Nareit
Real estate
working for you®

July 29, 2019

VIA ELECTRONIC SUBMISSION

Ms. Vanessa Countryman
Secretary
File Number S7-05-19
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-05-19: Amendments to Financial Disclosures about Acquired and Disposed Businesses

Dear Ms. Countryman,

This letter is submitted by Nareit in response to the SEC's Proposed Amendments to Financial Disclosures about Acquired and Disposed Businesses[1] (Proposal).

Nareit serves as the worldwide representative voice for real estate investment trusts (REITs)[2] and real estate companies with an interest in U.S. income-producing real estate. Nareit's members are REITs and other real estate companies 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.

This letter has been developed by a task force of Nareit members, including members of Nareit's Best Financial Practices Council. Members of the task force include financial executives of both Equity and Mortgage REITs, representatives of major accounting firms, institutional investors and industry analysts.

Nareit Recommendations

Nareit has long endorsed the SEC's ongoing Disclosure Effectiveness Project to address outdated, duplicative, and confusing disclosure obligations and has previously submitted comments to the SEC supporting its 2015 Request for Comment on the Effectiveness of Financial Disclosures about Entities

[1] Amendments to Financial Disclosures about Acquired and Disposed Businesses, Release No. 34-85765, File No: S7-05-19 (May 3, 2019), available at www.sec.gov/rules/proposed/2019/33-10635.pdf
[2] REITs are real estate working for you. Through the properties they own, finance and operate, REITs help provide the essential real estate we need to live, work and play. REITs own more than $3 trillion in gross assets across the U.S. and have an equity market capitalization of $1 trillion. In addition, more than 80 million Americans invest in REIT stocks through their 401(k)and other investment funds.

1875 I Street, NW, Ste 500
Washington, D.C. 20006-5413
202-739-9400

reit.com

other than the Registrant[3], its 2016 Concept Release on Business and Financial Disclosure Required by Regulation SK[4]; its related Disclosure Update and Simplification Proposal[5] and its Proposal on Financial Disclosures About Guarantors and Issuers of Guaranteed Securities.[6] Nareit also reiterated its support for the disclosure initiative in comments on the SEC's Strategic Plan 2018-2022.[7] Nareit fundamentally believes that eliminating redundant and outdated disclosure requirements improves the effectiveness and usefulness of the information presented to investors and analysts, while also decreasing the costs of preparing that information, which ultimately benefits shareholders.

Nareit and its members also agree that the SEC's Proposal, which includes several changes that Nareit recommended in its Nov. 15, 2015 Comment to the SEC[8], will improve the effectiveness of REIT disclosures. Nareit believes that these proposed changes will improve financial information available to REIT investors and reduce the costs and complexity associated with preparing the disclosure. In particular, Nareit supports the following aspects of the Proposal that would:

- Align key provisions of Rule 3-14 regarding significant real estate operations with the proposed changes to Rule 3-05 by increasing the significance threshold from 10% to 20% and eliminate the requirement to provide three years of financial statements for a real estate operation acquired from a related party;

- Revise the significance tests and raise the threshold for Form 8-K reporting of disposals of businesses from 10% to 20% to align with the requirements for acquisitions;

- Eliminate the requirement that registrants provide three years of financial statements for acquisitions that individually exceed 50% significance;

- Require registrants to provide one year of financial statements for acquired businesses that individually exceed 20% significance;

[3] Nareit comment on SEC Request for Comment on the Effectiveness of Financial Disclosures about Entities other than the Registrant; Release No. 33-9929; 34-75985; File No. S7-20-15 (Nov. 30, 2015) available at www.sec.gov/comments/s7-20-15/s72015-17.pdf.
[4] Nareit comment on SEC Concept Release on Business and Financial Disclosure Required by Regulation S-K; 17 CFR Parts 210, 229, 230, 232, 239, 240 and 249; Release Nos. 33-10064, 34-77599; File No. S7-06-16; RIN 3235-AL78 (July 21, 2016) available at www.sec.gov/comments/s7-06-16/s70616-268.pdf.
[5] Nareit comment on SEC Proposed Rule on Disclosure Update and Simplification (17 CFR Parts 210, 229, 230, 239, 240, 249, and 274; Release No. 33-10110, 34-78310; IC32175; File No. S7-15-16; RIN 3235-AL82) (Oct. 28, 2016) available at www.sec.gov/comments/s7-15-16/s71516-39.pdf.
[6] Nareit Comment on Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities Release; No. 33-10526; 34-83701; File No. S7-19-18 (Nov. 28, 2018) available at www.sec.gov/comments/s7-19-18/s71918-4705884-176625.pdf.
[7] Nareit Comment on Strategic Plan for Securities and Exchange Commission; File No. 34-83463: Draft 2018-2022 (July25, 2018) available at www.sec.gov/comments/34-83463/cll7-4127822-171766.pdf.
[8] Supra note 3.

- Require registrants to provide two years of financial statements for acquired businesses that individually exceed 40% significance;

- Eliminate the requirement that registrants provide unaudited interim financial statements for the prior year comparative period when only one year of audited financial statements is required; and,

- Expand the ability of a registrant to provide financial statements of an acquired business using International Financial Reporting Standards (IFRS) without a reconciliation to U.S. Generally Accepted Accounting Principles (GAAP) if the business would qualify as a foreign private issuer on its own.

Additionally, Nareit's member task force has developed the following two suggestions which, in our view, would provide further clarity in applying the Proposal and also improve the information available to REIT investors:

Conform the Significance Guidance for the Investment and Asset Tests Proposed in Rule 3-14 for Blind Pool Real Estate Offerings in Rule 3-05 and permit the exclusion of the Income Test during the distribution period

Nareit has members who conduct blind pool offerings and acquire both real estate operations within the scope of the proposed Rule 3-14 definition, as well as businesses within the scope of Rule 3-05 (i.e., senior housing, hotels, etc.). Based on the feedback from our task force, we believe the codification of the Commission staff's previous interpretation of significance during the distribution period to be appropriate in light of the nature of blind pool offerings, and we further believe the scope of the proposed Rule 3-14(b)(2)(iii) to be sufficiently clear.

Additionally, we suggest that the Commission consider applying the same adapted significance tests to Rule 3-05 acquisitions in circumstances where the registrants are subject to Industry Guide 5 undertakings. Doing so would align the significance tests for blind pool offerings under both Rule 3-05 and Rule 3-14, which we believe to be appropriate given these significance tests have similar objectives and the fact that the exclusion of certain types of real estate that generate revenues from operations other than leasing, such as nursing homes, hotels, motels, golf courses, etc.[9] from Rule 3-14 has historically been attributed to the variability and short-term nature of the underlying revenues and costs. Neither the staff guidance outlining the adapted significance test for blind pool offerings nor the Guide 5 undertakings distinguish between real estate operations and businesses within the scope of Rule 3-05. Consistent with current practice, conforming the adapted significance tests under Rules 3-05 and Rule 3-

[9] Supra., note 1 at 67.

14 would allow blind pool registrants to benefit from the inclusion of other activity up through the acquisition date (i.e. additional offering proceeds received, any individually insignificant acquisition(s) undertaken, etc.), regardless of whether or not the acquisition(s) qualify as a real estate operation, per the proposed definition set forth in the Proposal.

We also believe that this conforming change may improve the financial information provided to investors and reduce the complexity for registrants of adhering to two separate reporting regimes. It also would be likely to reduce the burden of providing audited historical financial statements for an acquisition considered to be material relative to its most recently audited fiscal year (as currently required under Rule 3-05) but, given the continuous nature of blind pool offerings, may not be material relative to its financial position and market capitalization as of the acquisition date.

We further suggest that the Commission consider permitting the exclusion of the Income Test during the distribution period as it is also likely to reduce the burden of providing audited historical financial statements for an acquisition considered to be significant in the early stages of the distribution period solely based on the Income Test. Given the continuous nature of blind pool offerings, we consider this financial information to be less useful to investors since a registrant is growing its portfolio during the distribution period.

Clarify the Definition of "Real Estate Operations"

We appreciate the SEC's efforts to define a "real estate operation" in Rule 3-14 consistent with current practice. However, we are concerned that the proposed definition may unintentionally exclude transactions involving the acquisition of real property that is not currently leased, but is being acquired with the intention to lease and has more than a nominal leasing history. Accordingly, we suggest that the SEC consider amending the proposed definition of "real estate operation" in Rule 3-14 as follows:

> "a business that generates substantially all of its revenues through the leasing of real property, or substantially all the assets of which are held for lease."

Additionally, we suggest that the SEC consider codifying in Rule 3-14 the current guidance in Sections 2330.8 through 2330.10 of the Division of Corporation Finance's Financial Reporting Manual regarding real properties with limited or no leasing history and real properties where the rental history will not be representative of revenues and operating costs of the real property after acquisition.

As noted above, Nareit has members who acquire real estate operations within the scope of the proposed Rule 3-14 definition, as well those whose transactions fall within the scope of Rule 3-05 (i.e., senior housing, hotels, etc.). We therefore suggest that the definition of "business" set forth in Rule 11-

01(d) also be revised to clarify that the definition includes real property that is leased or held for lease. Accordingly, we suggest that the third sentence of Rule 11-01(d) be revised as follows:

> "However, a lesser component of an entity may also constitute a business, and a presumption exists that a real property that is leased or held for lease to third parties constitutes a business."

Conclusion

Nareit appreciates the opportunity to participate in this additional rulemaking related to the SEC's ongoing Disclosure Effectiveness Project and would be pleased to discuss our comments, or any related questions that the SEC or its staff may have. Please contact: Victoria Rostow, Nareit's Senior Vice President, Regulatory Affairs & Deputy General Counsel (vrostow@nareit.com); Christopher Drula, Senior Vice President, Financial Standards (cdrula@nareit.com); or George Yungmann, Senior Vice President, Financial Standards (gyungmann@nareit.com), if you would like to discuss these issues in greater detail.

Respectfully submitted,

Victoria P. Rostow
SVP, Regulatory Affairs & Deputy General Council

Christopher T. Drula
SVP, Financial Standards

George Yungmann
SVP, Financial Standards