



National Policy Bulletin

NAREIT's Update on Emerging Policy Developments

NAREIT Submits Comment Letter to SEC on Short Sale Price Test and Circuit Breaker Restrictions

This past Friday, June 19, NAREIT submitted comments to the Securities and Exchange Commission with respect to proposed amendments to Rules 200(g) and 201 of Regulation SHO under the Securities Exchange Act of 1934. The proposed amendments to Regulation SHO pertain to two approaches to restrictions on short selling, one a price test that would apply on a market wide and permanent basis (a short sale price test) and another that would apply only to a particular security during severe market declines in that security (a circuit breaker). As part of the rule-making process, the SEC also is proposing that certain market making and hedging activity previously exempt from the old Uptick Rule (Rule 10a-1) removed on July 3, 2007, or from the Short Sale Ban Emergency Order, as amended by the Commission on September 21, 2008, continue receiving exempt status under any new short sale restrictions. Such market making activity would include "exchange traded funds (ETFs) and exchange traded notes (ETNs) of which securities included in the Short Sale Ban were a component."

In its comment letter, NAREIT pointed to the sharp increase in equity share price volatility, including that of REITs, following removal of Rule 10a-1. Consistent with its strong recommendation that Congress encourage the SEC to restore some version of the Uptick Rule, NAREIT expressed its support of the Commission's proposal to amend Regulation SHO with the intent of curbing abusive

short selling and related trading practices.

NAREIT also urged the Commission to adopt as quickly as possible one or more of the proposed short sale price test restrictions or proposed circuit breaker rules (individually or in some effective combination).



When considering exemptions to proposed short sale price test restrictions or proposed circuit breaker rules in the future, NAREIT also urged the Commission to consider carefully whether it is necessary and appropriate to extend such exemptions to a limited class of derivative products – leveraged, inverse and leveraged inverse ETFs. However, in keeping with the need to provide appropriate levels of market liquidity and effective price discovery, NAREIT supported extending such exemptions to include traditional long, unleveraged ETFs.

A copy of the comment letter submitted by NAREIT to the SEC may be found at <http://www.sec.gov/comments/s7-08-09/s70809-3792.pdf>. For further information, please contact Mike Grupe at 202-739-9409 or mgrupe@nareit.com.

This publication is designed to provide accurate information in regard to the subject matter covered. It is distributed with the understanding that NAREIT is not engaged in rendering legal, accounting, or professional service. If legal advice or other expert assistance is required, the service of a competent professional should be sought.

© Copyright 2009

National Association of Real Estate Investment Trusts®

REITs: Building Dividends and Diversification®

1875 I Street, NW, Suite 600, Washington, D.C. 20006-5413 • 202-739-9400, 800-3NAREIT • 202-739-9401 fax
REIT.com