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NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

September 15, 2010

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1840 -100, *Proposed Accounting Standards Update – Disclosure of Certain Loss Contingencies*

Dear Mr. Golden:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for comments from the Financial Accounting Standards Board (FASB or Board) on the proposal contained in the FASB *Proposed Accounting Standards Update – Disclosure of Certain Loss Contingencies* (the Exposure Draft or ED).

NAREIT is the worldwide representative voice for real estate investment trusts (REITs) and publicly traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT's members are REITs and other businesses throughout the world that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

NAREIT commends and supports the FASB's efforts to continue to develop high quality accounting standards that improve the transparency, usefulness and credibility of financial reporting. In particular, we support the convergence efforts to achieve a single set of high quality global accounting standards. NAREIT is strongly committed to improving the relevance and usefulness of financial reporting and routinely provides input on FASB, IASB and SEC proposals.

Summary of Comments

NAREIT believes that the Board has made important and appropriate changes to the original Exposure Draft. However, the FASB's redrafted proposal does not resolve our primary concern: disclosure of prejudicial information. We believe that more outreach and discussion is necessary, especially with preparers, to achieve the Board's goal of enhancing the existing disclosures without requiring the disclosure of information that would be prejudicial to the



company. While we appreciate the Board's willingness to provide constituents with more time to respond to the revised proposal, we remain concerned about the Board's timeline for completing this project. We believe others share our view that the revised exposure draft could require companies to disclose prejudicial information and ask that the Board carefully consider this concern. While some of the recommended changes we offer may appear redundant with alternatives that the Board previously considered, we encourage the Board to revisit these alternatives in light of the significance of our concern.

Further, we continue to question the premise on which the proposed reporting is based. Paragraph A3 in the initial exposure draft and paragraph BC3 in the revised proposal both state as a primary concern the fact that the existing disclosure requirements in Topic 450 have not "resulted in the disclosure of the full population of an entity's loss contingencies that would be of interest to financial statements users." What seems to us important to financial statement users are the contingencies that have a reasonable possibility (*i.e.*, a 'more likely than not' standard) for materially affecting future cash flows over a relevant investment horizon. Based on the evidence offered to date, we are not persuaded that the incremental information that would be required by the ED is balanced in terms of costs and benefits.

Specific Comments

Quantitative Disclosures - reconciliation of loss accruals

The requirement for a detail reconciliation of accrued losses likely would result in companies disclosing sensitive, potentially prejudicial information. The Board needs to either: i) eliminate the reconciliation (and retain the existing requirement to disclose the amount of loss accrual when necessary to keep financial statements from being materially misleading); or, ii) provide an exemption from providing prejudicial information.

We disagree with the FASB's conclusion that the tabular disclosure would not be prejudicial [paragraph BC 35]. Because aggregation does not address situations when a claim is unique or when a "class" includes only a few claims, reconciliation of the loss accrual can provide a roadmap to plaintiff's counsel. The date at which a loss must be recognized (*i.e.*, when it is probable and reasonably estimable) may precede the date at which settlement discussions begin or conclude. Disclosure of amounts accrued can provide a signal to plaintiff's counsel as to a company's willingness to settle or potentially even the amount at which the company would settle. This outcome is contrary to the Board's decision not to require disclosure of settlement offers [paragraph BC45]. In addition, when a company has a handful of similar claims, the requirement to disclose the settlement amount on one claim could prejudice the settlement of other claims and/or could encourage others to file similar claims.

The Board seems to believe that the reconciliation of a loss accrual would provide no more risk of disclosing prejudicial information than the current requirement to disclose loss accruals [paragraph BC 35]. We acknowledge that existing GAAP requires disclosure of the accrual of loss contingencies, but the current requirement is limited to those circumstances when disclosure of the amount is necessary to keep the financial statements from being misleading. That is a much higher disclosure threshold than the proposal. Although existing GAAP does not provide for a prejudicial



exemption, the current standard permits companies to use judgment in determining how to inform investors about unusually large accruals. The requirement for a prescriptive reconciliation eliminates the use of judgment.

Disclosure Threshold – disclosure of certain remote contingencies

Companies should not be required to disclose a contingency for which the likelihood of loss has been assessed as remote. NAREIT is not aware of any study or evidence, nor any complaints from our industry’s financial statement users, that indicate that the current disclosure threshold of “reasonably possible” impedes the timeliness of providing information to users regarding significant loss contingencies. Further, we believe the requirement to disclose certain remote loss contingencies would add to the cost of preparing financial statements without providing any meaningful benefit.

The IASB has not concluded that remote contingencies merit disclosure. In both IAS 37 and the IASB’s recent exposure draft, the IASB has concluded that “if the possibility of any outflows of resources is remote,” no disclosure is required. [paragraph 86 in IAS 37 and paragraph 51 in Draft of IFRS standard on Liabilities]

Disclosure Threshold – assessing materiality

We disagree with the requirement in the ED to assess the materiality of a loss contingency for disclosure purposes without regard to potential recoveries. If the disclosure objective is to inform users of the potential magnitude of a loss contingency, we believe that objective is better met by comprehensively considering the economic consequences to the company. While we acknowledge that some potential recoveries are highly uncertain [paragraph BC15], we do not believe a blanket prohibition against considering all recoveries is appropriate. We recommend that, for purposes of disclosure, the significance of a loss contingency be assessed after considering potential recoveries unless it is probable that the recovery will not be realized.

Remote Contingencies - assessing “severe impact”

Consistent with our comment above, it seems to us very unlikely that financial statement users are concerned about remote contingencies when there is no significant economic risk. However, the proposal does not permit a company to consider the *net exposure* arising from a remote loss contingency when determining the need for disclosure. In many cases, the potential financial impact of a loss may not be 'severe' because the company is adequately covered via insurance or indemnification. If the FASB retains the requirement to disclose certain remote loss contingencies, we encourage the Board to allow companies to consider recoveries in the determination of a remote loss contingency’s potential for having a “severe impact.”

Disclosure Requirement – possible recoveries from insurance and other sources

The proposal would require companies to disclose information about possible recoveries from insurance and other sources “only if, and to the extent that” the information either has been provided to the plaintiff or is discoverable by the plaintiff. This proposed requirement would apply to all loss contingencies that meet the disclosure threshold. In our experience, it could be difficult to



conclude that information about potential recoveries is not discoverable. Information about potential recoveries can significantly influence the plaintiff's strategy and negotiating posture. Therefore, any requirement to prematurely disclose sources of recovery can be prejudicial to a company.

The Board's basis for conclusions [paragraphs BC38-BC40] suggests that the revised proposal addresses commentators' earlier concerns about the prejudicial consequence of disclosing potential recoveries. Also, the antecedent phrase "only if, and to the extent that" implies that the Board intends that disclosure of potential recoveries be restricted to a narrow set of circumstances. But because discovery is not a significantly limiting factor, the revised proposal is substantively unchanged from the Board's earlier proposal.

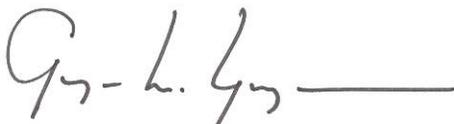
We would also observe that the availability of insurance or other sources of recovery could motivate others to file similar claims. Accordingly, we believe it is necessary for companies to be provided with some flexibility in determining when it is appropriate to disclose the availability of potential recoveries, regardless of the nature of any information that has been provided to the plaintiff. Thus, we recommend that the final standard require disclosure of potential recoveries only to the extent that such information would not be prejudicial or is not otherwise required to keep the financial statements from being materially misleading. If the Board rejects this approach, then as an alternative, we strongly encourage the Board to limit the requirement to disclose information about potential recoveries to those situations in which the information has already been made available to the plaintiff or regulatory agency.

Effective Date

The proposed effective date of 2010 year-end financial statements is not operational. Implementation of the new standard would provide companies with many challenges, both to gather the required information and to draft meaningful disclosure. We fully expect companies to have numerous implementation questions that require discussion with legal counsel, audit committees and auditors. If the final standard is issued in the third quarter of 2010, we urge the Board to defer its effective date to financial statements of interim or annual periods ending after December 15, 2011.

If you have any questions regarding these comments, please do not hesitate to contact George Yungmann at gyungmann@nareit.com or 202-739-9432.

Respectfully submitted,



George Yungmann
Senior Vice President, Financial Standards



Sally Glenn
Director, Financial Standards

