

Update



NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

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FASB

Votes to Allow Continued Capitalization of Rental Costs Incurred During Construction

In July 2005, the Financial Accounting Standards

Board (FASB or Board) issued for comment a Financial Statement Position (FSP) that would have required all rental costs incurred during construction be expensed as incurred. Based on comments received from NAREIT and its member companies, at the Sept. 21, 2005 meeting the Board decided that the scope of the proposed FSP should not include rental costs incurred during a construction period for a real estate project accounted for under FASB Statement No. 67, *Accounting for Costs and Initial Rental Operations of Real Estate Projects*. This means that most NAREIT member companies that capitalize any rental costs directly related to the construction of a property will continue to be allowed to do so. Click [HERE](#) for the final FSP.

Launches Investor Task Force

In September 2005, the FASB announced the launch of its Investor Task Force (ITF), an advisory resource that will provide the FASB with sector specific insight and expertise from the professional investment community on relevant accounting issues. The ITF is comprised of the nation's largest institutional asset managers, including The Capital Group Companies, Fidelity Investments, Mellon Financial Corporation, Putnam Investments, T. Rowe Price and Wellington Management. Together, these institutions and their affiliates maintain more than \$3 trillion in assets under management.

The FASB's establishment of the ITF represents the latest in a series of steps designed to enhance participation of investors and other users of financial information in the standard setting

process. In 2003, the FASB established the User Advisory Council (UAC) which includes representation from individual and institutional investors, equity and debt analysts, lenders and credit agencies. The UAC serves as a resource to the FASB both in formulating its technical agenda and in advising on specific agenda projects. Investors are also represented on the Financial Accounting Standards Board Advisory Council (FASAC), FASB's Emerging Issues Task Force (EITF) and in FASB's project resource groups. The FASB also regularly holds public meetings, conducts roundtables, issues proposals for public comment and takes a multitude of other proactive measures to ensure that its standards reflect the views and perspectives of all of its constituents.

In launching the task force, ITF member firms will each provide an institutional contact point—typically the Director of Research—who will identify industry specific analysts at their respective firms that match the sector requirements of each standard-setting initiative. For example, if an issue on the FASB's agenda relates to the real estate industry, the ITF, as appropriate, would appoint a real estate analyst to advise the Board and staff from at least one of the ITF member firms.

NAREIT staff intends to discuss this process with the appropriate investment analysts who follow our industry and urge them to provide input related to real estate companies to their respective “contact person” on the ITF.

Issues Revised Proposal to Improve Reporting of Earnings Per Share and Enhance Comparability in Cross-Border Financial Reporting

On Sept. 30, 2005, the FASB issued a revised Exposure Draft (ED) of a proposed standard that would make targeted improvements to the

reporting of earnings per share. Specifically, the proposed changes would clarify earnings per share computations involving certain instruments, such as mandatory convertible instruments and contractual obligations that may be settled with cash or by issuing shares. The ED includes revisions to the Treasury Stock Method to eliminate the averaging of quarterly computations and new computational guidance covering these types of instruments. The ED is a revision of the December 2003 proposed Statement, *Earnings per Share*, which was issued as part of the Board's ongoing efforts with the IASB to bring about convergence between U.S. and international accounting standards.

The proposed Statement would be effective for interim and annual periods ending after June 15, 2006. A copy of the proposal is available by clicking [HERE](#).

Proposes Standard on Uncertain Tax Positions

In step with its efforts to improve the quality of financial reporting, on July 14, 2005, the FASB published an Exposure Draft (ED) of a proposed interpretation, *Accounting for Uncertain Tax Positions*. The ED seeks to reduce the significant diversity in practice associated with recognition and measurement in the accounting for income taxes. It would apply to all tax positions accounted for in accordance with FASB Statement No. 109, *Accounting for Income Taxes*.

Under the proposed ED, a company would be required to recognize, in its financial statements, the best estimate of the impact of a tax position only if that position is probable of being sustained on audit based solely on the technical merits of the position. In evaluating whether the probable recognition threshold has been met under this

proposed ED, the company would presume that the tax position will be evaluated during an audit by taxing authorities. The term *probable* is used in this proposed ED to mean “the future event or events are likely to occur.” The ED provides some safe harbors that a company may rely on, *e.g.* receiving a “should” tax opinion from a qualified expert for which all conditions are objectively verifiable. Presumably, the biggest tax issue a REIT must address is its tax status as a REIT.

NAREIT’s views on this proposal are that uncertain tax positions should be a factor in calculating income tax liabilities and expenses if sustaining them on examination is more likely than not. In addition, NAREIT would recommend that, if the probability of sustaining these positions decreases materially, the initial positive impacts of them on the company’s tax expense and tax liability would be reversed.

NAREIT staff provided its views on this proposal to The Tax Council, a national organization representing large public U.S. companies. These views were represented in The Tax Council’s comment letter, as well as in a comment letter filed by Financial Executives International. Click [HERE](#) to access the ED.

Releases Working Draft of the Fair Value Standard

On Oct. 21, 2005, the FASB made available on its Web site a working draft of its Fair Value Measurements standard. The final standard is expected to be published in a few weeks and will be effective for fiscal years beginning after Dec. 15, 2006. The final standard will not require the use of fair value for investment property, but will provide guidance on how to measure fair value when required by existing authoritative pronouncements. It replaces any current guidance for measuring fair value in existing standards,

such as those that govern the accounting for derivatives and financial instruments. If eventually the FASB concludes that investment property should be reported at fair value, it is probable that this standard would be used as the guide for measuring those values. Click [HERE](#) to access the working draft.

The working draft defines fair value as the “the price that would be received for an asset or paid to transfer a liability in a current transaction between marketplace participants in the reference market for the asset or liability” and seeks to establish a hierarchy for measuring fair value that would apply broadly to financial and nonfinancial assets and liabilities. The original exposure draft had grouped the inputs that were to be used to estimate fair value into three broad levels, none of which included specific inputs provided by the entity to which the fair value measurement relates.

NAREIT’s comment letter, dated Sept. 7, 2004, requested that the final standard clarify that entity level inputs represent valid market inputs to measuring fair value. The working draft has been amended to reflect that market information provided by the entity represents valid inputs in fair value measurements. Click [HERE](#) to access NAREIT’s comment letter.

SEC

Proposes Changes to the Definition of an Accelerated Filer and Deadlines for Filing Periodic Reports

On Sept. 21, 2005, the Securities and Exchange Commission (SEC) voted to propose for comment amendments to filing deadlines for periodic reports and changes in accelerated filer definitions, as well as to postpone for an additional year the compliance date for filing internal control reports by companies not

designated as accelerated filers. Under the proposed rules, issuers that meet the existing definition of an accelerated filer and that also have a worldwide public float of at least \$700 million would be considered “large accelerated filers.” These filers would be required to file 10-Ks within 60 days of year-end and 10-Qs within 40 days of each quarter-end. Accelerated filers, those with public floats of \$75 million but less than worldwide float of \$700 million, would be required to file 10-Ks within 75 days of year-end and 10-Qs within 40 days of each quarter-end. These filing requirements are 15 days and five days respectively later than deadlines currently scheduled to become effective. No changes in the filing requirements for non-accelerated filers are proposed. The proposal also eases restrictions on the process for exiting accelerated filer status. Click [HERE](#) to access the SEC release.

In addition, click [HERE](#) to access NAREIT’s summary of the proposal.

Finalizes Rules on Securities Offering Reform

On July 19, 2005, the SEC adopted major amendments to the registered offering framework under the Securities Act of 1933, in the areas of communications, registration procedures, the timing of disclosures provided to investors and liability issues. Of particular interest are the proposed rules that would relax the prohibition on “gun-jumping”- offers prior to the filing of the registration statement and written communications during the “quiet period” that begins after filing of the registration statement and ends when the registration statement is declared effective.

NAREIT’s comment letter dated Jan. 31, 2005 supported the requirements in the proposal but urged the SEC to consider the prevalent UPREIT structure in our industry in the context of defining

“well-known seasoned issuers.” More specifically, if a REIT qualifies as a “well-known seasoned issuer”, NAREIT requested that the UPREIT Operating Partnership entity also gains the advantages of a “well-known seasoned issuer.” Additionally, we requested that the SEC provide a specific exemption permitting UPREITs (or any corporate owned partnership that has the same structure as an UPREIT) to utilize a prospectus supplement rather than a more complicated amendment in connection with identifying selling security holders under an evergreen shelf registration statement.

In a major win for the industry, on July 19, 2005 the SEC issued a final rule that substantially reflected both of NAREIT’s requests discussed above. Click [HERE](#) for the final rules.

In September 2005, the SEC staff also issued questions and answers (Q&As) regarding issuers’ compliance with the new rule and related forms. The Q&As address the following topics: 1) effective date; 2) use of the new communication rules; 3) inclusion in registration statements of the new undertakings in Item 512 of Regulation S-K; 4) shelf registration statements; and, 5) amendments to Form 10-K, Form 20-F, and Form 10-Q. The Q&As are available on the SEC's Web site by clicking [HERE](#).

NAREIT

Facilitates Third Annual Internal Audit Forum

The third annual Internal Audit Forum was hosted by Boston Properties in Boston on Aug. 8 and Aug. 9, 2005 and was attended by more than 40 Internal Audit (IA) directors from various member REITs (an increase of 33 percent from last year (30), which in itself was an increase of 25 percent from the first year (24)). The IA directors discussed a variety of topics, including the roles, responsibilities and reporting policies of their

respective IA functions; compliance with the Sarbanes-Oxley Act of 2002, especially section 404 documentation and testing; conducting risk assessments; best practices for establishing an IA function and relationships with external auditors. The lunch keynote speaker was an internal audit specialist from PricewaterhouseCoopers who advised the group on how the IA function can balance the core responsibilities with SARBOX 404 related work.

This year, in addition to the formal sessions, there were sector roundtable breakouts that were well attended and may become permanent fixtures of the forum.

The group also discussed the program and arrangements for the 2006 Internal Audit Forum which will likely be jointly hosted by Equity Office, Equity Residential and Trizec Properties in Chicago.

Hosts Senior Financial Officer (SFO)/Investor Relations Officer (IRO) Workshop

NAREIT's 2005 SFO/IRO Workshop was attended by more than 160 financial and investor relation professionals representing more than 70 corporate members. The program included three general sessions and eight concurrent sessions providing a broad range of learning experiences for financial officers and investor relations officers. Sessions covered recently issued and proposed accounting standards, the new corporate governance and financial reporting environment, the current capital markets and best practices with respect to investor relations.

A "spotlight session" was also included in this year's program. This session covered all aspects of managing significant TRS business activities.

In addition, for the first time, this year's SFO Workshop featured a Financial Management Roundtable. The purpose of this roundtable was to give SFOs an opportunity to share ideas, raise concerns, talk in-depth and also network.

Planning the 2006 Law & Accounting Conference

NAREIT's 2006 Law & Accounting Conference will be held March 29-31, 2006 in La Quinta, Calif. at the La Quinta Resort. We encourage you to provide us with any topical programming ideas by Nov. 1, 2005 to Gaurav Agarwal.

NAREIT

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