NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

June 24, 2002

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
Mail Stop 6-9
450 Fifth Street, NW
Washington, DC 20549-6009

Re: File No. S7-09-02

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 various proposals contained in Release No. 33-8090 ("Release"). NAREIT is the national trade association for real estate investment trusts ("REITs") and other publicly traded real estate companies. Members include real estate investment trusts (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.

Executive Summary

NAREIT supports proposed amendments that would improve the general transparency of insider transactions by reducing the amount of time between execution of an insider's transaction and the public disclosure thereof and increasing the scope of required disclosure about such transactions. NAREIT is concerned, however, that certain of the proposed filing deadlines set forth in the Release may be unrealistically stringent, especially with respect to reporting for outside directors and certain automatic grants under benefit plans. We also believe that the Commission should give more detailed guidance on a "safe-harbor" for issuers who establish pre-clearance procedures for Item 10 events given this new corporate reporting scheme. Further, certain of the reporting thresholds should be increased in order to prevent overly burdensome compliance obligations with respect to relatively *de minimus* transactions. NAREIT is also concerned that duplicative but delayed disclosure of the same transactions by insiders under Section 16 of the Securities Exchange Act of 1934 ("Exchange Act") may cause unnecessary confusion in the market, and we urge the Commission to find a way to obviate the necessity of Section 16 filings for transactions already

1875 Eye Street, NW, Suite 600, Washington, DC 20006-5413
Phone 202-739-9400 Fax 202-739-9401 www.nareit.com

comprehensively reported under the proposed new rules. We agree with the Commission's position that Form 8-K reporting is not appropriate for transactions by principal security holders who are not also insiders. Finally, we make suggestions for improvement with regard to the uniformity and clarity of disclosure under proposed new Item 10 of Form 8-K.

Filing Deadlines

Two Business Day Requirement

NAREIT believes that the two-business day reporting deadline is unworkably stringent. Particularly in the case of smaller companies with fewer resources, putting entirely new reporting systems into place in order to obtain near real-time communication from insiders and their brokers would place a burden on issuers that is disproportionate to the benefit obtained. The flow of information required for the Form 8-K process would generally involve the following communications: 1. the broker notifies the insider that a buy or sell order has been fulfilled, 2. the insider notifies the issuer, and 3. the issuer prepares the Form 8-K, confirms its accuracy with the "insider," and files the Form 8-K report. In cases where any of the individuals involved is in a different time zone or for any reason unable to be reached instantaneously, each of these steps may require more than one day to complete, in which case the two-day allowance would have already been exceeded. We believe that a five-business day reporting deadline is more appropriate for transactions exceeding a given threshold in value.

Extended Filing Deadlines for Outside Directors

While we appreciate the Commission's concern that all insiders be subject to uniform requirements, we note that directors who are not also executive officers may as a practical matter require additional time to coordinate with their companies the information flow required to insure prompt reporting under the proposed new Item 10. We would therefore suggest that, in the event that the Commission does not agree with the five business day deadline outlined above, a deadline of the later of the fifth business day following a transaction or the second business day of the week following the transaction should apply with respect to transactions by outside directors.

Relaxed Deadlines for Grants and/or Purchases pursuant to Certain Employee Benefit Plans

NAREIT believes that the two-business day reporting deadline is unworkable in the case of grants or purchases pursuant to certain employee benefit and discount stock purchase plans under which the date of the grant or purchase may be in excess of fifteen to twenty business days prior to the date the value of the grant is determined. We note that issuers are already required to disclose these plans and file them in connection with their periodic filings, that the insider has no discretion over the amount or timing of any grant and that investors will now have an increased understanding of the potential dilution of each of these plans given the recent amendments to Item 201(d) of S-K. Because the value of the grant would not be determined until several weeks

after the grant date, requiring an issuer to file an incomplete report on Form 8-K, that would require supplementation once value is determined, would not materially increase the amount of information available to investors but would significantly increase the reporting burden on issuers. However, we recognize that presently insiders may defer reporting of these transactions until 45 days after the close of the issuer's fiscal year under the current Section 16(a) rules (specifically, Rule 16a-3(f)(1)), and agree with the SEC that there is a need for increased transparency of these transactions. We would suggest that issuers be required to report such transactions on a Form 8-K on the fifth business day following the date on which the value of the grant is finally determined in accordance with the terms of the plan.

Safe Harbor for Issuers with Established Pre-Clearance Procedures

NAREIT appreciates the Commission's proposal to include in the general instruction regarding Item 10 of Form 8-K that it "is not in the public interest" to sanction a company, notwithstanding a violation, that demonstrates that: (1) at the time of the violation, it had designed procedures and systems sufficient to provide reasonable assurances that Item 10 events are timely reported, (2) the company followed such procedures at the time of the violation, and (3) the company made a corrective filing as promptly as reasonably practicable. We believe, however, that such a general statement of intent is not sufficient to provide the proper level of protection to issuers that endeavor in good faith to comply with the new rules, especially since the proposals mark a significant shift in reporting responsibility. NAREIT urges the Commission to spell out in detail the terms of an appropriate "safe harbor," specifying what internal procedures and systems (such as, for example, procedures requiring pre-transaction clearance with appropriate issuer management personnel) will qualify an issuer for protection from liability for a non-intentional violation of Item 10 reporting, and what exactly should constitute "repeated or systemic violations" that would cause the company to forfeit the safe-harbor protections. We note the Commission's subsequent proposal in Release No. 33-8106[1] (the "Second Release") of a safe harbor for liability arising from late Form 8-K filings based on criteria that are in some respects similar to the elements of the general instruction regarding Item 10 described above. It is unclear to us, however, whether the Commission intends the safe harbor proposed in the Second Release to supercede and replace the proposed language for the Item 10 general instruction. In any event, NAREIT believes that the safe harbor provisions of the Second Release should more specifically describe what is required for an issuer to satisfy the first element (i.e., what constitutes sufficient procedures to provide reasonable assurances that the company is able to collect, process and disclose within the specified time period the information required by Form 8-K.).

Reporting Thresholds

[1] Release No. 33-8106, Proposed Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date.

NAREIT believes that the accelerated reporting requirement should be applicable only to very large transactions (e.g., transactions exceeding $1,000,000). These higher thresholds would better quantify events of sufficient significance to investors to warrant accelerated reporting.

In addition, we believe that the threshold for deferral of reporting for transactions in aggregate value less than $10,000 should be available for transactions aggregating up to $100,000.

Confusion from Overlap with Section 16

Duplicative Disclosure

NAREIT is concerned that disclosure of insider transactions on Forms 4 under Section 16 of the Exchange Act, where such transactions had been previously reported by the issuer under the proposed Item 10 of Form 8-K, may cause substantial confusion among investors. This could particularly arise where a Form 4 reports in the aggregate on trades previously reported on multiple Forms 8-K. Allowing market participants to obtain some information about insider trades from Form 8-K filings but requiring them to inspect later-filed Forms 4 for the balance of the information is inefficient from the perspectives of both the providers and the users of the information. We would suggest that the Commission incorporate all the informational requirements of Form 4 into the new Item 10 disclosure. The Commission should then obviate the need for later duplicative filings by amending the Section 16 rules (perhaps similar to the provisions of Rule 16a-3(b), which excuse additional filings on Form 3 that might otherwise technically be triggered by Section 12 registration of an additional class of equity securities by the same issuer or by an insider assuming a different type of insider relationship with respect to the company). As an alternative, the Commission should consider whether it could not, by rulemaking, simply stipulate that Forms 4 filed by officers and directors may satisfy all substantive reporting requirements by incorporating by reference the disclosure from one or more earlier-filed Forms 8-K, thus avoiding duplicative or fragmented disclosure.

Uniform Definition of Insider

NAREIT believes that the expanded Section 16 definition of "executive officer" should be uniform for all purposes under the Exchange Act, the Securities Act of 1933, and the rules promulgated under each statute.

Exclusion of Reports on Principal Security Holders

We agree with the conclusion expressed in the Release that Form 8-K disclosure should not be expanded to cover transactions by greater than 10% holders of a registrant's equity securities. As noted in the Release, these beneficial owners do not receive compensation from the company, may not be subject to the type of fiduciary duties to the company as are imposed on directors and executive officers, and may even be hostile to management. There is no reason to assume that

such persons would have the type of relationship with a registrant as would facilitate an effort by it to report on covered transactions. We believe that any additional disclosure obligations with respect to non-insider shareholders should be covered in appropriate amendments to the rules promulgated under the Williams Act.

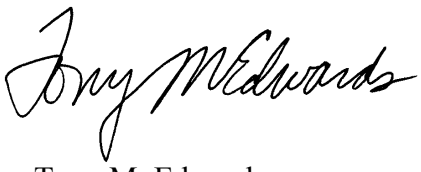
Clarity of Reporting

NAREIT also believes that the clarity of disclosure under proposed Item 10 would be significantly increased were the Commission to require a standardized tabular format for each type of event to be reported in the form. In order to increase ease of use, this tabular format should follow as nearly as possible the existing format of Forms 4 filed under Section 16 of the Exchange Act.

Conclusion

NAREIT thanks the Commission for this opportunity to comment on the Release. Please contact Robert Cohen, NAREIT's National Policy Counsel, or me at (202) 739-9400 if you have any questions regarding this letter.

Sincerely,



Tony M. Edwards

Senior Vice President & General Counsel