NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

July 25, 2008

Via E-mail and Overnight Delivery

The Honorable Jerome D. Gerard
Acting Executive Director
Maine Revenue Services
24 State House Station
Augusta, ME 04333-0024

Re: LD 2074: Maine Revenue Services Study Group

Dear Acting Executive Director Gerard:

The National Association of Real Estate Investment Trusts® (NAREIT) thanks you for the opportunity to participate in a meeting of a real estate investment trust (REIT) Study Group (Study Group) on July 29, 2008, convened by Maine Revenue Services. As you know, this Study Group is being convened at the request of the Joint Committee on Taxation of the 123rd Maine Legislature after its consideration of L.D. 2074.

NAREIT is the worldwide representative voice for 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 that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

Please find enclosed written materials submitted by NAREIT in connection with this July 29, 2008, meeting. These materials are meant to address the following five subject areas of the REIT Study Group:

1) Whether transactions between REITs and their Taxable REIT Subsidiaries (TRSs) enable corporations to avoid tax on income earned in Maine;
2) Whether REITs other than timberland REITs use a TRS to develop properties intended for sale;
3) Whether the favorable tax status granted to REITs by federal tax law results in a net transfer of wealth out of state;
4) Analysis of how "captive REITs" function under Maine's system of combined reporting;
5) Analysis of both the benefit to Maine residents of diversifying their retirement and savings portfolios through investment in REITs and the benefit to Maine communities of investments by REITs in Maine.

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1875 I Street, NW, Suite 600, Washington, D.C. 20006-5413
Phone 202-739-9400 Fax 202-739-9401 www.reit.com

EXECUTIVE SUMMARY

Set forth below is detailed information that addresses the five issues of interest to the Study Group. First, Section I.C. describes how REITs and TRSs interact and describes the federal 100% tax penalty that is imposed on income or deductions that are improperly shifted between REITs and TRSs. This section demonstrates that transactions between REITs and TRSs do not enable REITs to avoid Maine tax – quite the contrary, they most likely increase the amount of tax owed to Maine by TRSs that recognize gain on the sale of Maine properties.

Section II provides information on the use by non-timber REITs of TRSs to develop property for sale. As you will see from this information, there are quite a number of retail, office, residential and industrial REITs that use TRSs for this purpose.

Section III addresses the issue of whether REITs allow for a net transfer of wealth out of state. While this section notes the impossibility of obtaining complete data, there have been significant REIT dividends paid to Maine investors over the last several years by REITs whose Maine properties are insignificant or nonexistent, demonstrating the benefit to the fisc by Maine residents' investment in REITs.

Sections III and IV also provide information about the benefit to Maine residents and communities of investing in REITs and investment by REITs. Section IV in particular notes the benefit to Maine communities of jobs, property taxes, payroll taxes and tourism that REIT investments provide.

Finally, Section V provides data showing that REITs provide an excellent choice for both strong, risk-adjusted returns and diversification potential.

In addition, we have also attached the following: a one page summary describing our opposition to L.D. 2074 (Exhibit 1); a comparison of "fact vs. fiction" concerning L.D. 2074 (Exhibit 2); a listing of properties owned by Securities and Exchange Commission (SEC)-registered, non-timber REITs in Maine (based on current data) (Exhibit 3); a map of those properties owned by Securities and Exchange Commission (SEC)-registered, non-timber REITs in Maine (based on current data) (Exhibit 4), as well as a number of other Exhibits listed throughout this submission.

I. REITs: Vehicle for Small Investors to Own Income-Producing Realty

A. Background and History

Over nearly half a century, the U.S. REIT industry has become an important segment of the U.S. economy and investment markets. U.S. REITs have seen their equity market capitalization soar from $90 billion to approximately $300 billion in just the past 10 years. In the process, that growth has set the stage for the adoption of the REIT approach to securitized real estate investment across the globe. Prior to the creation of listed real estate equities, access to the investment returns of commercial real estate equity as a core asset was available only to institutions and wealthy individuals having the financial wherewithal to undertake direct real estate investment.

By way of background, REITs are corporations or business trusts that combine the capital of many investors to benefit from a diversified portfolio of income-producing real estate, such as apartments, hotels, shopping centers, offices, timberlands, and warehouses. In exchange for meeting a whole host of requirements described further below to ensure, among other things, that they remain real estate-focused, including that they distribute at least 90% of their taxable income, REITs may claim a dividends paid deduction. Thus, REIT income is typically taxed at the shareholder level.

Significant growth in the REIT industry did not begin until 1992 for a number of reasons. The early to mid-1990s represented a period of recession in the real estate industry, and REITs' traditionally low debt levels and ability to access the public capital markets allowed them to infuse equity capital in the real estate market.

The market capitalization of REITs grew from about $13 billion at the end of 1991 to over $140 billion in mid-1999. The taxes generated from REITs also increased since dividends from public REITs increased from about $1 billion in 1991 to more than $8 billion in 1999.

As the real estate industry in general grew, real estate owners began to provide more "cutting edge" and tenant-specific services (like high speed internet, concierge services, shuttles from apartment buildings to shopping malls, etc.). Although the existence of REITs clearly benefited the real estate marketplace, REITs were at a competitive disadvantage since they risked loss of REIT status if they provided these services. As a result, Congress enacted the REIT Modernization Act (RMA) of 1999 (with a 2001 effective date) in order to allow REITs to own fully taxable subsidiaries, within limits, that could perform such services, as well as earn other, non-qualifying income.

In connection with this legislation, former Senator Bob Graham (D-FL) noted the following:

> REITs play a positive role in the real estate economy that has helped to stabilize property values and provide liquidity to the market. As long as the basic limitations on REIT activities are preserved, those tax rules which impose restraints on REIT activities must be modified. . .
>
> The legislation that we are introducing today . . . would permit REITs to establish taxable [REIT] subsidiaries to offer services that a REIT cannot offer directly to tenants and third parties. <u>Stringent rules are included to ensure that the subsidiary would be fully subject to taxation</u>. Current rules designed to ensure that REIT income is primarily earned from real estate activities would continue to apply.

145 Cong. Rec. S. 5381 (Daily Ed. May 14, 1999 (remarks of Sen. Bob Graham) (emphasis added).

Regarding the authorization of REITs, Congress' vision has been realized: as of December 31, 2007, 152 publicly traded REITs had a total market capitalization of over $312 billion. Investors have benefited from owning REITs: the 35-year compound annual return for the period ending December 31, 2007 of the S&P 500 stock index was 10.97%, while that of equity REITs was 13.16%. The economy has and continues to benefit from REITs as well – because REITs cannot pass through losses to investors (unlike partnerships), their focus must be on creating value for shareholders. Furthermore, unlike other real estate owners that use high levels of debt, average debt levels for public REITs are less than 50%, leading to less volatility in the real estate market and fewer bankruptcies and workouts. Over 20 countries have some form of REIT legislation in place that allows for a single level of taxation.

Set forth below is additional background on the requirements for REIT status.

B. REIT Requirements and Applicable Rules

1. REITs Must Distribute at least 90% of Taxable Income

In order to encourage the creation of REITs, Congress provided a tax regime whereby if REITs satisfied a number of requirements primarily designed to ensure that REITs remain real estate-focused, REITs would be entitled to deduct any distributions to shareholders. One such requirement is that REITs must distribute at least 90% of their taxable income. Many REITs exceed this distribution requirement.

In exchange for distributing taxable income and any net capital gains (and for satisfying a number of other requirements to ensure that REITs remain focused on the long-term investment in real estate), federal law grants REITs (and mutual funds) a dividends paid deduction (DPD). In 2007, publicly traded REITs distributed more than $19 billion to their shareholders.

Thus, most, if not all, of a REIT's earnings are taxed only at the shareholder level. On the other hand, REITs pay the price of not having retained earnings available to meet their business needs. Instead, capital for growth and significant capital expenditures comes largely from new money raised in the investment marketplace from investors who have confidence in the REIT's future prospects and business plan.

2. 75%/95% Gross Income Tests

In order to ensure that REITs remain real estate-focused, REITs must satisfy two gross income tests annually. First, at least 75% of their gross income must be from real estate-related sources, including, among other things, "rents from real property" (a defined term), interest on mortgages secured by real property, gains from the sale of real property, etc. Second, at least 95% of a REIT's gross income annually must be from "passive" sources, including those items included in the 75% gross income test as well as non-real estate interest, dividends, etc.

3. Asset Tests

REITs also must satisfy a quarterly asset test which demands that they be real estate-focused. Among other things, at the end of each calendar quarter, at least 75% of a REIT's assets (by value) must include real estate assets and cash and cash items (like government securities). To ensure that a REIT be diversified, REITs cannot own more than 10% of any corporation other than another REIT, a "qualified REIT subsidiary" (a QRS, or 100% corporate subsidiary, which is considered a "disregarded entity" under federal and most states' tax laws, similar to a single member limited liability company), or a "taxable REIT subsidiary" (a TRS, described further below).

4. Prohibited Transactions: 100% Tax on Sales of "Inventory" or Property Specifically Developed for Immediate Sale

Congress required REITs to be long-term investors in real estate. As the REIT provisions were originally enacted, any sale of property "held primarily for sale in the ordinary course of a REIT's trade or business" (also known as "inventory" or "dealer property," rather than property held for long-term investment) could have caused loss of REIT status. Since 1960, Congress has modified this rule so that, instead of loss of REIT status for selling dealer property, REITs face a 100% tax on gains from such sales. The determination of whether property is "dealer property" is made based on a "facts and circumstances" analysis.

REITs may develop property for their own account that, once developed, they hold for investment. The relevant inquiry is whether the property is held as investment (for the long term) or as inventory as a dealer (for the short term). This rule is desirable because it provides the flexibility for those REITs that have property development expertise to benefit their shareholders by undertaking development for their own account, thereby achieving cost efficiency and savings. This rule also helps spur development by REITs with particular development expertise in blighted areas and redevelopment in all areas. Other REITs choose not to develop for their own account.

With that said, the REIT faces strong discouragement, but not loss of REIT status, from directly developing property for third parties, as a result of the 100% tax on such gains.

Because the penalty for selling "dealer property" is so draconian, a safe harbor is available. Specifically, the 100% tax is not imposed on a REIT's property sales if the REIT has: 1) held the property for at least 4 years; 2) not spent, in the form of capital expenditures, more than 30% of the net selling price of the property over the last 4 years; 3) either not made more than 7 sales of property within the taxable year or the aggregate adjusted bases of property sold during the taxable year does not exceed 10% of the aggregate adjusted bases of all of the REIT's assets as of the beginning of the taxable year; and, 4) met certain other requirements.[1]

[1] Pending federal legislation, H.R. 3221, would change the four-year safe harbor test to 2 years, allow a REIT to use fair value to calculate the 10% dealer sales test, and would expand the limit on the size of a REIT's TRSs from 20% to 25% of a REIT's gross assets.

Many REITs have established a core expertise in developing properties, and therefore develop properties not only for their own account, but also for third parties through a taxable REIT subsidiary (TRS) within specifically defined limits, as described further below. Profits of the TRS are taxable at the entity level.

C. Taxable REIT Subsidiaries

1. Generally

In 1999, as part of the REIT Modernization Act (RMA) of 1999, Congress allowed REITs (effective January 1, 2001) to own up to 100% of the stock of a TRS, provided both REIT and TRS make a TRS election. However, Congress provided stringent limits on the use of ownership of TRSs. First, the value of a TRS' securities cannot exceed more than 20% of the value of a REIT's assets. Second, to ensure that a TRS is subject to an appropriate level of corporate taxation, the amount of debt and rental payments from a TRS to its affiliated REIT are limited. Further, a 100% excise tax is imposed to the extent that any transaction between a TRS and its affiliated REIT (or that REIT's tenants) is not conducted on an "arm's length" basis.

More specifically, as part of the authorization of TRSs, Congress required that many transactions between a REIT and its TRSs be at arm's length or be subject to a **100%** tax. Congress was concerned about the possibility that, absent such a rule, REITs and TRSs could shift income and deductions inappropriately to avoid tax. Aside from the general 100% tax, the IRS has always had authority under § 482 of the Internal Revenue Code (along with those states that incorporate § 482 into their tax law) to reallocate income among related parties in order to clearly reflect income. Furthermore, because applicable accounting rules potentially require the REIT's financial statements to reflect the imposition of these taxes if a particular transaction cannot be justified as having met the arm's length standard, the accounting rules further constrain a REIT from charging above-market prices to an affiliated TRS. Because of these rules, REITs expend significant efforts in order to demonstrate that properties are sold at fair market value, including obtaining appraisals from third parties.

As noted above, a REIT also faces a 100% tax on gain from dealer property. Although a safe harbor does exist, it requires, among other things, that the property being sold be held for at least four years. REITs concerned about not satisfying this safe harbor and facing a 100% tax often may transfer properties to their TRSs for them to prepare for development and ultimate sale. In doing so, REITs are mindful that the TRS must be viewed as the true developer and owner for tax purposes so that the ultimate sale is attributed to the TRS. While REITs are mindful that TRSs are subject to full corporate-level tax on gains from the sale of property at federal and state rates in excess at times of 40%, such tax at the TRS level pales in comparison to a 100% federal tax rate (plus state taxes) if the REIT is viewed as the seller.[2]

[2] Additionally, if the REIT in fact is holding property primarily for sale in the ordinary course of its trade or business and it sells the property at a gain—even at fair market value—it faces a 100% prohibited transactions tax on such gain unless the sale meets the safe harbor describe above. Thus, to the extent that it is viewed as appropriate for a TRS to develop property owned by the REIT for sale to third parties, the REIT is well-advised to transfer the property to the TRS before undertaking any preparation of the property for sale.

Furthermore, this potential risk to a publicly traded REIT subject to the accounting rule known as "FIN 48" (which requires public disclosure and booking of tax liabilities for tax positions that are not more likely than not of being sustained) is significant, and, as a result, the REIT is expected to take steps to ensure that: a) it is the TRS, not the REIT, that "develops" the property (*e.g.,* obtains zoning permits, completes infrastructure, markets the property, etc.); and b) that if the property is sold to the TRS by the REIT, it is sold at a fair market value that can be substantiated if challenged. With that said, property values do vary over time, and it is possible that the REIT may sell a particular property to a TRS for an amount in excess of the REIT's tax basis in the property.

2. <u>U.S. Treasury Department Study Demonstrating Taxes Paid by TRSs</u>

In connection with the authorization of TRSs, Congress required the Treasury Department to "conduct a study to determine how many taxable REIT subsidiaries are in existence and the aggregate amount of taxes paid by such subsidiaries." A copy of a Treasury Department study (the Study) from 2001-2004 entitled "*The Development of Taxable REIT Subsidiaries, 2001-2004*" is attached to this submission as Exhibit 5. In short, the Study demonstrates that TRSs do in fact pay significant amounts of taxes.

For example, the Study notes that "TRS tax remittances grew robustly during their first 4 years… [T]heir total tax payments also increased sharply, from $84 million in 2001 to $388 million in 2004, a 51-percent annual growth rate." Study, p. 199. A total number of 1,051 TRS elections were filed between 2001 and 2004. However, the actual number of active TRSs is not clear since some REIT-TRS affiliates file the election in order to preserve the TRS status of the subsidiary (thereby allowing the REIT to own more than 10% of the TRS' securities without failing the REIT asset tests).

D. <u>All States With a Personal Income Tax Impose Tax REIT Income Only Once – at the Shareholder Level</u>

1. <u>Generally</u>

Every state with a personal income tax system, including Maine currently, allows both the DPD for REITs and does not impose a separate capital gains tax on REITs. As a result of the DPD, most, if not all, of a REIT's income is taxed at one level – the shareholder level.[3] Maine thus benefits by taxing Maine residents investing in REITs that have no Maine operations. For example, since 2000, hundreds of Maine investors have invested over $9 million in two SEC-registered but non-traded REITs that do no business in Maine. These REITs distributed more than $5 million to Maine investors during this time period, thereby increasing Maine's potential tax revenues significantly.

[3] In Tennessee, a single level of tax is accomplished somewhat differently. Tennessee does not impose personal income tax on REIT dividends and grants REITs a DPD, but it imposes its franchise tax on both REITs and partnerships, including those partnerships owned by REITs.

2. Some States Eliminate the DPD for "Captive REITs"

On February 1, 2007, the *Wall Street Journal* published an article entitled "Wal-Mart Cuts Taxes by Paying Rent to Itself," about a "captive REIT" utilized by Wal-Mart ostensibly for state tax planning purposes only. The article described how a Wal-Mart affiliate formed a lower-tier, virtually wholly-owned subsidiary REIT. The affiliate paid rent to the REIT that was deductible for state tax purposes. While the REIT included the rent in income, it also received a DPD for dividends paid to an out-of-state Wal-Mart affiliate that was not subject to the relevant state's income tax.

In 2005, the state of Louisiana eliminated the ability of "captive REITs" to claim a DPD. Since the *Wall Street Journal* article was published (and similar articles appeared in other publications), there has been a flurry of activity at the state level with the goal of shutting down the use of "captive REITs."

Over the past two years, the following states have enacted some type of "captive REIT" legislation: Alabama, Illinois, Indiana, Kentucky, Maryland, Minnesota, New York, North Carolina, Oklahoma, Rhode Island, Utah, West Virginia and Wisconsin.

NAREIT also has worked for over two years with the Multistate Tax Commission (MTC), www.mtc.gov, in its drafting of a uniform statute on captive REITs that narrowly addresses the Wal-Mart-type tax strategy, while still permitting non-corporate entities, U.S. REITs and foreign REITs to own more than 50% of a U.S. REIT's stock without affecting the DPD. In early January 2008, the MTC Executive Committee approved for consideration by the full MTC in July 2008 the model uniform statute language recommended by NAREIT and the Property Council of Australia (an Australian organization similar in function to NAREIT). This draft is attached as Exhibit 6.

After the January 2008 MTC Executive Committee approval of a draft uniform captive REIT statute, the next step for approval by the full MTC is for a majority (in this case, eleven) of the MTC member states to respond to an MTC survey that they would "consider" adopting the draft captive REIT statute (which we understand has occurred). The full MTC is due to vote on the MTC draft during the next MTC meeting at the end of July.

Some have argued that widely held REITs are a "tax loophole" just like "captive REITs." This is an inaccurate analogy. As you can see, "captive REITs" are REITs that are virtually 100% owned by a single C corporation as a means to generate rental deductions by the C corporation's affiliates without a corresponding rental income inclusion even though the rental payments eventually flow in a circular manner. Widely held REITs that invest in professionally managed, income-producing real estate are consistent with the Congressional mandate that REITs allow investors from all walks of life to own some portion of a shopping mall, office building, storage facility, ski resort, or timberland property. Widely held REITs are required to comply with a strict set of rules to ensure that they remain real estate-focused and distribute at least 90% of their taxable income, which non-REIT corporations can freely ignore. Widely held REITs are not tax loopholes.

3. Maine's Taxation of REITs/Captive REITs

Our understanding is that the ability to use captive REITs inappropriately under Maine's tax structure will be addressed by another study group participant. With that said, our understanding is that although Maine uses a "combined" system of reporting, and that typically the benefit of using a captive REIT would be eliminated through this system, there may be structures that would allow a taxpayer group to "break" combination and realize the benefit of a rental deduction to a captive REIT. For example, the interposition of certain foreign corporations or a corporation that provides insurance for other taxpayer group members may be one method to break combination.

II. Use of TRSs by Non-Timber REITs To Develop Properties

One question to be addressed by this Study Group is the extent to which non-timber REITs use TRSs to develop properties for sale. Although we do not have exhaustive information on the use of TRSs by REITs for any particular purpose, we do have significant anecdotal evidence about the use TRSs to develop properties for sale. For example, see "Taxable REIT Subsidiaries: Expanding the REIT Horizon," by Steve Bergsman, *Real Estate Portfolio* (November/December 2005), attached as Exhibit 7 to this submission. This article lists a number of REITs that use TRSs for development, including Colonial Properties Trust, a retail REIT based in the Southeast, Developers Diversified Realty Corporation, a diversified REIT based in the Midwest, Archstone-Smith (formerly an apartment REIT that used a TRS to sell condominiums converted from apartments), and Kimco Realty Corporation, a retail REIT based in New York. Other REITs using TRSs for development include Prologis, an industrial REIT based in Colorado, GMH Communities Trust, a REIT that invested in military housing (sold to American Campus Communities, another REIT, in 2008), and Taubman Centers, Inc., a retail REIT based in Michigan. While we do not have complete information as to the federal and state taxes paid by these TRSs, and of course the amount of tax will vary based on tax rates, other deductions, net operating losses, etc., at least several of our members have confirmed to us that they have paid or estimate paying taxes in the millions of dollars with respect to gains realized by TRSs. For example, one REIT with no Maine properties confirmed that its TRS paid approximately $12.5 million in federal and state taxes in 2006, and estimates paying $11 million in 2007.

Further, as you may know, the IRS from time to time issues private letter rulings to particular taxpayers on specific issues. A number of recent rulings involved factual situations in which a TRS was being used for property development. For example, *see* LTR 200726004 (TRS is in the business of developing real estate properties and providing real estate development services); LTR 200726002 (TRS owns and operates a specialty finance business, an investment property sales business, and a development business); LTR 200624063 (The TRS will also engage in development construction, renovation and management services for military housing privatization projects); and LTR 200525013 (REIT's TRS provides development, management, leasing, and financial services to entities with which it is affiliated).

III. Maine Investors Receive Significant Dividends from REITs

Another question to be addressed by the Study Group is whether REITs cause a net transfer of wealth out of state. It is difficult to quantify this answer for a number of reasons. For example, we assume that most of the REIT properties in Maine are owned by publicly traded REITs. Typically, shares in publicly traded REITs are held in "street name" (by brokerage firms that hold investment accounts for the "true owners") and REITs are unaware of their ultimate investors.

However, we do note that Maine benefits by taxing Maine residents investing in REITs that have no Maine operations. For example, since 2000, *hundreds of Maine investors have invested over $9 million in two SEC-registered but non-traded REITs that do no business in Maine. These REITs distributed more than $5 million to Maine investors* during this time period (in part due to sale of a number of properties), thereby increasing Maine's potential tax revenues significantly. (SEC-registered, but non-listed REITs are able to identify their shareholder base.)[4] One of these REITs is Wells Real Estate Investment Trust II, and a letter on behalf of this company in opposition to L.D. 2074 is attached as Exhibit 8.

Similarly, another SEC-registered, but non-listed REIT owns Maine properties representing less than 1% of its total portfolio, but it distributed over $850,000 to almost 400 Maine shareholders last year. A fourth SEC-registered, but non-listed REIT with Maine properties also representing only 1% of its portfolio (which has since been sold) distributed over $1 million to 600 Maine investors last year.

These examples provide some indication of the significant distributions being made by REITs, typically with no or very little connection to Maine, to shareholders based in Maine. These distributions are taxable at the shareholder level in Maine, thus enabling Maine to benefit from the investments of REITs in states other than Maine.

IV. Benefit to Maine Residents and Communities of Investments in and by REITs

In addition to the significant distributions by REITs to Maine residents noted above, over twenty widely-held REITs have invested hundreds of million of dollars in commercial real estate in Maine, employ many Maine residents and invest in subsidiary entities that pay millions of dollars in Maine taxes. The Maine real estate owned by REITs generates millions of dollars in property taxes. These taxes are on top of the individual income taxes currently generated by REIT dividends paid to Maine residents, as well as the sales and other taxes generated by the tenants that conduct business on the premises owned and operated by REITs. We understand that another study group participant, CNL Lifestyle Properties, Inc., a widely-held REIT, will provide specific data on the benefit to Maine from their ownership of properties in Maine, noting that their Maine ski resorts generate over $4 million of various sales, payroll, property, and rooms and meals taxes for the State of Maine. A similar letter is attached as Exhibit 9, submitted on

[4] SEC-registered, non-listed REITs are REITs that are not publicly traded, but are required to register their shares with the SEC due to the size of their assets and investor base. Because these REITs are not publicly traded, they typically can identify their investors.

behalf of General Growth Properties, Inc. (GGP), which owns the Maine Mall, in South Portland, to Senators Piotti and Perry in opposition to L.D. 2074. This letter indicates that the Maine Mall generates over $7 million in sales and property taxes for the State of Maine and provides employment for hundreds of individuals.

Interestingly, on July 21, 2008, on www.wmtw.com's website, WMTW reported on the benefit of REIT investment to Maine, noting that:

> When listing Maine's top tourist destinations, Acadia National Park and the southern Maine beaches from York to Scarborough are among the places that quickly come to mind.
>
> But what draw the most visitors are the shopping meccas in Kittery [note: *several of which are owned by two publicly traded REITs*] and Freeport, which feature dozens of outlet stores and -- in the case of Freeport -- L.L. Bean.
>
> Merchant associations in the two towns said each of the outlet districts drew more than 3 million shoppers last year. That compares to the 2.2 million people who visited Acadia.
>
> The latest figures from the state Office of Tourism show that U.S. travelers spent $2 billion in purchases in Maine in 2006. By contrast, they spent $1.9 billion on food, 1 billion on accommodations and transportation and $800 million on recreation.

[http://www.wmtw.com/news/16940710/detail.html?rss=port&psp=news]

Maine teachers, state, county, and municipal employees, legislators, and judges also benefit from REITs through the nearly $100 million investment of the Maine State Retirement System's investment in a REIT index fund. Furthermore, several institutional money managers based in Maine manage over $20 million of investment in REITs, including a number of REITs that own no Maine properties.

V. Benefits of Investing in REITs

Attached to this submission as Exhibit 10 is a series of slides prepared by NAREIT's research department that provides some background on the benefits of investing in REITs. In sum, we note that publicly traded and widely held REITs provide modest long-term growth with a consistent, yearly income stream. As noted above, as of December 31, 2007, 152 publicly traded REITs had a total market capitalization of over $312 billion. Investors have benefited from owning REITs: the 35-year compound annual return for the period ending December 31, 2007 of the S&P 500 stock index was 10.97%, while that of equity REITs was 13.16%.

Perhaps the most telling indicator of the benefit of REITs is the slide entitled "Diversification & Risk Adjusted Performance: Domestic Investments" (slide 10). As further described below, this chart demonstrates that REITs provide the highest risk-adjusted return and the maximum diversification potential of any asset class. By way of background, it is important to note several important factors in achieving the most efficient investment portfolios. First, of course, high rate of return is important. However, also important is low risk – at least relative to the rate of return. Finally, diversification of assets is important so that when one asset is “down,” another asset may be “up.” More specifically, diversification that includes assets with what is known as “low correlation” to one another is important. What that means is that, as stated above, when one asset tends to go down, the other tends to go up.

The vertical axis of this chart indicates risk-adjusted rate of return. Thus, the high point of this axis indicates an asset with a high rate of return, per unit of risk. The horizontal axis indicates “correlation” with an index known as the “Dow Jones Wilshire 5000 TR.” This index “represents the broadest index for the U.S. equity market, measuring the performance of all U.S. equity securities with readily available price data.” Correlation essentially refers to the extent to which a particular asset class follows the pattern of the rest of the index – that is, when the index goes “up” in value, these assets also go up, and when the index goes down, these assets go down. You can see that “large cap and broad market indexes” hit the far right of this axis, demonstrating the high correlation of these assets with the index.

This illustration demonstrates the importance of including REITs in an investment portfolio because they provide both strong risk-adjusted returns AND diversification potential. That is, REITs are the only asset class in the top left of the slide. While value stocks do provide high rates of return (they are at the top right of the slide), they do not provide sufficient diversification because their returns tend to “correlate” with those of other stocks. Conversely, while utility stocks tend to have low correlation with other equity stocks (they are further to the left of the chart), they have relatively poor risk-adjusted returns. There is literally no other U.S. equity investment located near REITs, in the top left corner of the graph.

Thank you again for the opportunity to file this submission. I look forward to meeting you on July 29, 2008, and I would be glad to discuss these issues further and answer any questions that you may have.

Sincerely,

Dara F. Bernstein

Dara F. Bernstein
Senior Tax Counsel

Enclosures
Cc: Nanette Ardry, Esq. (w/enclosures)