



SEC Measure Meets Mixed Results

December 17, 2007

By Jeff Mordock,

Some real estate brokers are criticizing an SEC proposal that would allow them to be compensated for selling interests in tenant-in-common investments.

Only broker-dealers, which are licensed to sell securities, can legally be compensated for selling TIC interests, or fractional ownership stakes in properties.

But the SEC is proposing to allow TIC interests to be sold as real estate rather than securities. That would mean that real estate brokers could be compensated for selling them. The proposal, issued in the form of a position paper, was welcomed by the National Association of Realtors.

But not all brokers like the idea.

"This proposal would cause great and significant harm to both the public and the TIC industry as a whole," wrote Rick Willoughby, a Phoenix realtor, in comments to the SEC.

He noted that real estate brokers are in the business of selling properties. "They do not look for a suitable investment for a client," he said. "To think a few unenforceable rules would stop a realtor from puffing a property or general solicitation is absurd," he added.

"Without certifiable financial training, realtors cannot determine suitability for investors," said an attendee at a New York conference held last week by the Information Management Network.

"Real estate agents do not understand the impact of investments on a client's overall financial situation," said Sean L. DeFrehn, president of DeFrehn Consulting of Washington, D.C., in comments he made to the SEC. "This is true even when the underlying asset is a real property. Allowing for this exception would open investors to receiving financial advice from under-qualified individuals."

Roughly 200 securities brokers are active in the business of selling TIC interests to investors. Opening up that business to real estate brokers could add at least 100,000 licensed commercial real estate brokers to the mix, which should result in a drop in fees. And that, many believe, would expand the TIC market substantially.

Other brokers, meanwhile, are chomping at the bit to broaden their reach.

"This is a tremendous opportunity for realtors to get involved in a \$3.7 billion industry," said Josh Vail, director of business development at Welton Street Capital, a New York broker-dealer. "Commercial real estate brokers will bring more investors into the TIC pipeline, generating more revenue for everyone."

Some say that if real estate brokers are allowed to play the role of broker-dealer for TIC interests, the sector might see an increase in consolidation, where sponsors acquire broker-dealers or vice-versa.

And as TIC sponsors diversify their product offerings, shops could also pitch other investment opportunities such as REITs or investment funds.

"This could lead to more integration between TIC sponsors and securities and broker-dealers," said Stephen Burr, a partner at Foley & Lardner, a Boston legal firm that specializes in TIC law. "Some of the leading real estate brokerage firms could develop their own broker-dealer capacity."

The proposal would also open up TIC opportunities to more investors. One panelist speculated that the ruling would add an extra \$5 billion per year to the TIC equity pool.

Members of the baby boom generation, along with European investors, are seen as the largest contributors to that pool. Baby boomers could look at real estate to diversify their retirement income.

It is not known if or when the SEC will adopt the measure, but most conference attendees agreed the proposal would likely pass.