October 17, 2007

Via Electronic Mail

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-18-07; Rel. No. 33-8828; IC-27922: Revisions of Limited Offering Exemptions in Regulation D (the "Release")

Dear Ms. Morris:

The Legislative and Regulatory Committee (the "Committee") of the Tenant in Common Association ("TICA") is pleased to submit its comments regarding the proposal of the Securities and Exchange Commission (the "Commission") to revise the limited offering exemption in Regulation D contained in the Release. The views expressed in this letter do not represent the official position of TICA, nor does it necessarily reflect the views of all members of TICA or the Committee. TICA is a national trade association that represents the interests of sponsors and other industry participants in the promotion of syndicated tenant in common offerings. There are 634 primary members of TICA that represent approximately 1200 industry professionals. The members include sponsors, broker-dealers, registered representatives, real estate brokers, attorneys, third party due diligence firms, title companies and qualified intermediaries.[1] We appreciate the opportunity to comment.

The Release advances the Commission's initiatives relating to reducing regulatory burdens on smaller issuers and facilitating capital formation while remaining focused on investor protection. The Release, among other things, (1) creates a new limited offering exemption to "large accredited investors" under proposed Rule 507 that would differ from existing Rule 506 by allowing issuers to publish a limited announcement of the offering; (2) adds a new "investments-owned" standard as an alternative means for qualification as an "accredited investor" (and, if implemented, to the categories for qualification as a large accredited investor); and (3) adds the provision of uniform

[1] More information is available about TICA at our website, http://ticassoc.org.

disqualification provisions throughout Regulation D. While we generally favor the proposals contained in the Release, we respectfully submit the following comments.

Proposed Rule 507 - General Solicitation and Limited Announcements

While we are in favor of the proposed Rule 507 offering exemption that would allow issuers to publish a limited announcement of an offering to large accredited investors, we believe that the Commission should eliminate the general solicitation prohibition entirely for offerings made solely to accredited investors. Eliminating the prohibition entirely would render proposed Rule 507 unnecessary.

If the Commission determines to keep the limited announcement, we do not agree with either the requirement for such announcement to be solely in "written" form or the 25 word limit. Eliminating the ability to communicate orally would likely discourage the use of the Rule 507 exemption because of the fear of running afoul of the general solicitation prohibitions for no apparent benefit since the communication would only be among a group of persons clearly eligible to invest in the offering. Whether an investor could determine to invest in an offering in 25 words or less is debatable and seems arbitrary in nature.

If the Commission determines to keep the limited announcement and the restrictions with respect to the method of communication as well as the 25-word limit, we believe it would be difficult to construe such an announcement under a Rule 507 offering as a general solicitation for purposes of a separate and distinct Rule 506 offering. However, we would suggest that the Commission clarify in the final rules that a proposed Rule 507 advertisement will not be deemed to be a general solicitation for an offering under Rule 506 that would not, under the five-factor test, be otherwise integrated into the Rule 507 offering by the same sponsor.

Proposed Addition of Investments-Owned Standard

We support the addition of an investments-owned standard as an alternative means for qualification as an accredited investor (and, if implemented, to the categories for qualification as a large accredited investor). The express inclusion of retirement plans and trusts as an investment is a welcome clarification. The Committee is also pleased that the total assets, net worth and income tests have been retained but recommends that a net worth qualification be added as an alternative method of determining accreditation for large accredited investors, we would suggest $3 million, so that the same categories are used, albeit with differing threshold amounts, for both accredited investors and large accredited investors. In addition, the exclusion of real estate that is used as a place of business or in connection with the conduct of a trade or business as part of the definition of "investments" is a concern. While the Committee appreciates that the net worth calculation continues to include the value of personal residences and places of business, the exclusion of such assets from the definition of investments for purposes of the investments-owned test could work to exclude a younger, more educated investor who

has not yet had time to amass a large investment portfolio but has made a significant investment into his or her place of business from being able to qualify as an accredited investor under the investments-owned standard, even if their level of sophistication and other objective measures would qualify them but for this exclusion. Small business owners, who are starting their own enterprises and choose to invest in real property in order to invest in their business rather than a portfolio of stocks, bonds and mutual funds, should not be precluded from using that investment as part of the determination of their status as an accredited investor.

Proposed Definition of "Joint Investments"

We do not support the Release's new definition of "joint investments" because it would limit an individual to only being able to count 50 percent of investments owned jointly with a spouse in a determination of whether the individual meets the investments-owned standard unless both spouses have a binding commitment in the offering. In many cases, the 50 percent limitation would not adequately measure the individual's contribution to the accumulation of the joint investment. In addition, because each spousal arrangement will differ in terms of contributions to joint investments and determination of whether the contemplated investment will be joint or individual, we believe that joint investments should be included at 100 percent for purposes of meeting the investments-owned threshold for qualification either as an accredited investor or as a large accredited investor in the same way that net worth is measured as a combined calculation for the current determination of net worth in Rule 501(a)(5) of Regulation D.

Proposed Expansion of the Application of the Disqualification Provisions

While we believe that deterring recidivist securities law violators is a valid public policy, we do not believe that the proposed expansion of the disqualification provisions accomplishes that goal without penalizing myriads of others in the process and we believe there are more appropriate and tailored methods available to the Commission to meet such goal. If proposed Rule 502(e) were to be adopted as currently drafted, issuers may be driven back to utilizing the statutory Section 4(2) private offering exemption rather than Regulation D for private offerings and lose the benefit of the safe harbor provided. The disqualifications currently proposed are flawed because they are difficult to apply, are overly broad and the terms used are imprecise.

The disqualification provisions are difficult to apply because the list of persons who are subject to the rule and would therefore cause the issuer's offering to be disqualified under Regulation D includes not only the issuer, but its predecessor, parent, subsidiary, sister company and 20% or more beneficial owners of any class of the issuer's equity securities. Many issuers have equity owners at the 20% level who are merely passive investors and do not play an active role in the business; yet, the disqualification of such a passive investor would disqualify the issuer from being able to access the capital markets in a Regulation D offering. In addition, for many issuers, the 20% threshold is constantly changing metric which can make tracking such threshold over

time an administrative burden for monitoring the persons and the potential disqualifications.

The list of actions or events that would constitute a disqualification is also overly broad. Cease and desist orders issued at the state level do not necessarily require any notice to the defendant or an opportunity to be heard. Temporary injunctions and restraining orders may be lifted and no finding of fault may occur and yet a five year disqualification would be the result upon the issuance of such injunction or order. In any type of provision where disqualification is for a five-year period, some kind of due process is critical when the impact of such a finding would be so severe. In addition to due process, an actual full and fair adjudication of any such claim should be required.

There is also no requirement of fraud or deceit in connection with such actions the result of which would be to apply the same broad brush to all alleged wrongdoing. Being subject to an adjudication or determination of a violation of federal or state securities or commodities law or a law "under which a business involving investments, insurance, banking or finance is regulated" could relate to a myriad of activities or persons that have nothing to do with fraudulent behaviors under the securities laws but would disqualify an issuer (even if the subject of the adjudication or determination is not the issuer) from utilizing the capital formation devices permitted under Regulation D for a five-year period. In addition, restricting the disqualification provisions to require serious offenses, such as felony convictions or civil judgments for fraudulent behaviors would comport with the public policy of not having bad actors involved in taking investors money in the sale of securities, while at the same time, allowing capital formation to occur under Regulation D for those who are not the "bad actors."

These broad and imprecise disqualification provisions may cause issuers to revert back to relying upon the statutory exemption from registration, without the benefit of federal preemption, and leave the capital formation abilities of issuers up to the states who are already overburdened with fraudulent securities activities. The public would not benefit from such an overburdened and inefficient system and would not necessarily be protected from the bad actors these provisions are attempting to thwart.

The costs of such a proposal significantly outweigh the benefits. The disqualification provisions should stay applicable solely to Rule 505 offerings and should not be expanded into all other Regulation D offerings. In the event that the Commission determines to expand the disqualification provisions to all Regulation D offerings, however, the provisions should be narrowed to eliminate the issues raised with respect to the due process concerns and the punitive nature of such broad provisions.

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With the exception of the issues raised above, the Committee generally favors the Release, and we appreciate the opportunity to comment. Thank you for your consideration of these comments. If you have any questions or wish to discuss them further, please do not hesitate to contact me at (877) 366-1031.

Sincerely,

/s/ Timothy Snodgrass

Timothy Snodgrass,
Chair, Legislative and Regulatory Committee

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Annette I. Nazareth
Commissioner Kathleen L. Casey
Mr. John W. White, Director, Division of Corporation Finance
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