

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

(202) 371-7000
Fax: (202) 393-5760
<http://www.skadden.com>

DIRECT DIAL
202-371-7216
DIRECT FAX
202-661-8286
EMAIL ADDRESS
SUZANNE.ROTHWELL@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
SAN FRANCISCO
WILMINGTON

BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

June 26, 2006

Catherine McGuire, Chief Counsel
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: Welton Street Investments, LLC
Request for No-Action under Section 15(a)
of the Securities Exchange Act of 1934

Dear Ms. McGuire:

We are special counsel for Welton Street Investments, LLC ("WSI"). WSI is a broker/dealer registered with the Securities and Exchange Commission ("SEC") under Section 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is a member of the National Association of Securities Dealers, Inc. (the "NASD"). We respectfully request your assurance that the staff of the Division of Market Regulation will not recommend that the SEC take enforcement action under Section 15(a) of the Exchange Act against real estate brokerage firms, with which certain associated persons of WSI are also licensed, if the real estate brokerage firms do not register with the SEC as a broker or dealer under Section 15(b) of the Exchange Act in the circumstances set forth below.

The purpose of the first condition is to prevent the fee paid under the Desk Fee Arrangement from becoming a fluctuating fee that would indirectly reflect the securities activities of the dual-registered person. However, a fee paid under a Desk Fee Arrangement may be combined with a Real Estate Percentage Fee, since any Real Estate Percentage Fee is based only on a percentage of income from non-securities activities. Similarly, the purpose of the second and third conditions is to ensure that the securities activities of the WSI dual-registered person do not affect the amount of the fee paid under the Desk Fee Arrangement or the Real Estate Percentage Fee that is charged by the real estate firm.

General Compliance Representations

In connection with WSI's arrangements with WSI dual-registered persons, WSI will comply with the applicable requirements of the Exchange Act and the rules thereunder and self-regulatory organization rules, including the requirements to make and keep current certain books and records pursuant to Section 17(a) of the Exchange Act and the rules thereunder. WSI will also exercise exclusive control over, properly supervise, and be responsible for the training of all WSI dual-registered persons, and be responsible for and monitor compliance by all WSI dual-registered persons with all applicable securities laws, rules and regulations and with WSI's compliance manual and procedures with respect to such persons' securities activities.¹⁰

In addition, WSI will monitor compliance of all WSI dual-registered persons with the special limitations on the activities of WSI dual-registered persons that are set forth above, which are for the purpose of ensuring that there is an identifiable separation between the person's securities and non-securities real estate activities. WSI will require each WSI dual-registered person to provide WSI with an up-to-date copy of any contract, agreement, or other records reflecting his or her Desk Fee Arrangement and/or Real Estate Performance Fee Arrangement with his or her real estate firm, and WSI will preserve those records for a period not less than three years. WSI will provide each WSI dual-registered person with a copy of WSI's compliance manual, the NASD Manual and a copy of this request for no-action and the response received from the staff.

WSI will provide each real estate firm with which a WSI dual-registered person is licensed as a real estate agent with a copy of this request for no-action and the response received from the staff. WSI will inform in writing every

¹⁰ See, Division of Market Regulation, Staff Legal Bulletin No. 17, *Remote Office Supervision* (March 19, 2004). See, also, NASD Notice to Members 99-45, *NASD Provides Guidance on Supervisory Responsibilities* (June 1999); NASD Notice to Members 98-38, *NASD Reminds Members of Supervisory and Inspection Obligations* (May 1998); NASD Notice to Members 86-65, *Compliance with the NASD Rules of Fair Practice In the Employment and Supervision of Off-Site Personnel* (September 1986).

three years each such real estate firm that, in order to rely on the staff's no-action position, the real estate firm directly or through its unregistered persons may not:

1. engage in securities-related activities, including the offer and sale of TIC Securities, on behalf of WSI or any other broker/dealer;
2. accept or transmit orders or handle customer funds or securities in connection with TIC Securities;
3. receive any payment, compensation, or other economic incentive for the referral of customers to WSI or WSI dual-registered persons in connection with TIC Securities until and unless such referral fees are permitted by the SEC;
4. post any signage, advertise or make any public representation that the real estate firm or the office of the real estate firm where the person is licensed is a location that conducts a securities business, is a broker/dealer, is associated with WSI, or that TIC Securities are available; or
5. advertise the offer of TIC Securities in general or any specific TIC Securities or list any TIC Securities on any multi-listing or other real estate listing service.

ANALYSIS

Section 15(a) of the Exchange Act provides that it shall be unlawful for any broker or dealer to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security, unless the broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

Section 3(a)(4) of the Exchange Act defines the term "broker," in relevant part, as "any person engaged in the business of effecting transactions in securities for the account of others."¹¹

In determining whether a person comes within the definition of "broker," the staff has, among other things, focused on whether the person is effecting transactions in securities and whether the person is at least partly engaged in the business of securities transactions or receives commissions or other compensation in connection with transactions in securities ("transaction-based compensation").¹²

¹¹ Because we do not anticipate that the real estate firms will buy and sell TIC Securities for their own accounts, we are not requesting no-action relief from Section 15(a) of the Exchange Act for activity that would require registration as a dealer.

¹² In *Herbruck, Alder & Co.*, SEC No-Action Letter (May 3, 2002), the SEC Division of Market Regulation staff stated that "The Division previously has noted that the receipt of compensation related to securities transactions is a key factor that may require an entity to register as a broker-dealer." The Division explained that, where such transaction-based compensation is paid "Registration helps to ensure that persons who have a 'salesman's stake' in a securities transaction operate in a manner that is

the amount of income generated by the such person or whether such person's income is generated from sales of non-securities real property or securities real property (such as TIC Securities), from the sale of other securities that are not also considered real property under state laws, or from property management and other types of real property-related services.

Further, all WSI dual-registered persons will be deemed to be associated persons of WSI within the meaning of Section 3(a)(18) of the Exchange Act and WSI has represented that WSI will exercise exclusive control over, properly supervise, and be responsible for the training of all WSI dual-registered persons, and be responsible for and monitor compliance by all WSI dual-registered persons with all applicable securities laws, rules and regulations and with WSI's compliance manual and procedures with respect to such persons' securities activities.

The receipt by an unregistered real estate firm of a fee paid under a Desk Fee Arrangement, whether or not combined with a Real Estate Percentage Fee from a WSI dual-registered person should not, therefore, lead to a conclusion that the unregistered real estate firm is "engaged in the business of effecting transactions in securities" as required by the definition of "broker" in Section 3(a)(4) of the Exchange Act.

CONCLUSION

On the basis of the foregoing, we respectfully request your assurance that the staff of the Division of Market Regulation will not recommend that the SEC take enforcement action under Section 15(a) of the Exchange Act against the unregistered real estate firms that WSI dual-registered persons are licensed with if a WSI dual-registered person enters into a periodic Desk Fee Arrangement (the fee paid under which may be combined with a Real Estate Percentage Fee Arrangement) with the unregistered real estate firm with which the person is licensed as a real estate agent, as described above.

* * * *

