NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

VIA E-MAIL

December 22, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: Security Holder Director Nominations (File No. S7-19-03)

Dear Mr. Katz:

The National Association of Real Estate Investments Trusts® ("NAREIT") submits the following comments in response to the SEC's request for public comments with regard to proposed rules that would, under certain circumstances, require public companies to include in their proxy materials security holder nominees for election as director. NAREIT is the national trade association for real estate investment trusts ("REITs") and other publicly traded real estate companies. Members include 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.

NAREIT's purpose in providing comments on these proposed rules is not to disagree with the policies and underlying rationale articulated in this Release. Rather, our purpose is to request clarification with respect to certain of the proposed rules because, as the SEC itself has said, it has put forth a "complex proposal" that raises a number of important questions. Our concerns include the following:

Clarify the Notice Requirement. We believe that further clarification of the 80-day notice requirement would be helpful and necessary to avoid substantive conflict with advance notice bylaw provisions. As proposed, a nominating security holder or group is required to provide notice to the company of its intent to require the inclusion of that security holder's nominee on the company's proxy card no later than 80 days before the date that the company mails its proxy materials for the annual meeting. However, most if not all companies, have established notice and other timing procedures with regard to directors nominations in their governing instruments (*i.e.*, advance notice bylaw provisions) that often require lengthier advance notice (*i.e.*, 120 days prior to the date the company mails its proxy materials). What happens if the nominating security holder misses the advance notice bylaw date for business to be properly brought before a meeting of security holders (including the election of directors) contained in the company's bylaws yet timely files notice under the proposed rules? If the company must include the nominee on its proxy card in accordance with the proposed rules, must it override its own bylaw provisions and

present such nominee for election at the meeting? Would it not simplify the notice requirements for all parties if any such notice provisions set forth in a company's governing instruments also governed the notice requirement for the purpose of security holder nominations under the proposed rules?

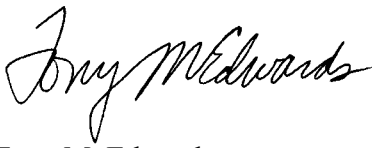
Independence Standard. We believe that the requirement that a security holder nominee be required to meet the definition of "independence" that is generally applicable to the directors of the company should be further clarified. It is not clear from the proposed rules whether security holder nominees would be required to satisfy objective categorical standards for director independence adopted by a company that may even go beyond the independence standards adopted by the self regulatory organizations ("SROs"). Does this mean that the nominee must simply pass the "bright line" conditions that disqualify a director from being independent? If a company establishes categorical objective standards, must the security holder nominee satisfy these objective standards as well?

State Law Prohibitions. Although the SEC has stated the proposed rules would not provide security holders with the right to nominate directors where it is prohibited by state law, very little guidance is given as to what this actually means. For example, if allowed under state law, can a company adopt stricter bylaw nomination procedures in its charter or bylaw, or opt into applicable state laws that prohibit security holder nominations, after final rules are adopted?

Timing. We note that several commenters have expressed concerns that nomination triggering events could occur after January 1, 2004 (which would be prior to any effective date of the proposal) and that a later date would be more appropriate. We echo that concern and request that the SEC consider imposing a later date in order for both companies and security holders to fully understand the complex procedures involved, especially in light of the fact that no final rules have yet been adopted. In particular, we are concerned that any security holder proposal providing that a company becomes subject to the nomination procedure in proposed Rule 14a-11(a) made prior to the final implementation of the rule could create confusion. What happens if a company's security holders approve the nomination procedure in the proposed rules at its 2004 annual meeting, but then the procedure is subsequently modified in the final rules? Does the security holder action become void? Is it automatically modified to comport with the final rules? Many new corporate governance rules adopted in the recent past by Congress, the SEC, and self regulatory organizations have included phase-in periods and we suggest the same approach for this proposal.

NAREIT appreciates this opportunity to provide its views on these important rules to the SEC. Please contact Robert Cohen, NAREIT's National Policy Counsel, or me at (202) 739-9400 if you have any questions regarding this letter.

Respectfully submitted,



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