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**NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®**

NAREIT

August 8, 2008

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: File Reference No. 1600-100, *Proposed Statement of Financial Accounting Standards – Disclosure of Certain Loss Contingencies* (“the Exposure Draft”)

Dear Mr. Golden:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for comments from the Financial Accounting Standards Board (FASB or Board) on the proposal contained in the FASB Exposure Draft, *Disclosure of Certain Loss Contingencies* (“the Exposure Draft”).

NAREIT is the worldwide representative voice for real estate investment trusts (REITs) and publicly traded real estate companies with an interest in U.S. real estate and capital markets. NAREIT’s members are REITs and other businesses throughout the world that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

NAREIT commends and supports the FASB’s efforts to continue to develop high quality accounting standards that improve the transparency, usefulness and credibility of financial reporting. In particular, we support the efforts to achieve a single set of high quality global accounting standards. NAREIT is strongly committed to improving the relevance and usefulness of financial reporting and routinely provides input on FASB, IASB and SEC proposals.

This letter offers certain general and specific comments in response to the Exposure Draft issued for comment on June 5, 2008. This comment letter has been developed based on input from a wide range of NAREIT members, including financial executives and general counsels of NAREIT member companies.



Overarching View

NAREIT believes that the proposed accounting standard requires disclosures that go far beyond those that are required to project future cash outflows from the realization of losses. In fact, the proposed disclosures would place a defendant company at a significant disadvantage in the adversarial relationship with a plaintiff. Further, we believe that certain of the disclosures that would be required represent nothing more than a catalog of very soft information.

In particular, the disclosure of the maximum possible loss, or range of loss at the outset of a claim could be very misleading. We are surprised that the SEC would even allow such soft information to be disclosed. In terms of the balance between relevance and reliability, NAREIT believes that certain of the disclosures would amount to little more than conjecture and “best guesses” which in most cases would make the disclosures irrelevant if not misleading. This is particularly true of estimates of loss at the outset of a claim as well as much of the proposed qualitative disclosures. In particular, the anticipated time of resolution and the company’s assessment of the most likely outcome would be extremely unreliable in the early stages of litigation.

We note that the Supreme Court has taken the position that “Some information is of such dubious significance that insistence on its disclosure may accomplish more harm than good.” *TSC Indust. Inc. v Nothway, Inc.*, 426 U.S. 438,448 (1976). We believe that this position could be asserted with respect to many of the disclosures required by the proposal.

FAS 5 Has Provided Adequate Disclosures in our Industry

NAREIT also questions the premises on which the proposed reporting is based. We are not aware of concerns raised by financial statement users in the real estate industry regarding current FAS 5 disclosures. The major issues with respect to disclosures around loss contingencies, we believe, have related most recently to loan losses at financial institutions and yet these losses are not within the scope of the Exposure Draft.

Paragraph A3 of the Exposure Draft describes the primary criticisms of current disclosures. With respect to item A3.b., NAREIT takes issue with the notion that disclosures should include information about “the full population of an entity’s existing loss contingencies.” What seems to us important to financial statement users is not the full population but those loss contingencies that “more likely than not” will materially impact future cash flows over a relevant investment horizon. We believe that spending time and money developing a plethora of quantitative and qualitative information about losses that are not “more likely than not” to have a material impact on future cash flows is not balanced in terms of costs and benefits.

Other Significant Issues with the Proposed Reporting

Our members, either individually or in concert with other industry or professional groups, have raised many of the same significant issues with the Exposure Draft that have been raised by



Mr. Russell G. Golden

August 8, 2008

Page 3

comment letters already submitted and comment letters that we are aware are being prepared. These issues include:

- Revealing, through the proposed required disclosures, aspects of the defendant company's thinking that historically have been carefully guarded in adversary proceedings;
- Potential implicit waiver of attorney/client privilege – primarily through the need for an auditor to accumulate evidential matter supporting the company's disclosures;
- The increased risk of subsequent litigation when early estimates of loss are found to be significantly at variance from the actual loss; and
- The cost and effort to accumulate information that would have dubious analytical value.

We have not provided a detailed discussion of NAREIT's concerns regarding these other significant issues because they have been thoroughly addressed in many of the comment letters already submitted – in particular, comment letters from Association of Corporate Counsel, Allergan, United States Steel Corporation and The Chicago Bar Association.

Convergence with IFRS

The Exposure Draft indicates that the IASB deliberations to reconsider IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* have not progressed to the point of reconsidering disclosure requirements. As indicated above, NAREIT supports the development of a single high quality set of global accounting standards. We urge the Board to defer any significant amendments to FAS 5 until such time as the Board and the IASB can develop a consensus on required disclosures.

A Possible Interim Solution

We recommend that the Board consider the following interim guidance that would enhance disclosures regarding the impact of the potential realization of loss contingencies on a company's financial statements. First, set a "more likely than not" threshold for certain disclosures. This would be consistent with the threshold used in FIN 48 *Uncertain Tax Positions*. For losses that are "more likely than not" to be realized within the subsequent twelve-month period, the company would be required to provide an estimate of the range of loss and the anticipated timing of the cash outflow, subject to the exception with respect to prejudicial information contemplated by the proposed standard. The reasons why estimates could not be made would be disclosed. We suggest the subsequent twelve-month period because this seems to be a relevant time horizon for most financial statement users' projections of operating results and cash flow. The company would not provide the extensive qualitative disclosures included in the Exposure Draft unless and until consensus is reached with the IASB. Pursuant to FAS 5, probable losses would continue to be recognized in the financial statements and be subject to existing disclosure requirements.



Mr. Russell G. Golden

August 8, 2008

Page 4

If you have any questions regarding these comments, please do not hesitate to contact George Yungmann at 202-739-9432 or Sally Glenn at 202-739-9442.

Respectfully submitted,

G. L. G.

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