NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

December 7, 2006

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Re: Proposed Revisions to NASAA Guidelines and Statements of Policy as to Real Estate Investment Trusts and Real Estate Programs

Ladies and Gentlemen:

The National Association of Real Estate Investment Trusts (NAREIT) appreciates the opportunity to submit these comments in response to the Notice of Request for Public Comments issued by the North American Securities Administrators Association (NASAA) Direct Participation Programs Policy Project Group (the Project Group), dated September 26, 2006, on certain proposed revisions (the Proposals) to NASAA Guidelines and Statements of Policy as to Real Estate Investment Trusts (REITs) and Real Estate Programs.

NAREIT is the worldwide representative voice for U.S REITs and U.S. publicly traded real estate companies. Members include traded and non-traded REITs and other businesses that own, operate, and finance income-producing real estate, as

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well as those firms and individuals who advise, study, and service those businesses.

NAREIT appreciates the Project Group's consideration of an update to the suitability standards in the NASAA Guidelines for Direct Participation Programs (the DPP Guidelines) but believes that the expansion of the requirements would in some instances have the consequence of depriving investors of the potential benefits of investing in non-traded REITs. Our comments on the Proposals as they relate to REITs and Real Estate Programs are below.

* * * *

I. Increase to Net Income and Net Worth Standards

The Proposals would increase the $45,000 income and net worth requirement to $70,000 and the net worth figure from $150,000 to $250,000.

In the Proposals, the Project Group states that the Direct Participation Program (DPP) suitability standards have not been updated for many years, that the last update to increase the suitability provisions was approximately 15 to 16 years ago in 1990 or 1991 and that there have not been any adjustments for inflation in that time. There may be some general debate as to whether any federally registered, publicly reporting enterprises (such as non-traded, public REITs) require such suitability standards. However, if suitability standards such as these must exist in the regulation of public, non-traded REITs, NAREIT believes that such increases are reasonable.

II. Exclusion of Retirement Assets from Computation of Net Worth Calculation

The proposal would exclude "any and all retirement or pension plan accounts or benefits" from the computation of an investor's net worth.

In the Proposals, the Project Group compared retirement assets to an investor's home, home furnishings and automobiles -- all of which the Project Group considered to be illiquid, difficult to value, and which should not be considered part of an offeree's financial well being for investment purposes. In addition, the Project Group did not believe that investors would wish to liquidate all or a portion of their retirement assets to make up for any losses in their investments. NAREIT believes this Proposal is based on assumptions that are not wholly accurate and, if implemented, would inappropriately deprive investors of a viable method of diversifying their portfolios and potentially reducing volatility.

A. "<u>Retirement Assets are Illiquid and Difficult to Value</u>"

Subject to compliance with the requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA), as regards prudence, diversification, avoidance of prohibited transactions and others, investments held for example by self-directed investment retirement accounts (IRAs) and other types of retirement plans are generally tradable at the discretion of the person directing the investment. Furthermore, those same retirement plans are generally valued on a daily basis.

Even if an entire retirement portfolio is not valued on a daily basis, it is an ERISA requirement that an ERISA fiduciary value its portfolio under management at least on an annual basis. ERISA fiduciaries, such as IRA custodians, do so and report this value to their ERISA beneficiaries at least annually. As such, it would not seem that retirement assets are inherently difficult to value.

B. "Investors Do Not Wish to Liquidate Retirement Assets"

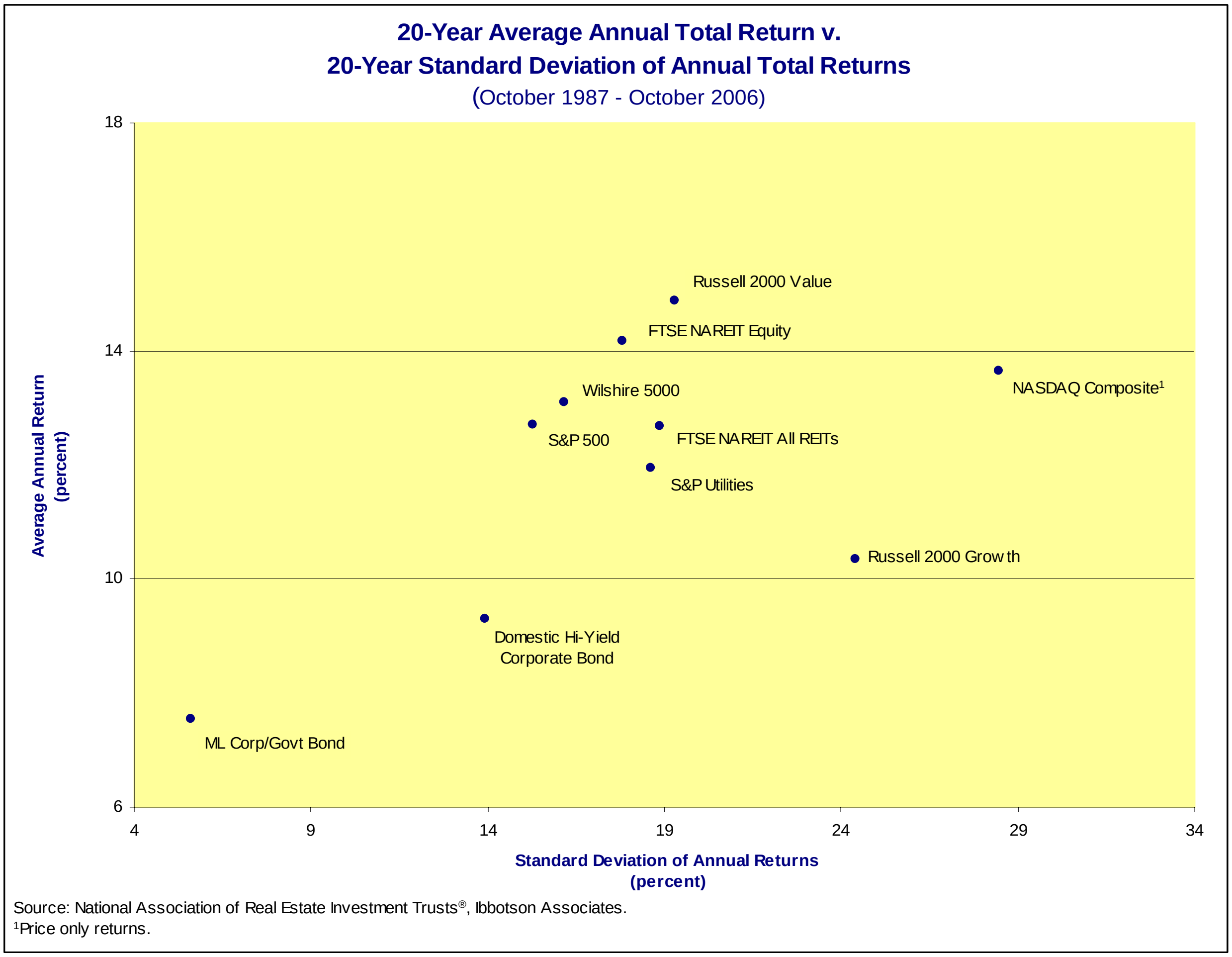
Certain investors may not wish to liquidate their retirement assets as it may trigger the payment of certain taxes and penalties. However, it would be impossible to characterize all the situations in which an investor might be prepared to liquidate part or all of his or her retirement assets. For example, it is quite conceivable that significant expenditures such as purchasing a new residence, paying for a child's higher education or uninsured medical expenses may necessitate the liquidation of part or all of an investor's retirement assets.

C. "Retirement Assets are Not Part of an Investor's Financial Well Being"

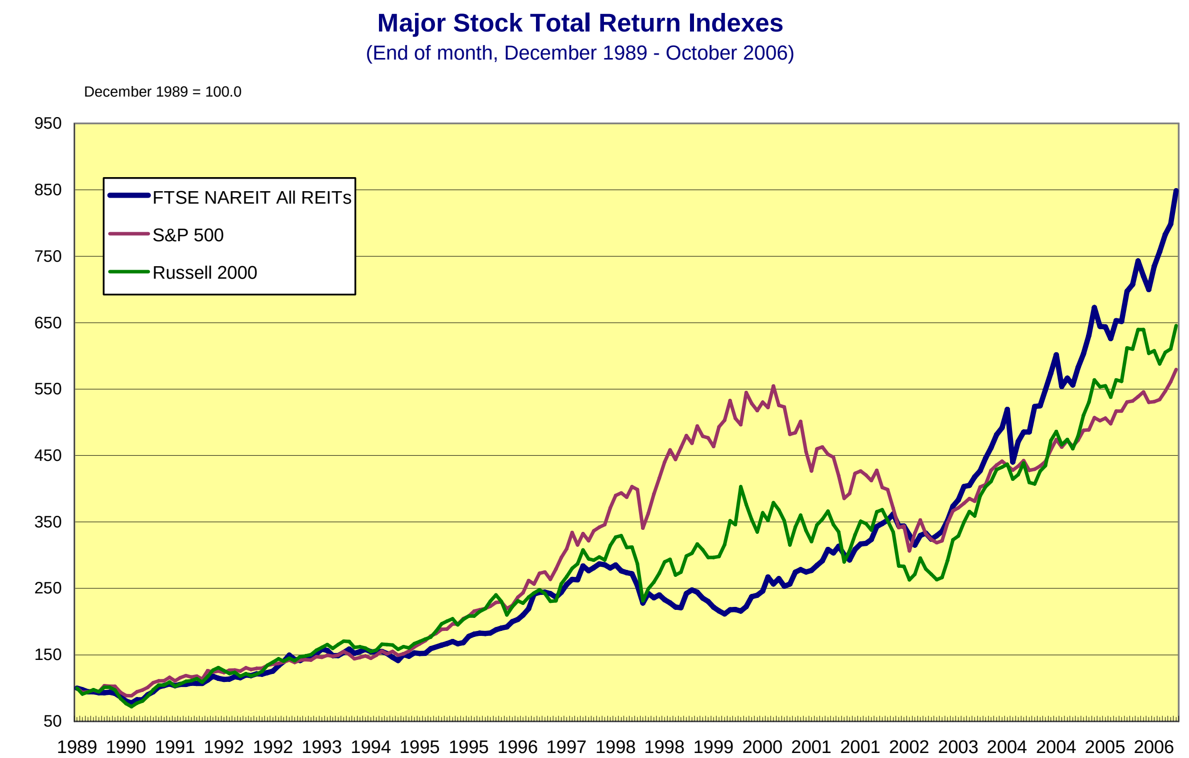
As is further described below under "D. Breadth of Exclusion," retirement accounts represent nearly one-third of the financial assets of all U.S. families. Investors in U.S. real estate have experienced very strong returns over the long-term, and investors would be deprived of one method of accessing this market if such a significant proportion of their financial assets were excluded from the computation of an investor's net worth. The Investment Program Association estimates that the Proposals, if implemented, would result in a reduction of annual investment in DPPs by between 50% and 80%.

The U.S. Real Estate Market

Investors in U.S. real estate have experienced very strong returns over the last few years. For the year ended June 30, 2006, both the NCREIF National Property Index and the FTSE NAREIT U.S. Equity REIT Index generated returns in excess of 18%. This strong performance has not been limited to the year ended June 30, 2006. The chart below demonstrates how the long-term performance of two principal listed REIT indices compares with other frequently used indices.



The chart below shows the total return of the FTSE NAREIT All REIT index (again measuring listed REITs) against the S&P 500 and the Russell 2000 for a 16 year period through September 2006.



Source: National Association of Real Estate Investment Trusts®

Historically, real estate investors have been attracted to the asset class for the following reasons: i) total return; ii) current income return vs. other cash-yielding alternatives; iii) inflation hedge characteristics; and, iv) diversification and portfolio optimization benefits. Today's real estate investment market is very liquid, with real estate opportunities being pursued aggressively by a large number of investors. This liquidity is one of the reasons that private capital is playing a major role in the REIT M&A market.

With the backdrop of a 5% 10-year U.S. Treasury, core real estate returns are in the 7-8% range (nominal and unleveraged), compared with many analysts expecting general equity market returns to be in the mid-to-high single digits. These analysts expect that so-called value-added real estate and opportunistic real estate strategies are in the 12-16% and 17-20% ranges, respectively.[1] These expected real estate returns are in line and reasonable as compared to alternative asset choices (*i.e.*, bonds and equities) that investors are making today.

[1] *See, e.g.* John Montaquila, "*Why Real Estate Remains a Good Investment Opportunity*," presented to the Institute of Fiduciary Education as part of their "Real Estate -- Fall 2006" collection of seminar papers on real estate. The paper is accessible at: http://www.ifecorp.com/Digital%20Binders/RE0906/Papers.htm

Diversification of Portfolios by Adding REITs Increases Return

1. *Adding Publicly-Traded REITS*

NAREIT has commissioned various studies that have concluded that a diversified portfolio of investments produces a higher return with lower risk when publicly traded equity REITs are included as a distinct asset class. For example, Ibbotson Associates compared the 34-year average annual portfolio return of risk adverse and risk tolerant portfolios composed of other equities, bonds and Treasury bills but no distinct REIT allocation with similarly constructed portfolios including 10% equity REITs and 20% equity REITs. The results are set forth below:

Total Annualized Portfolio Return at Various Levels of Risk[2]
(1972-2005)

Portfolio	*1*	*2*	*3*	*4*	*5*	*6*
No REITs	10.7%	11.7%	12.2%	12.7%	13.1%	13.5%
10% REITs	11.2%	11.9%	12.4%	12.9%	13.4%	13.8%
20% REITs	11.5%	12.1%	12.6%	13.1%	13.6%	14.0%
Risk	9.0%	10.0%	11.0%	12.0%	13.0%	14.0%

As shown in the table, portfolios that included a distinct 10% allocation to equity REITs produced average annual total returns across the risk spectrum that were 0.3-0.5% higher than comparable returns of portfolios without REITs. Likewise, portfolios containing a 20% allocation to REITs produced average annual total returns that were 0.4-0.7% higher. Over long investment horizons, such incremental annual returns can appreciably raise portfolio value. Moreover, adding equity REITs to a portfolio not only increases long-run returns, but reduces volatility because the investment returns to REITs are relatively uncorrelated with the investment returns of other equity and bond investments. A low correlation of returns from two different investments indicates that the time pattern of returns from the two investments do not move closely together, thereby tending to stabilize overall portfolio performance and reduce risk.

Using data through 2005, Ibbotson Associates also analyzed the diversification benefits of equity REITs in investment portfolios that included additional asset classes not previously considered, including small and mid-cap stocks, emerging market stocks, high-yield bonds and investment-grade corporate bonds. Adding REITs to a wide selection of diversified portfolios boosted average annual total returns by 40-60 basis points when compared with non-REIT portfolios from 1988 through 2005. Specifically, allocating 20% of the sample portfolio to equity REITs in Ibbotson Associates' analysis both increased total portfolio return and lowered overall portfolio risk.

[2] Portfolio risk is measured as the standard deviation of annual portfolio returns.

2. *Adding Publicly-Traded REITs and Direct Real Estate*

In a study commissioned by NAREIT in 2001, Ibbotson Associates evaluated the effect on overall portfolio performance of adding publicly traded and private real estate investments to portfolios including allocations to typical core assets such as large and small-capitalization stocks, international stocks, long term bonds and cash. Using annual returns for the 15-year period 1987 to 2001, average annual total portfolio returns were as much as 27 basis points higher in portfolios that included both listed equity REITs and direct real estate equity than in portfolios with no real estate allocation.

Additional analysis by Ibbotson Associates found that allocating 20% of a balanced stock and bond portfolio to listed equity REITs each year from 1972 to 2005 would have boosted the average annual return by 70 basis points (from 10.7% to 11.4%) while reducing portfolio risk by 40 basis points (from 11.0% to 10.6%).

3. *Correlation between Publicly-Traded REITs and Direct Real Estate*

A similar study by Prudential Real Estate Investors (PREI) compared the historical returns for publicly traded equity REITs with the returns for directly-held private real estate ownership.[3] For the period 1990-2003, the PREI analysis compared returns for public real estate ownership, as measured by the NAREIT Equity REIT Index (currently the FTSE NAREIT US Equity REIT Index), with returns for private real estate ownership, as measured by the National Council of Real Estate Investment Fiduciaries (NCREIF) Property Index.[4]

The analysis revealed several years in which public real estate investment returns were negative while private returns (as measured by appraisals rather than actual sales) were positive, or vice versa, but not a single year when returns for both public and private real estate investment were negative.

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[3] *See* Corner & Falzon, *Rational Differences Between Public and Private Real Estate* (Prudential Real Estate Investors, May 5, 2004, available at www.prudential.com/research) (hereinafter "Prudential article").
[4] The NCREIF Property Index (NPI) is available at www.NCREIF.com/indices.

Compound Annual Rates of Return for the Period 1990-2003			
	Public Real Estate	*Private Real Estate*	*Difference (basis points)*
1990	-15.4%	2.3%	-1,770
1991	35.7%	-5.6%	4,130
1992	14.6%	-4.3%	1,890
1993	19.7%	1.4%	1,830
1994	3.2%	6.4%	-320
1995	15.3%	7.5%	780
1996	35.2%	10.3%	2,490
1997	20.3%	13.9%	640
1998	-17.5%	16.2%	-3,370
1999	- 4.6%	11.4%	-1,600
2000	26.4%	12.2%	1,420
2001	13.9%	7.3%	660
2002	3.8%	6.7%	-290
2003	37.2%	9.0%	2,820
3-year return	17.5%	7.7%	980
5-year return	14.4%	9.3%	510
10-year return	10.7%	9.9%	80

Since the PREI analysis was completed, returns in 2004, 2005 and the first ten months of 2006 have been positive for both public and private real estate investment.

The PREI research concluded that, although the magnitude of return differences varies from year to year and over the different time intervals, over the longer term the returns have been comparable. The generally higher historical returns for listed REITs may be explained in part by: 1) listed REITs use of 30-50% leverage, while the NCREIF Property Index returns are reported as unleveraged; 2) the lag time inherent in an appraisal based system such as NCREIF’s; 3) public market ownership of commercial real estate assets simply may be more efficient than private ownership; and, 4) the broader property types represented by the FTSE NAREIT U.S. Equity REIT Index.

Moreover, publicly traded firms are priced as "going concerns," whereby share prices reflect the market's estimated present value of future growth opportunities over and above growth opportunities of assets in place. For example, many REITs also generate additional earnings from property management and other tenant services that are not reflected in the returns measured by the NCREIF Property Index.

In any event, recent academic research has provided evidence that the underlying returns to public and private ownership of commercial real estate assets, when adjusted for major risk and data measurement effects, are substantially the same.[5]

4. *Performance of the Direct Real Estate Market*

The Proposals seem to be premised on the assumption that investments in real estate DPPs will result in economic losses. This assumption is questionable based on the actual performance of the longest-tenured real estate DPP, which has been managed by W.P. Carey (NYSE: WPC). Attachment A shows the historic investment performance of the WPC's DPPs, which also can be accessed on page 62 of http://www.sec.gov/Archives/edgar/data/1250873/000095012306005432/y19363b3e424b3.htm).

D. Breadth of Exclusion

As proposed, all forms of retirement assets would appear to be excluded from the computation of an investor's net worth. This would, however, severely restrict the investor universe that would be eligible to obtain the benefits from investing by this method in this asset class[6] and would have a tendency to result in non-traded REITs having smaller and less diversified portfolios of real estate investments. According to the 2004 Survey of Consumer Finances, non-financial assets (such as homes and automobiles, which are already excluded from the existing calculation of net worth) represent 64.3% of the assets of all U.S. families. Of the remaining 35.7% of assets that constitute financial assets, retirement accounts represent nearly one-third of this 35.7%. Thus, the Proposal would exclude nearly one-third of the financial assets and nearly 75% of all assets of U.S. families from being taken into account in determining net worth.

This could have the consequence of causing investors to be excluded from DPPs in real estate and might cause them to invest instead in unregistered Regulation D private placements that often have less diversification and transparency than publicly-offered REITS (both traded and non-traded). One can imagine a scenario, among many variations, when investors who satisfy the $70,000 annual income threshold are nonetheless excluded from investing in the DPP because their retirement assets are excluded from the computation of that investor's net worth. However,

[5] *See, e.g.*, Pagliari Jr., J.L., Kevin A. Scherer, and Richard C. Monopoli, "Public v. Private Real Estate Equities: A More-Refined Long-Term Comparison," *Journal of Real Estate Economics*, Spring 2005, Vol. 33; Riddiough, Timothy J., Mark Moriarty, and P. J. Yeatman, "Privately versus Publicly Held Asset Investment Performance," *Journal of Real Estate Economics*, Spring 2005, Vol. 33.
[6] Any investor still would be able to invest in publicly traded REITs or directly into real estate. However, the popularity of non-traded REITs demonstrates a desire by some investors to access income-producing real estate through an alternative route.

these same investors could invest in a private placement because they satisfy the "accredited investor" standard under Regulation D that allows them to include their homes and retirement assets in the computation of their net worth.

Finally, NAREIT is concerned that the breadth of the exclusion would preempt the current requirements in place for determining investor suitability. As you know, all DPP investments are sold through NASD member firms. NASD Rule 2810 guides NASD members' representatives in making investor suitability judgments based on their personal knowledge of each individual's overall financial situation. Investors who are currently served by representatives who are required to individually assess each investor's portfolio and make judgments with regards to that individual's financial situation and objectives would no longer have the ability to recommend what may work best for that investor because a significant portion of that investor's net worth would be automatically excluded.

III. 10% Diversification Restriction

The Proposals would require that the "maximum investment in the program and affiliates and other investments with similar investment objectives may not exceed 10% of the participant's net worth."

In the Proposals, the Project Group states that its goal is to "help an investor avoid over-concentration in any one issuer and asset class" and that the principle of diversification is the basis for this proposed requirement that investors should not "put all their eggs in one basket". As a general rule, it is certainly prudent for an individual investor to have a diversified portfolio of investments. And, as detailed above, NAREIT believes the real estate asset class contributes significantly to that diversity. NAREIT's concern with the 10% mandatory diversification restriction is that it ignores the particular financial well being and objectives of the individual investor.

The investment objectives of each investor defy categorization. For example, a particular non-traded REIT may be an attractive category of asset to certain investors who, as a result, may wish to invest more than 10% of their net worth in income-producing real estate. Other investors may want greater exposure to other asset classes. A mandatory diversification requirement would tend to remove the ability of the investor to assess and evaluate investment opportunities based on his or her own financial objectives and situation and instead place what would appear to be an arbitrary limit on what the investor could or could not do.

In addition, the inclusion of "other investments with similar investment objectives" may capture an extremely broad range of potential investments which was probably not the intention behind the Proposal. For example, would an investment in a dividend paying REIT be aggregated with bonds and preferred stocks that produce a steady income return, and would an investment in a non-traded REIT be aggregated with listed REITs, real estate mutual funds or real estate exchange traded funds?

*   *   *   *

Non-traded REITs have become more prevalent in recent years because they offer prospects of current income and long-term growth in a format that provides much greater transparency as compared to directly-owned real estate investments. In addition, they offer: i) the same reasonably predictable cash flow of publicly traded REITs; and, ii) the opportunity for investors to benefit from any appreciation in the underlying real estate when the REIT's assets are sold or if the REIT is listed or acquired. The adoption of Sarbanes-Oxley and other governance rules have made REITs (traded and non-traded) even more transparent, independent and responsive to investors.

Further, non-traded REITs have allowed investors another method of ultimately accessing the public markets. In recent years, many non-traded REITs have become traded companies by listing their company, acquiring a listed company, or by merging or being acquired by a listed company. The Proposals could have the effect of unnecessarily restricting the growth of non-traded REITs that have had the salutary role of acting as incubators for the public markets.

NAREIT does not object to the Project Group's Proposal to increase the net income and net worth standards. However, with regard to the Proposals concerning the exclusion of retirement assets from the net worth calculation and the 10% mandatory diversification restriction, NAREIT believes that these changes would deprive investors of the potential benefits of investing in non-traded REITs.

Respectfully submitted,

Tony M Edwards

Tony M. Edwards
Executive Vice President & General Counsel

ATTACHMENT A

W. P. CAREY & CO.'S COMPLETED FUNDS

		CPA®:1	CPA®:2	CPA®:3	CPA®:4	CPA®:5	CPA®:6	CPA®:7	CPA®:8	CPA®:9	CPA®:10	CIP®
Total Cash Distributions Plus Terminal Value per $10,000 Invested		$ 23,670	$ 36,864	$ 40,806	$ 31,007	$ 21,024	$ 26,382	$ 21,504	$ 22,851	$ 18,393	$ 20,833	$ 24,243
Value Received at Termination per $10,000 Invested[1]		$ 11,314	$ 12,028	$ 16,317	$ 14,184	$ 7,903	$ 14,848	$ 11,914	$ 14,960	$ 11,321	$ 11,230	$ 13,900
Total Cash Distributions per $10,000 Invested[2]		$ 12,356	$ 24,835	$ 24,489	$ 16,824	$ 13,122	$ 11,534	$ 9,590	$ 7,891	$ 7,072	$ 9,603	$ 10,343
Percentage of Original Investment Received		237%	369%	408%	310%	210%	264%	215%	229%	184%	208%	242%
Average Annual Return[3]		7.17%	14.89%	18.81%	13.85%	7.72%	12.47%	10.15%	13.10%	9.59%	8.81%	11.22%
Annualized Yields	2004											8.58%
Based on	2003											8.54%
Calendar Year	2002										7.18%	8.51%
Distributions[4]	2001										7.15%	8.41%
	2000										7.12%	8.32%
	1999										7.09%	8.28%
	1998										7.05%	8.25%
	1997	7.05%	18.92%	19.86%	11.44%	7.05%	9.71%	8.62%	8.81%	8.50%	7.35%	8.22%
	1996	7.02%	18.73%	19.72%	11.38%	7.71%	9.61%	8.52%	8.72%	8.48%	8.30%	8.17%
	1995	6.50%	17.90%	18.95%	11.24%	9.78%	9.29%	8.37%	8.53%	8.44%	8.29%	8.09%
	1994	6.29%	17.51%	18.69%	11.16%	9.74%	9.23%	6.74%	8.45%	8.40%	8.25%	8.02%
	1993	6.23%	17.33%	18.49%	11.11%	9.68%	9.17%	6.12%	8.41%	8.36%	8.20%	7.41%
	1992	6.15%	17.11%	17.95%	11.03%	9.60%	9.08%	6.62%	8.35%	8.30%	8.12%	7.10%
	1991	6.07%	16.82%	16.44%	10.83%	9.52%	8.67%	8.32%	8.27%	8.22%	7.94%	
	1990	5.75%	16.57%	15.80%	10.59%	9.44%	8.46%	8.29%	8.19%	8.14%		
	1989	5.41%	16.00%	14.60%	10.45%	9.36%	8.33%	8.18%	8.08%	8.09%		
	1988	5.32%	15.40%	13.54%	10.35%	9.28%	8.23%	8.10%	8.03%			
	1987	5.27%	15.08%	13.00%	10.26%	9.19%	8.14%	8.03%				
	1986	5.22%	13.29%	12.25%	10.19%	9.10%	8.06%					
	1985	7.45%	9.57%	11.55%	10.11%	8.84%	8.01%					
	1984	7.45%	9.17%	11.15%	10.03%	8.48%						
	1983	7.45%	9.09%	10.06%	8.92%							
	1982	7.45%	8.79%	9.76%								
	1981	7.43%	8.03%									
	1980	7.33%	8.01%									
	1979	7.18%										