

**National Association of Real Estate Investment Trusts
1875 Eye Street, NW
Suite 600
Washington, DC 20006**

August 14, 2002

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File No. S7-21-02

Dear Mr. Katz:

The National Association of Real Estate Investment Trusts[®] (“NAREIT[®]”) welcomes this opportunity to respond to the request for comments from the Securities and Exchange Commission (“Commission”) on the proposed rules contained in Release No. 34-46079, as supplemented by Release No. 34-46300 (the “Proposed Rules”). NAREIT is the national trade association for real estate investment trusts (“REITs”) and other publicly traded real estate companies. Members include REITs and other businesses that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

Executive Summary

NAREIT supports the efforts of both Congress and the Commission to promote full disclosure and improve investor confidence by requiring the principal executive officer and principal financial officer of all public companies to certify the contents of their companies’ quarterly and annual reports.

However, NAREIT is concerned that Congress and the Commission have not provided enough guidance regarding the differences between the certification requirement under Section 906 (the “906 Certification”) of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”) and the SEC’s proposed certification (which is designed to comply with Section 302 of the Sarbanes-Oxley Act) (the “302 Certification”). NAREIT requests that the Commission address differences in the “knowledge” standard between the 906 Certification and the 302 Certification; provide a form for the 906 Certification or, preferably a form that combines the 906 Certification and the 302 Certification; clarify the manner in which the certifications should be filed with the SEC; and clarify that the 906 Certification need not accompany Form 8-K reports that contain financial statements.

Different Standards for Certification under Section 906 and Section 302 of Sarbanes-Oxley

Section 906 of Sarbanes-Oxley requires a company's chief executive officer and chief financial officer to certify that:

- each periodic report containing financial statements fully complies with the Securities Exchange Act of 1934 ("Exchange Act"), and
- information in the report fairly presents, in all material respects, the company's financial condition and operational results.

The 302 Certification, on the other hand, requires an officer to certify, among other matters, that:

- *to the certifying officer's knowledge*, the report does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements in the report, in light of the circumstances under which they were made, not misleading, and
- *to the certifying officer's knowledge*, the report fairly presents, in all material respects, the company's financial condition and operational results.

(emphasis added). The most recent Commission release with respect to the 302 Certification excludes any discussion of the relationship between Section 906 of Sarbanes-Oxley, the requirements of which became effective on July 30, 2002 and the proposed 302 Certification.

Although the criminal penalties under Section 906 for a false certification hinge on whether the officers "knowingly" made false statements, the certification itself is not so qualified. However, by making the 906 certification without the knowledge qualifier, the certifying officers may be exposing themselves to civil or criminal liability under other existing statutes. This suggests that an officer would be subject to liability for *de minimis* non-compliance or inaccuracies that would not cause the filing to be materially inaccurate or false. This standard is extremely high and is far beyond anything previously required by Congress or the Commission. NAREIT believes it is unreasonable to expose officers to criminal or civil liability by requiring a certification that is not qualified by reference to their knowledge. NAREIT therefore proposes that the Commission confirm that the 906 Certification also should be interpreted for all purposes to include a "knowledge" qualification or, alternatively, petition Congress to so clarify.

Filing Procedures for Sarbanes-Oxley Certifications

NAREIT appreciates that the Commission has supplied companies with forms to follow in giving the certifications under its Order of June 27, 2002 and has indicated that forms will be forthcoming for the Section 302 Certification. NAREIT respectfully requests that the Commission either supply a form to follow for the 906 Certification, or, preferably, conform the 302 and 906 certifications into one form that can be filed to comply with both sections of Sarbanes-Oxley.

It is unclear under the provisions of Sarbanes-Oxley whether the Section 906 certifications should be filed as an exhibit to the 10-Q, under Item 9 of Form 8-K, or submitted manually or via Edgar as correspondence apart from the periodic report. NAREIT is aware that many CEOs and CFOs of our member companies have struggled with what is the proper manner of filing the requested certification. NAREIT requests that the Commission provide appropriate guidance as to the proper (and uniform) manner for filing the certification required under Section 906.

Confirmation that Form 8-K's Not Subject to Certification

NAREIT is concerned that there is uncertainty with respect to the application of Section 906 to Form 8-K Current Reports that contain financial statements. NAREIT does not believe that such financial statements constitute "periodic reports" as described under Section 906 and requests that the Commission confirm this analysis and understanding.

Conclusion

NAREIT urges the Commission to clarify that the 906 Certification for all filers is qualified by the certifying officer's knowledge, as will be the case with the 302 Certification. To the extent it is not possible for the Commission to do so, we urge the Commission to petition Congress to clarify and resolve this difference between the certifications.

NAREIT also respectfully proposes that the Commission promulgate rules with respect to filing mechanics associated with the certification. In lieu of filing a separate certification to satisfy each of Section 302 and Section 906 of Sarbanes-Oxley, NAREIT proposes that a single certification form be designed that will satisfy the requirements of both provisions. NAREIT also proposes clarification regarding the manner of submitting the certifications. In addition, NAREIT requests the Commission's confirmation that Form 8-K Current Reports are not subject to certification under Section 906.

NAREIT thanks the Commission for the opportunity to comment on the Proposed Rules. Please contact Robert Cohen, NAREIT's National Policy Counsel, or me at (202) 739-9400 if you have any questions regarding this letter.

Sincerely,

Tony M. Edwards
Senior Vice President & General Counsel