NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

November 29, 2010

Via email: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule – Short-Term Borrowings – File No. S7-22-10

Dear Ms. Murphy:

This comment letter is in response to Release Nos. 33-9143; 34-62932 (the Proposing Release) in which the Securities and Exchange Commission (Commission) solicits comments on proposed amendments to Item 303 of Regulation S-K and amendments to Forms 8-K and 20-F under the Securities Exchange Act of 1934 (Exchange Act).

The National Association of Real Estate Investment Trusts (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 real estate businesses throughout the world that own, operate and finance commercial and residential real estate. NAREIT's members play an important role in providing liquidity and transparency to real estate.

We commend the Commission for its efforts to promote full and fair disclosure and to require public companies (registrants) to provide both qualitative and quantitative information about their short-term borrowings. If adopted, these disclosures would be made in annual and quarterly reports, proxy or information statements, and in registration statements filed under the Securities Act of 1933 and the Exchange Act.

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All registrants would be subject to the enhanced short-term disclosures designed to better inform investors about funding and liquidity risk. The Commission proposes to distinguish between registrants that engage in financial activities as their business and all other registrants, and would impose more stringent disclosure obligations upon those registrants that meet the definition of "financial company." In particular, a "financial company" would be required to provide disclosure of the maximum *daily* amount of each of five different types of short-term borrowing *during* the reporting period.[1] For all other registrants, disclosure of the maximum *month-end* amount of each of the five types of short-term borrowings during the reporting period would be required.

The Proposing Release suggests that this distinction is warranted because of the "critical" nature of liquidity and funding matters to a financial company's business activities.[2] The Commission proposes to define "financial company" as a registrant that during the relevant reporting period is "engaged to a significant extent in the business of lending, deposit-taking, insurance underwriting or providing investment advice." At the same time, the Commission specifies that certain entities such as a bank, savings association, business development company (BDC), broker-dealer, futures commission merchant or mortgage real estate investment trust would, *per se*, be included within the definition of "financial company." The Proposing Release seeks comment about a number of issues related to "financial company," including whether the activities-based definition of a "financial company" is sufficiently clear and whether the definition is over- or under-inclusive. Further, comment is sought on whether certain types of entities should be deemed to be a "financial company" as was done in the Proposing Release.

REITs generally do not engage to a significant extent "in the business of lending, deposit-taking, insurance underwriting or providing investment advice" and, therefore, we strongly urge that the Commission not categorically include REITs (including mortgage REITs) within the definition of "financial company." Most of the entities specifically included within the proposed definition of "financial company," such as banks, BDCs and insurance companies, are unequivocally "in the business of lending, deposit-taking" or "insurance underwriting," but REITs are not *per se* in any of those businesses.

The Proposing Release makes it clear that the proposed definition of "financial company" is based on the types of business *activities* that expose a company to similar liquidity risks faced by banks,[3] and REITs do not present a similar liquidity risk as banks. Further, to qualify for the specialized tax treatment afforded a REIT under the Internal Revenue Code (Code), no REIT can be a "financial institution," which the Code defines as a bank, savings and loan, small business investment company or business development company.[4] The Code thus draws a sharp line

[1]This would include repurchase agreements, commercial paper, borrowings from banks or factors or any short-term borrowing reflected on the registrant's balance sheet.

[2] Proposing Release at 59869.

[3] Proposing Release at footnote 50. REITs' reliance on, and need for, short-term borrowings varies widely by company and is not comparable to that of banks, savings associations, broker-dealers or futures commission merchants.

[4] Sections 856(a)(4), 582(c)(2) of Internal Revenue Code.

between REITs and most of the entities that the Commission would *per se* define as a "financial company."

We strongly urge the Commission to exclude REITs from the *per se* portion of the definition of "financial company" and, accordingly, treat them like most registrants and apply the definition of "financial company" to a REIT only when it is "engaged to a significant extent" in one of the covered businesses.[5] By so doing, all REITs would be subject to the same enhanced disclosure requirements adopted for registrants generally.

We look forward to working with the Commission as it continues to develop its rules and disclosure regulations in this critical area.

Respectfully submitted,

Tony M. Edwards,
Executive Vice President & General Counsel

[5] Because the amount of leverage employed within the REIT industry varies widely by company, to subject REITs categorically to the heightened disclosure obligations proposed for a "financial company" would not be justified on a cost-benefit analysis, although such short-term leverage would be disclosed in the same manner as for any registrant generally.