

Alert



National Association of
Real Estate Investment Trusts®

SEC RULE RETAINS USE OF NON-GAAP PER SHARE MEASURES CONSISTENT WITH NAREIT AND INDUSTRY COMMENTS

On November 5, 2002, the Securities and Exchange Commission (SEC) issued a proposed rule that would have prohibited the use of non-GAAP per share information in earnings releases or similar public announcements. Additionally, all registrants would have been required to file their earnings releases on Form 8-K. The proposed rule can be found at

<http://www.sec.gov/rules/proposed/33-8145.htm>.

Today the SEC concluded that the use of non-GAAP per share information, such as FFO per share, should not be prohibited in earnings releases and similar public announcements.

NAREIT and many of our members filed comments opposing the proposed prohibition on the use of non-GAAP per share measures in earnings releases and similar announcements. "We believe that reporting non-GAAP measures on a per share basis is important to meaningful communications of a company's operating performance and financial condition," NAREIT explained in its December 16 letter (the full text is available at <http://www.sec.gov/rules/proposed/s74302/gyungmann1.htm> or in the Government Relations section of www.nareit.com.)

The final rule adopted by the SEC today permits the use of non-GAAP per share measures,

including FFO or EBITDA per share, in non-SEC filings, such as press releases and "supplemental packages", so long as the non-GAAP measures are reconciled with comparable GAAP measures. Additionally, the rule requires that reporting companies furnish earnings releases along with Form 8-K instead of filing the release as part of the 8-K. This modification of the proposed rule will somewhat reduce the liability exposure of public companies. The SEC did not indicate when the final rule will become effective.

The REIT industry filed more comments than any other impacted sector, according to SEC staff. Additionally, other real estate organizations used NAREIT's text as a model for their comments in opposition to the proposal.

We will communicate additional information after the SEC releases the actual text of the final rule. If you have any questions in the meantime, please contact Rob Cohen at rcohen@nareit.com or George Yungmann at gyungmann@nareit.com.