typical) is only \$11,667 (assuming, for example, that the Realtor receives a 50% split on the securities commission--the Real Estate Advisory Fee--which to me is far to high). If Realtors can tell clients they are able to sell TICs as well as traditional properties (and receive TIC commissions), is it possible that some would recommend a traditional property instead of a TIC even where the TIC would be more suitable for the client (something like "I can sell them to you, but I wouldn't")? Remember, suitability is important to a securities licensee, but is not required for real estate sales through a Realtor. This is a "countervailing factor," but in the other direction. Because of the commission differential, I doubt if any RE Professional would sell a TIC if he/she could sell a traditional property, but I do believe that it would be appropriate for the buyer's agent agreement to describe the various fees that the Commercial Real Estate Professional would receive from the sale of various kinds of property, including TICs—why multiple buyer's agent agreements? **SUMMARY: IT IS UNLIKELY THAT COMMERCIAL REAL ESTATE PROFESSIONALS WILL SUGGEST TICs OVER OTHER KINDS OF REAL ESTATE SINCE TIC COMMISSIONS WILL BE LOWER THAN OTHER PROPERTY CHOICES.**

5. With regard to "The Commercial Real Estate Professional may discuss the real estate characteristics of a TIC Security property with the client and arrange for the client to inspect a TIC Security property . . ." (emphasis added, and I assume "inspect" means the same as "visit"), I suggest that the TIC property allowed to be visited should only be a TIC property that is fully subscribed (sold out) since no TIC properties then on the market (available to purchase) should be introduced to the client (by visit, inspection or otherwise) until the securities registered representative takes the handoff from the Commercial Real Estate Professional so the securities registered representative can guard against general solicitation (although the request for exemption envisions most Commercial Real Estate Professional TIC sales to be replacement properties in a 1031 exchange where the Commercial Real Estate Professional has assisted in the sale of the relinquished property and already has a relationship with the client, the exemption apparently is not limited to that, so the client could easily be the result of a real estate ad run by the Commercial Real Estate Professional or his/her company), determine if the client is an accredited investor and whether a particular TIC property is suitable--and I suppose the securities registered representative and/or his/her broker-dealer can also inquire into whether the Commercial Real Estate Professional's "representation" that he is not subject to any statutory disqualification under Section 3(a)(39) of the Exchange Act is true. Probably this is what you

meant, but I think it should be clearer. However, if it is made clear that the TIC property the Commercial Real Estate Professional may allow the client to inspect must be a sold out, fully subscribed TIC property, what harm would be done if the Commercial Real Estate Professional could show a client more than one fully subscribed (sold out) TIC property--several samples: maybe one office, one multifamily, one retail, etc. TIC Security property? There have been around 1,200 TIC Security properties "sold out" since 2002, and whatever the limit on the number of sold out TIC property samples the Commercial Real Estate Professional's client might inspect, a directory of all previous TIC properties might be prepared so that any Commercial Real Estate Professional could locate one or more sold out TIC Security properties relatively nearby for the client to visit. How would one police the number of TIC properties visited anyway? As long as only securities registered representatives have access to the currently available TIC property lists (and there was a rule against making the list available to the Commercial Real Estate Professional or his client before the securities registered representative has qualified the client), there would be little chance that clients of Commercial Real Estate Professionals would visit available TIC properties prematurely. We who are in the TIC business know that clients often fall in love with a TIC property that they actually visit and, therefore, have a tendency to ignore the PPM and/or other TIC properties (and maybe even traditional properties) that might also be available for purchase. Introducing (discussing, inspecting and/or visiting) a single available TIC property to an investor before the investor is introduced to the other available TICs (the entire list that is accessible by the Securities Registered Representative) is entirely inappropriate and counterproductive. **SUMMARY: NO TIC SECURITY PROPERTY CURRENTLY AVAILABLE FOR PURCHASE SHOULD EVER BE INTRODUCED TO A POTENTIAL BUYER (CLIENT) EXCEPT THROUGH A SECURITIES REGISTERED REPRESENTATIVE AFTER THE HANDOFF OF THE CLIENT FROM THE COMMERCIAL REAL ESTATE PROFESSIONAL TO THE SECURITIES REGISTERED REPRESENTATIVE (AND QUALIFICATION, BY THE SECURITIES REGISTERED REPRESENTATIVE, OF THE CLIENT AS AN ACCREDITED INVESTOR).**

6. With regard to the of the Notice of Application section called "(2) Buyer's Agent Agreement and Introduction to Selling Broker-Dealer," I have a few observations.

- In "a" there is a reference to "discussing a specific TIC Security property." No differentiation is made between fully subscribed, sold out TIC properties and those currently on the market for purchase. As mentioned in #5 above, I believe a distinction should be made throughout the exemption between fully subscribed (sold out) TICs and currently available TICs. This section also says that the buyer's agent agreement must "obligate the RE Participant to solely represent the client in connection with the purchase of a TIC Security." If the RE Participant is also showing the client traditional (and maybe NNN properties), what is the purpose of having a buyer broker agreement for the TIC Security and a separate one for the other kinds of properties.
- In "b" there apparently is a requirement that the buyer's agent agreement be amended to add any RE Participant who will share the Real Estate Advisory Fee, but who was not included within the original agreement. If the client and original RE Participant are located in Detroit, Michigan and the TIC property the client is interested in is in Dallas, Texas, what difference does it make if the hometown RE Participant offers to share its fee with a Dallas RE Participant who is willing to analyze the property (assuming, of course, both RE Participants can satisfy the qualification requirements).
- In "c" it states that the maximum Advisory Fee must be included in the buyer's agent agreement as a fixed dollar amount or percentage. The exemption seems to provide that the client and Commercial Real Estate Professional sign the buyer's agent agreement and then the Commercial Real Estate Professional can go out and shop among TIC sponsors and TIC securities representatives for a "team member" relative to a possible TIC purchase. Before shopping around, how would the Commercial Real Estate Professional know what the fixed fee for a TIC purchase would be? If the Commercial Real Estate Professional is also shopping traditional, or even whole ownership triple nets (NNNs) like a Walgreens, he or she won't know the "offer of compensation" made by the listing broker (or the negotiated commission for a non-listed property) until much later in the process. Is it intended that the agent agreement can cover

compensation for any of the three kinds of properties (traditional, NNN and TICs, or must it only cover TIC properties (“a” says “solely . . . in connection with the purchase of a TIC Security)? In “c” there is a reference to “purchase of a specific TIC Security property.” Again, it is suggested that no “specific TIC Security property” that is currently available for sale should ever be introduced to a client by the Commercial Real Estate Professional before the introduction (handoff) to the securities registered representative, and why would the introduction be to the “Selling Broker-Dealer” instead of the securities registered representative who will be the actual team member relative to the purchase (maybe there should be a new defined term: Securities Registered Representative)?

- What is the purpose of “d”? Can’t the buyer’s agent agreement be amended at any time to change the compensation? Why would a buyer care, assuming it is the sponsor (seller) who pays the Advisory Fee?

**SUMMARY: THERE WILL BE SUBSTANTIAL BURDEN AND CONFUSION UNLESS A STANDARDIZED FORM OF BUYER’S AGENT AGREEMENT IS PROMULGATED.**

7. The role and relationship of both the Commercial Real Estate Professional (agent) and his/her Real Estate Firm (broker) is mentioned throughout the Notice of Application, but I cannot find anywhere in the Notice of Application where the securities registered representative is mentioned (although his or her broker is prominently mentioned as Broker-Dealer throughout) except at the beginning where there is fleeting mention of “a registered associated person of a registered broker-dealer.” I believe this is a shortcoming because the front line team for protecting the interests of the investor (client) should be that of the Commercial Real Estate Professional and the registered associated person (Securities Registered Representative), and the crucial role of this team should, I believe, be prominently recognized throughout the exemption. If, as I have suggested earlier, the system is to work and the basic roles of the Commercial Real Estate Professional and the Securities Registered Representative are to be consistent with their areas of expertise and licensure, no available TIC properties should ever be introduced (shown or visited) before the handoff from the Commercial Real Estate Professional to the Securities Registered Representative. The exemption should recognize that Commercial Real Estate Professionals will “partner up” with Securities Registered Representatives who are knowledgeable (hopefully those that specialize in TICs instead of stocks, bonds and other products), experienced, compliant, trustworthy, have a track record, etc. so that, when a client’s interest turns to TICs, the Securities Registered Representative is only a phone call away—quick response time and established relationships will be even more important in the compressed time frame of 1031 exchanges. In my opinion, the system envisioned by the exemption will be significantly blemished if Commercial Real Estate Professionals are encouraged to “shop around” for the Securities Registered Representative who will “front the deal” for the smallest share of the TIC commission. Moreover, if the Commercial Real Estate Professional has an established continuing relationship with a particular Securities Registered Representative, it is more likely that the Commercial Real Estate Professional will be able, based upon prior deals and a continuing understanding of the “split” acceptable to his TIC Securities Registered Representative teammate, to fill out the Buyer’s agent agreement with the actual amount of the Advisory Fee stated therein even before making contact with the Securities Registered Representative. If the exemption prohibits the Commercial Real Estate Professional from contacting sponsors, managing broker-dealers and selling broker-dealers directly (and provides that Commercial Real Estate Professionals may deal only with Securities Registered Representatives), the exemption will be vastly simplified, will work and will provide the Commercial Real Estate Professional expertise (and the investor benefit resulting therefrom) that is the premise upon which the NAR exemption request is based. **SUMMARY: THE SECURITIES REGISTERED REPRESENTATIVE SHOULD PERFORM THE LEAD ROLE IN ANY TIC TRANSACTION UNDER THE EXEMPTION (NOT THE COMMERCIAL REAL ESTATE PROFESSIONAL), NO TIC PROPERTY THEN AVAILABLE FOR PURCHASE SHOULD BE INTRODUCED TO ANY CLIENT EXCEPT THROUGH THE SECURITIES REGISTERED REPRESENTATIVE AND THE COMMERCIAL REAL ESTATE PROFESSIONAL’S ONLY PERMITTED CONTACT IN A TIC TRANSACTION SHOULD BE A SECURITIES REGISTERED REPRESENTATIVE (NOT THE SPONSOR, MANAGING BROKER-**

DEALER OR SELLING BROKER DEALER) WHO WILL SERVE AS THE GATEKEEPER  
RELATIVE TO COMPLIANCE WITH ALL SECURITIES LAWS, RULES AND REGULATIONS.

Thank you.