NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

May 23, 2002

VIA E-MAIL

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

Re: Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports (File No. S7-08-02)

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. 33-8089 ("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 believes that the acceleration of quarterly and annual report due dates, while a worthy goal in theory, would in practice reduce the quality and accuracy of information supplied to investors and create unnecessary and counterproductive costs to issuers. Most capital market participants, including the Commission, are attempting to achieve higher quality, more transparent and more understandable financial reporting. Mandated acceleration of '34 Act filings is not consistent with this goal. Additionally, the proposed rule would make it more difficult to find qualified individuals willing to serve on public company boards, especially audit committees. The Commission could accomplish some of the goals of accelerated filing in better ways, for example, through efforts to improve the quality of earnings releases, which NAREIT would not oppose. If the Commission decides to accelerate the due dates, NAREIT recommends due dates for accelerated filers of 40 days (instead of 30 days as proposed by the Commission) for 10-Qs and 75 days (instead of 90 days as proposed) for 10-Ks.

We commend the Commission's efforts to encourage prompt website posting of periodic reports. However, we believe the proposed disclosure requirements should not be required of companies that provide website access through a hyperlink to EDGAR.

Acceleration of Quarterly and Annual Report Due Dates

The Due Dates. Although we agree that technological advances have increased the ability of companies to capture, process and disseminate the information presented in quarterly and annual reports, the time savings from these technological advances have been more than offset by the ever-increasing amount of disclosure called for in 10-Qs and 10-Ks. In the past five years alone, there have been 16 new Statement of Financial Accounting Standards (SFAS) issued by the Financial Accounting Standards Board (FASB), a number of new Statements on Auditing Standards and approximately 80 accounting issues deliberated by the FASB's Emerging Issues Task Force (EITF). During this period, specific accounting standards and disclosure rules that have made the preparation of quarterly and annual reports more time consuming include:

- SFAS No. 130, *Reporting Comprehensive Income;*
- SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, and conforming amendments to Regulation S-K;
- SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*;
- SFAS No. 141, *Business Combinations;*
- SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*;
- Amendments to Regulation S-K relating to disclosures regarding market risk sensitive instruments;
- Recent Commission guidance regarding MD&A requirements and more rigorous considerations of materiality pursuant to SAB 99.

Auditing standards that have increased the time required to complete '34 Act filings include:

- SAS No. 61, Communications with Audit Committees;
- SAS No. 90, Audit Committee Communications;
- SAS No. 71, Interim Financial Information; and
- SAS No. 82, Consideration of Fraud in a Financial Statement Audit.

In addition, pending accounting standards proposals and proposals regarding the disclosure of the application of critical accounting policies in the MD&A section of periodic reports would add to the challenge of complying with periodic disclosure requirements. With respect to accounting standards proposals, the very detailed "cookbook" being considered by the AICPA's Accounting Standards Executive Committee covering the accounting for property, plant and equipment would add significant additional financial reporting complexity.

Based on a survey of our member companies, less than two percent of NAREIT corporate members currently file their reports within the proposed 30- and 60-day periods. To meet those requirements, most of our members would have to do one or more of the following:

- close their books early and rely on forecasts for the last month of the period and for the last two months where information is required from third-party managers, joint-venture partners or foreign affiliates;

- spend less time analyzing compiled financial information and completing reviews by senior management, auditors, lawyers and board audit committees;

- pull further resources away from the management of the day-to-day operations of the company;

- depend more heavily on expensive outside advisors; and

- hire additional personnel.

Many real estate companies cannot close their financial statements until well after the end of the reporting period because they rely on third-party property managers for much of the required information. For example, with respect to hospitality REITs, this reliance is mandated by federal tax laws that prohibit REITs from managing their hotels. Hospitality REITs typically do not release earnings any sooner than 32 days after quarter end -- let alone file their 10-Q within 30 days. As another example, companies owning and operating shopping centers often are entitled to a percentage of sales made by their retail tenants, but cannot begin to process that data until the tenants provide their quarterly and total year-end sales to the company. As a whole, real estate companies cannot release earnings as quickly as many other reporting companies in large part because of their reliance on information from third parties. In order to meet the proposed deadlines, many real estate companies would need to close their accounting records early and rely on forecasts for at least the last month of the period. Notwithstanding the Commission's recent efforts to improve registrant disclosure of certain accounting estimates, disclosure of actual results is superior to forecasts.

Although the proposed rule change reduces the amount of time for completion of the reports by only 33%, the reduction is much greater with respect to the time allowed for review and comment of the reports by audit committees, directors, officers, auditors and attorneys. This disparity is due to the fact that senior-level review must typically wait until after the completion of financial statement closing processes, analysis of the compiled financial information and preparation of drafts of the filings. Many of our members have indicated that senior-level review time would be reduced by up to 50%.

We are concerned that permitting less time for review by audit committees, auditors, directors, senior officers and attorneys would have two negative consequences:

- less clear, full and accurate disclosure and
- fewer qualified individuals willing to serve as directors of public companies.

This latter consequence is a particular concern in light of two other contemporaneous developments. First, new legislation, agency rulemaking or guidelines likely will require more active oversight of financial reporting by audit committees. Second, directors face increasing liability risk (as best evidenced by the well-documented increases in D&O liability insurance and increased exclusions of coverage in D&O policies). At a time when more is asked of audit committee members and when liability risks are increasing, it would be a mistake to reduce the opportunity that directors have to fulfill their obligations and to review the very disclosure that is often the basis for liability.

While the negative consequences of accelerating the filing deadlines for periodic reports are significant, the benefits noted in the Release can be achieved in other ways. Rather than shortening the period between the release of earnings and the filing of more complete financial information, the Commission could take steps to improve the quality of the earnings releases. We note with approval the Commission's cautionary advice and enforcement action regarding the use of pro forma financial information in earnings releases. We would not be opposed to additional Stock Exchange or Commission efforts to improve earnings disclosure through, for example, exchange guidelines requiring a reconciliation of pro forma financials to GAAP net income in earnings releases.

Accelerated Filer Definition. Although we urge the Commission to not adopt an accelerated-filer rule, we offer some observations regarding the proposed definition. We agree that companies with prior experience filing periodic reports, especially the lengthier annual report, are more likely to be able to prepare information in a shorter time frame. We also understand the desire to relieve smaller companies of the burden of accelerated filing due to their more limited resources. However, we believe that the Commission underestimates the burden accelerated filing would impose on larger companies. Typically, larger companies also are more complex, with different sources of revenue, more complex capital structures and, in the real estate industry, more reliance on third parties for data. Closing their books can take a longer period of time because of the magnitude and complexity of their operations. In short, the public float distinction in the accelerated filer definition is not appropriate because larger companies, especially those in our industry, may be even more burdened by the demands of accelerated filing than smaller companies.

If, however, the Commission adopts an accelerated-filer definition distinguishing between companies based on their public float, we recommend the same standards for exiting accelerated-filer status as those used to enter such status. Under the proposed standard, a company whose public float falls from \$75 million to \$26 million would remain saddled by the accelerated filing requirements even though such a filer (i) no longer enjoys the benefits of S-3 eligibility and (ii) may be just as burdened by accelerated filing deadlines as would other similarly sized companies that never met the accelerated-filer definition. Moreover, even if an accelerated filer's public float fell below \$25 million, it would remain subject to the accelerated deadlines for at least two years and even longer if its revenues stayed above \$25 million.

The proposed standard treats similar companies differently merely because some previously had a higher public float. Admittedly, arbitrary distinctions are oftentimes unavoidable. In this case, however, a better approach would be to use the same standard for entering and for exiting accelerated-filer status. Not only does this approach avoid dissimilar treatment of similar companies, it reduces regulatory complexity.

We believe that notice of exiting accelerated-filer status would be unimportant to most investors. If the Commission imposes such a notice requirement, draconian consequences for non-compliance, such as loss of S-3 eligibility, should be avoided.

Mitigation of the Burdens of Accelerated Filing Deadlines. If the Commission adopts accelerated filing requirements, the negative consequences of such a decision would be partially mitigated by:

- requiring accelerated-filers to file their annual and quarterly reports within only 75 and 40 days of the relevant period end;
- lengthening the extension periods permitted under Rule 12b-25 to 30 and 20 days;
- delaying effectiveness for at least one year so that reporting companies have time to adjust their reporting practices and hire additional personnel.

With respect to lengthening the 12b-25 extension periods, this suggestion would not negate the accelerated filing deadlines because of the negative consequences of Rule 12b-25 reliance, namely, temporary loss of Rule 144 and Form S-8 eligibility. Moreover, even after lengthening the extension periods, the deadlines for filing in reliance on Rule 12b-25 would still be shorter than those currently in effect.

Website Access to Information

We commend the Commission's efforts to encourage every reporting company to make its filings available to investors free of charge on its website. However, we believe that reporting companies that provide website access to their reports through an EDGAR hyperlink should not be required to make the proposed explanatory disclosure. The disclosure would be boilerplate and of little interest to investors. Therefore, the Commission should consider delaying adoption of the rule until EDGAR provides same-day access to '34 Act filings or revising the rule to require an explanation only if the reporting company does not provide website access to 10-Qs, 10-Ks, and 8-Ks as promptly as through an EDGAR hyperlink.

As an alternative way to encourage website postings of periodic reports, the Commission may want to consider permitting reporting companies that provide such access to satisfy prospectus delivery requirements through written notice of its website posting of a prospectus. In addition, the Commission could adopt guidelines permitting such reporting companies to satisfy the public disclosure requirements of Regulation FD through a website posting under certain circumstances.

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 would like to discuss our comments in more detail.

Respectfully submitted,

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Senior Vice President & General Counsel