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NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

February 19, 2005

VIA E-MAIL

Mr. Lawrence W. Smith
Director-Technical Application and Implementation Activities and EITF Chair
Financial Accounting Standards Board
401 Merritt 7
Norwalk, Connecticut 06856-5116

Re: Proposed EITF Abstract 04-05

Dear Mr. Smith:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for comments from the Emerging Issues Task Force (EITF) on the proposal contained in EITF Abstract 04-05, *Investor's Accounting for an Investment in a Limited Partnership When the Investor Is the Sole General Partner and the Limited Partners Have Certain Rights* (Abstract). NAREIT is the national trade association for real estate investment trusts (REITs) and publicly traded real estate companies. Members include REITs and businesses 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 the EITF's efforts to continue to develop high-quality accounting standards that improve the transparency, usefulness and credibility of financial reporting. In addition, we support the EITF's efforts to make the various standards consistent with one another. Overall, we support the requirements in the Abstract that a sole general partner (GP) should consolidate the limited partnerships, until and unless the limited partners (LPs) can overcome the presumption of control based on the two-step test provided in the Abstract. However, we would like to clarify certain aspects with respect to evaluating whether the participating rights are substantive or not.

♦ ♦ ♦
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The Abstract as currently written presumes that a sole GP controls the limited partnership and therefore should consolidate the LP(s) until and unless the latter can demonstrate that they possess substantive kick-out rights or substantive participating rights, regardless of the sole GP's ownership interest in the limited partnership. We have instances within our industry whereby the GP holds only a one percent economic interest and the LP(s) hold 99 percent of the economic interest. We believe that, where the GP's actual economic interest is minimal (say less than 10 percent), requiring the GP to consolidate the partnership and report a significant (say more than 90 percent) minority interest, does not faithfully represent the economic substance of the GP's partnership interest. As stated in paragraph 19a, "although the general partner is presumed to control the limited partnership, the level of skepticism about such ability should increase as the sole general partner's economic interest in the limited partnership decreases." We request that the EITF consider a minimal economic interest threshold in its basic premise that a GP in a limited partnership is presumed to control that limited partnership and therefore should consolidate the partnership regardless of the sole GP's ownership interest in the limited partnership.

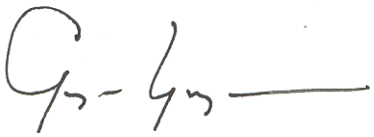
Example 1 in Exhibit 04-5A of the Abstract states that, "the rights of the limited partners relating to the approval of acquisitions and dispositions of assets that are 20 percent or less of the fair value of the limited partnership's total assets and that are closely related to the limited partnership's existing business (that is, same line of business) may be substantive participating rights." We agree with this. The example further states that, "if approval by the limited partners is necessary to incur additional indebtedness to finance an acquisition that is not in the limited partnership's ordinary course of business (that is, an acquisition greater than 20 percent of the fair value of the limited partnership's total assets or an acquisition of an investee that is not in the same line of business), then the approval by the limited partners would be considered a protective right."

We believe that using a bright line of 20 percent to distinguish "ordinary course transactions" does not result in accounting that reflects the business substance of limited partnerships in the real estate and, possibly, other industries. Real estate partnerships may own a relatively small number of properties. Further, acquisitions and dispositions are executed as a regular/ordinary part of the partnership's business. Assume that a partnership owns four properties of equal value and that these properties are "recycled" (sold and replaced) regularly. If these sales/purchases require the approval of the limited partners, it seems clear that these partners have participating rights. However, under these circumstances, the Abstract would define these rights as being "protective" since the value of each acquisition/disposition would be greater than 20 percent.

We request that the 20 percent rule contained in Example 1 of the Abstract be eliminated and that the accounting rely on the preparer's and auditor's judgments as to whether acquisitions/dispositions and other transactions requiring approval of the limited partners are "in the ordinary course" of a partnership's business.

NAREIT thanks the EITF for this opportunity to comment on the proposal. Please contact Gaurav Agarwal, NAREIT's Director, Financial Standards, at (202) 739-9442 or myself at (202) 739-9432 if you would like to discuss our comments.

Respectfully submitted,



George Yungmann
Vice President, Financial Standards