NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

<u>VIA E-MAIL</u>

February 18, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-6009

Re: Rule 10b-18 and Purchases of Certain Equity Securities by the Issuer and Others (S7-50-02)

Dear Mr. Katz:

The National Association of Real Estate Investment Trusts® ("NAREIT") welcomes this opportunity to respond to the request for comments from the Securities and Exchange Commission ("Commission") on certain proposals contained in Release Nos. 33-8160 and 34-46980 ("Release") with respect to amending Rule 10b-18 of the Securities Exchange Act of 1934, as amended.

NAREIT is the national trade association for real estate investment trusts ("REITs") and other publicly traded real estate companies. Members of NAREIT include 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. NAREIT estimates that over 95% of publicly traded REITs, as measured by equity market capitalization are active members of NAREIT.

Executive Summary

NAREIT generally supports the Commission's efforts to simplify, update and modernize Rule 10b-18 in light of recent market developments. We especially applaud the fact that the proposed amendments to Rule 10b-18 call for increased transparency of issuer repurchases by requiring disclosure of all such repurchases, regardless of whether such repurchases fall within the Rule 10b-18 safe harbor.

However, we disagree with the Commission's proposal to eliminate the block trade exception to the volume condition of Rule 10b-18. As further discussed below, we are concerned that the proposed elimination of the block trade

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exception would severely limit the Rule 10b-18 safe harbor for many publicly traded real estate companies. We also do not believe that the block trade exception results in manipulation of issuer stock prices in contravention of the meaning and spirit of Rule 10b-18. Additionally, NAREIT supports conforming the definition of "block" for purposes of Rule 10b-18 to the definition used by the New York Stock Exchange. Finally, we believe that increasing the size of "blocks," while retaining the current block trade exception and thus not including block trades in the calculation of Average Daily Trading Volume ("ADTV"), could alleviate some of the concerns raised by the Commission regarding the block trade exception.

Importance of Stock Repurchase Programs

Stock repurchase programs serve an important function by allowing issuers to manage the amount of capital available to fund capital requirements. At some points in the business cycle, issuers require more capital than at other times. Accordingly, issuers use a variety of strategies to increase or decrease their capital base depending on their needs at any given time, including issuances and repurchases of equity securities. Stock repurchase programs are a flexible and cost-efficient mechanism for managing capital. While other mechanisms, such as self-tender offers, are alternative ways to reduce an issuer's capital base, repurchase programs are less time-consuming and expensive to implement and to operate. An ongoing repurchase program, coupled with periodic disclosure of purchases made through the program as contemplated by the Release, serves as the most efficient way for an issuer to distribute wealth to its public stockholders.

As of December 31, 2002, more than 25% of publicly traded REITs had announced issuer stock repurchase programs. REITs sometimes trade below their net asset value ("NAV")as determined by investors and analysts. When this occurs, analysts and investors frequently urge REIT managers to use the REIT's capital to repurchase those shares they perceive to be undervalued, instead of buying additional properties. As Green Street Advisors noted in an October 10, 2000 special report, REITs have "created meaningful value for their shareholders by aggressively repurchasing shares." In addition, the attached research piece by Morgan Stanley dated December 4, 2001 concludes that a company's stock price increases over the long-term when a REIT buys back its stock when it is trading below its net asset value. Such long-term results belie any concern that real estate companies have used stock buybacks to manipulate prices.
Elimination of the Block Trade Exception

Publicly traded REITs would be harmed by the proposal to eliminate the block trade exception to the volume condition of Rule 10b-18. The block trade exception is frequently used by REITs to implement Rule 10b-18 stock repurchases. The only way for many small or mid-cap issuers, including many REITs, to repurchase any significant amount of shares in a cost effective and timely manner is through block trades. Issuers use block trades to reduce brokerage expenses and to ensure that the desired number of shares are repurchased in a timely manner. Many stock repurchases made by REITs under Rule 10b-18 repurchase programs during 2002 were successfully achieved through block trades. NAREIT believes that elimination of the block trade exception would have significantly reduced the amount of Rule 10b-18 repurchases by REITs during 2002 and prior years.

The Commission expressed concern in the Release that the block exception may allow issuers to "dominate the market for their securities in a way not originally contemplated by the safe harbor." NAREIT recognizes that block trades may, particularly in the case of small- to mid-cap issuers, account for significantly more than 25% of an issuer's ADTV on a given day. However, despite this significant volume from time to time, we believe there is nothing inherently manipulative about block trades. In its 1980 proposing release (Release Nos. 33-6248 and 34-17222) regarding Rule 13e-2 (the effective predecessor to Rule 10b-18), the Commission noted that the market impact of block purchases was less than that of a series of smaller purchases, which in the aggregate were equal in size to a block purchase. We believe that the same analysis used by the Commission in originally adopting Rule 10b-18 with the block trade exception holds true today. Although we recognize that the number of block trades may have increased in recent years, we do not believe this increase alters the reasoning that smaller repurchases might more inaccurately indicate an enhanced buying interest in an issuer's securities. We believe that the current block trade exception represents an appropriate balance between the Commission's concern about manipulation and the practicalities of issuer repurchase programs.

Increase the Size of Blocks

The Commission also requested comment on whether the amount of shares constituting a block should be raised. NAREIT supports the Commission's suggestion in the Release to conform the definition of "block" for purposes of Rule 10b-18 to the definition used by the New York Stock Exchange. We believe that increasing the size of "blocks," while retaining the current block trade exception and thus not including block trades in the calculation of ADTV, could alleviate some of the concerns raised by the Commission regarding the block trade exception.

Proposed Disclosure Requirements

The disclosure obligations proposed by the Commission in the Release, together with the timing and price conditions contained in Rule 10b-18, will provide the necessary transparency to the markets about the volume levels and price of block trade repurchases. These disclosure obligations should adequately address the Commission's concerns regarding the potential abuse of the block trade exception.

Conclusion

NAREIT applauds the Commission in its efforts to revise and update the Rule 10b-18 safe harbor to reflect current market and economic developments, and to enhance the transparency of all issuer repurchases. Clear and concise disclosure regarding issuer repurchase programs is important for investors and is an initiative which we strongly support. NAREIT believes, however, that the elimination of the block trade exception from the Rule 10b-18 safe harbor would disadvantage stockholders of REITs and other small- to mid-cap issuers generally. The proposed disclosure requirements in issuers' periodic filings will provide adequate information to the marketplace about the incidence, frequency and impact of repurchase programs on such issuer's publicly traded securities

NAREIT thanks the Commission for this opportunity to comment on the Release. Please contact Rob Cohen, National Policy Counsel, at 202-739-9415 or me at 202-739-9408, if you would like to discuss our comments in more detail.

Respectfully submitted,

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Industry Overview

December 4, 2001

The Merits of Stock Buybacks

- **Buybacks make sense from a corporate perspective**
  Our data suggests that the stocks of companies conducting buybacks ourperform the RMS .
- **It appears possible to trade on buyback information, but it takes patience**
  Purchasing stocks based on buyback announcements does not lead to strong outperformance until roughly 10 months after the initial investment.
- **Our analysis confirms the merits of share buybacks**
  We have long been advocates of most stock buyback activity, a view that is endorsed by the result of our analysis.

The Merits of Stock Buybacks

In Case You Had Any Doubts about the Merits of Stock Buybacks

With the recent 3Q01 declines in some REIT stock prices and our suspicion that further softness might eventually occur, given the continued recent earnings disappointments, we decided to reexamine the merits of stock buybacks, and their impact on total returns. In summary, ***our analysis would support our preconceived belief in the merits of companies buying their stock back when the shares are trading at discounts to NAV***.

Our specific conclusions include:

1. **Buybacks definitely make sense from a corporate perspective**. Our data suggests that the stocks of companies conducting buybacks outperform the RMS not just during the buyback, but for at least a year afterwards as well.

2. **It also appears possible to trade on buyback information, but it takes patience**. Purchasing the stocks of companies with buybacks following their announcement of the activity in quarterly disclosure does not lead to strong outperformance of the RMS until roughly 10 months after the initial investment.

3. **Our results are not surprising**. We have long been advocates of most stock buyback activity, a view that is endorsed by this data. Given the efficiency of the public markets, it is not surprising that it is difficult to outperform immediately following a company's disclosure of actual buyback activity. However, the final outperformance of such investments after 10 months supports the view that the market does ultimately reward companies for smart investment decisions.

Buybacks and Total Returns

Given the 3Q01 declines in some REIT stocks and our view that ongoing earnings disappointments could eventually cause further price declines, we decided this week to delve into the issue of stock buybacks. Our objective was to determine: i) Whether or not companies that complete buybacks in fact outperformed the RMS? and ii) whether or not investors are able to outperform the RMS by buying the stocks of those companies that have just announced actual buyback activity in the most recent quarterly earnings disclosure?

The Corporate Perspective

Many of the companies we cover have historically been reluctant to repurchase stock, even when it appears especially cheap. Arguments extended by management include the need to maintain certain liquidity levels, a need to avoid levering-up, and, the belief that investments in other external growth activities might offer better returns than an investment in the company's own stock. Although we understand the logic behind many of these arguments (we admit that they are appropriate once in a while), we are generally pretty skeptical of them.

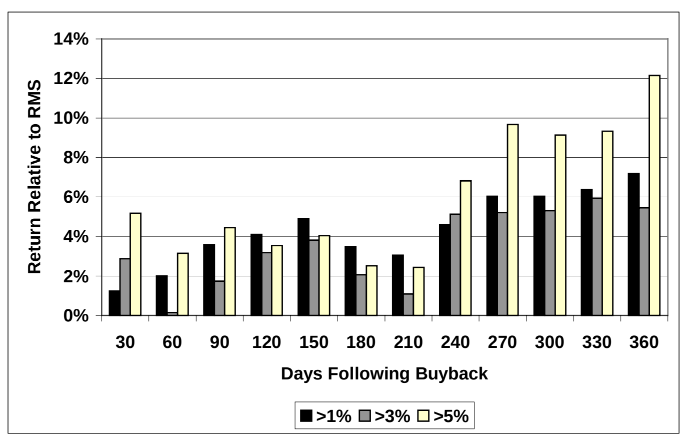
In order to respond to traditional corporate reluctance to repurchase stock, we decided to re-evaluate the historical return data to determine whether buybacks really did positively impact stock prices over an extended period of time.

So here's what we did.

To test the effectiveness of stock buybacks, we screened the quarterly share counts of the REIT universe back through 1996. We then assumed that any company that experienced a sequential quarterly share count *decline* of more than 1% had completed a buyback (we also ran the analysis for reductions of 3% or more, and for reductions of 5% or more). Then, for lack of any better information, we further assumed that the buyback had occurred in the middle of the quarter under consideration.

Exhibit 1

Stocks of Companies with Buybacks Outperform the RMS



Source: Company data, Morgan Stanley Research

Exhibit 2

Relative Performance vs. RMS of Stocks with Buybacks

	Days Following Assumed Buyback											
	30	**60**	**90**	**120**	**150**	**180**	**210**	**240**	**270**	**300**	**330**	**360**
>1% of Total Shares	1.2%	2.0%	3.6%	4.1%	4.9%	3.5%	3.1%	4.6%	6.0%	6.0%	6.4%	7.2%
>3% of Total Shares	2.9%	0.2%	1.7%	3.2%	3.8%	2.1%	1.1%	5.1%	5.2%	5.3%	6.0%	5.4%
>5% of Total Shares	5.2%	3.2%	4.5%	3.5%	4.0%	2.5%	2.4%	6.8%	9.7%	9.1%	9.3%	12.2%

Source: Company data, Morgan Stanley Research

We therefore measured stock returns from the middle of the quarter in which the buyback appeared to occur, and compared that individual stock's return to the return from the RMS from the middle of that same quarter on. All the returns discussed in our analysis are market capitalization weighted.

We believe the results from this research are very compelling (see Exhibit 1).

- The stocks of companies engaged in buyback activity not only outperformed the RMS in the first month following the buyback, but also outperformed up to a year later. Specifically, in the first month following the buyback, the average stock outperformed the RMS by 1.2% for those companies that bought back 1% or more of their stock, and outperformed by more than 5.2% for those companies that bought back over 5% of their stock.

- During the full year following the buyback, the stocks of companies with a 1% or larger buyback outperformed by 7.2%, while the stocks of those companies with 5% or greater buybacks outperformed by a surprising 12% or more!

These results firmly suggest that companies improve stock price performance by repurchasing stock. And the fact that the outperformance not only lasts, but increases throughout the year following the buyback, suggests that excess returns may be attributable to more than just the short-term phenomenon of merely having the company in the market buying its own shares. We would attribute this longer-term outperformance to several factors:

- the buyback clearly sends a strong signal to the market that the company's stock is undervalued,

- the removal of stock from the market lowers the (potentially already low) liquidity in the stock over the longer term, and

- The market ultimately rewards companies for making rational decisions to invest in their own equity.

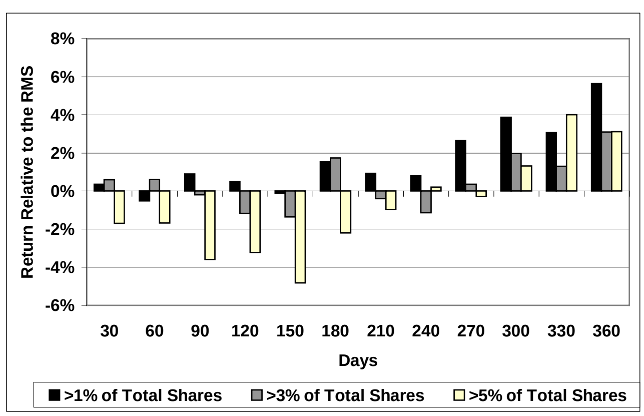
The Investor's Perspective

While these results suggest companies with buybacks outperform, assembling the same portfolio we did would require knowing exactly which companies are buying back their own stock, and knowing it as the companies are actually undertaking the buybacks. Unfortunately for investors, knowing these details is very rarely the case. Instead, rather than being able to invest in the stock during the quarter that the buyback are actually occurring in, investors must typically wait until quarter-end results are announced in order to determine whether buyback has occurred and if so, to what extent. (Remember that the extent of the price outperformance was strongly correlated to the sheer size of the buyback!)

As a result, this could mean potentially very different returns for investors than those portrayed in Exhibit 1 above.

Exhibit 3

Buying After Buybacks Are Announced Produces More Modest Results



Source: Company data, Morgan Stanley Research

Please see the important disclosures at the end of this report.

Exhibit 4

Relative Performance vs. RMS of Stocks with Buybacks

	Days Following Reporting of Assumed Buyback											
	30	**60**	**90**	**120**	**150**	**180**	**210**	**240**	**270**	**300**	**330**	**360**
>1% of Total Shares	0.4%	-0.5%	0.9%	0.5%	-0.1%	1.5%	0.9%	0.8%	2.6%	3.9%	3.1%	5.6%
>3% of Total Shares	0.6%	0.6%	-0.2%	-1.2%	-1.4%	1.7%	-0.4%	-1.1%	0.4%	2.0%	1.3%	3.1%
>5% of Total Shares	-1.7%	-1.7%	-3.6%	-3.2%	-4.8%	-2.2%	-1.0%	0.2%	-0.3%	1.3%	4.0%	3.1%

Source: Company data, Morgan Stanley Dean Witter Research

Consequently, and in order to determine the ‘investibility’ of initial buyback study, we have assumed that investors are only able to purchase a stock 45 days *following* the end of the quarter in which the buyback actually occurred. (We focused on the fact that companies are required to report results, and most likely any buyback activity, within 45 days after quarter-end.) Using this different methodology produces very different results, and obviously slightly different ramifications for investors (Exhibit 3).

Not surprisingly, market efficiency is such that it makes it difficult to outperform *after* a company has announced its quarterly results (and by definition, *after* knowing whether or not the company has completed a buyback). ***Our data suggests that buying stocks 45 days after quarter-end, when completed buybacks would typically be announced, does not lead to outperformance of the RMS until about 10 ten months following that initial investment*.**

Specifically, buying a stock 45 days after a quarter in which a 5% repurchase has occurred actually causes *underperformance* of the RMS for 9 months. Positive relative returns do not begin until the 10th month, and the total outperformance after a full 360-day period is only about 3.1%. (Which, if one were able to do consistently, wouldn’t be too shabby!)

Buying stock 45 days after the end of a quarter in which a 1% buyback has occurred leads to essentially in-line relative performance until 9 months, and total positive relative returns after 12 months are only 5.6% - clearly much less than when investing in the stock as the buyback is actually occurring.

So, from an investor’s perspective, while some marginal outperformance can be achieved by buying the stocks of companies that have recently completed buybacks, the time to be building positions is clearly at the time that the buybacks are actually underway, not after they’ve been reported. Consequently, determining which companies have programs in place, and, more importantly, which companies are likely to actually execute on their programs is the most important consideration. As an investor, being able to ascertain the likely price at which companies are prepared to go forward and execute on the buyback programs, and the actual probability of the management sticking to its word, become some of the most important criteria.

V = More volatile. We estimate that this stock has more than a 25% chance of a price move (up or down) of more than 25% in a month, based on a quantitative assessment of historical data, or in the analyst's view, it is likely to become materially more volatile over the next 1-12 months compared with the past three years. Stocks with less than one year of trading history are automatically rated as more volatile (unless otherwise noted). We note that securities that we do not currently consider "volatile" can still perform in that manner.

Within the last three years, Morgan Stanley, Morgan Stanley DW Inc. and/or their affiliate companies managed or co-managed a public offering of the securities of Apartment Inv. & Mgmt. Co., AMB Property Corporation, Amli Residential Prop., Arden Realty, AvalonBay Communities, BRE Properties, Boston Properties, Mack-Cali Realty, Cousins Properties, Developers Diversified, Duke Realty Corp., Equity Office Pptys Trust, FelCor Lodging Trust, Health Care Prop. Inv., Highwoods Properties, Host Marriott Corporation, LaSalle Hotel Properties, Mid-America Apartment, The Macerich Company, PS Business Parks Inc., Public Storage Inc., Regency Realty, Summit Properties, Storage USA, Simon Property Group, Vornado and United Dominion.

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Additional information on recommended securities is available on request.

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