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NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

<u>VIA E-MAIL</u>

December 16, 2002

Mr. Jonathan G. Katz

Secretary

U.S. Securities and Exchange Commission

Mail Stop 6-9

450 Fifth Street, NW

Washington, DC 20549-6009

Re: Conditions for Use of Non-GAAP Financial Measures (File No. S7-43-02)

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 Nos. 33-8145 and 34-46788 ("Releases"). 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.

Executive Summary

NAREIT commends the Commission's efforts to improve the transparency. usefulness and credibility of financial reporting. In particular, we support efforts to have public companies clearly distinguish financial measures provided by generally accepted accounting principles ("GAAP") and non-GAAP measures. In addition, NAREIT supports the proposed Rule's requirements that: (1) any non-GAAP financial measure must be reconciled with the comparable GAAP measure; and (2) such comparable GAAP measure must be presented with equal or greater prominence of the comparable non-GAAP measure.

Although we generally support the proposed disclosures, we disagree with the Commission's proposed prohibition of reporting non-GAAP measures on a per share basis. As further discussed below, we believe that reporting non-GAAP measures on a per share basis is important to meaningful communications of a company's operating performance and financial condition.



Importance and Basis of Reporting Non-GAAP Measures

Supplemental non-GAAP financial measures are vital to clearly communicating operating results and financial condition to financial statement consumers. Additionally, previous SEC releases support this reporting. Accounting Series Release No. 142, *Reporting Cash Flow and Other Related Data* encouraged industries to develop uniform definition and terminology with respect to supplemental earnings measures. Additionally, the Commission's December 2001 release, *Cautionary Advice Regarding the Use of "Pro Forma" Financial Information in Earnings Releases*" stated that pro forma financial information can serve useful purposes.

In keeping with the spirit of ASR 142, in 1991 NAREIT defined Funds From Operations ("FFO") as the industry's supplemental performance measure. The White Paper that defines FFO discusses the rationale for this measurement and provides guidance on its calculation and usage. This White Paper is very clear that GAAP presentations are primary disclosures and that FFO is a supplemental performance measure. Additionally, the White Paper explicitly states that FFO is not intended to be used as a measure of cash generated. The White Paper is available at http://www.nareit.com/accountingissues/2002whitepaper.pdf. Most real estate industry participants, including company executives, analysts, investors, credit rating agencies and the media use FFO as an important supplemental earnings measure. It has also become a component for comparing the operating performance of companies in the industry and for testing the value of equity shares of those companies.

Reconciliation of Non-GAAP Measures to GAAP Measures

A specific disclosure recommendation contained in the FFO White Paper is that FFO be reconciled to GAAP net income in all earnings releases, periodic reports to shareholders and other public disclosures. The great majority of companies in the industry follow this recommendation. In fact, NAREIT encouraged the Commission to require such reconciliation in all public reporting of pro forma financial measures in its comment letter to the Commission's Proposed Rule on *Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports (See NAREIT comments filed on May 23, 2002, File No. S7-08-02).*

Per Share Reporting

Reporting these metrics on only an absolute basis, not on a per share basis, could be confusing and certainly not as useful to investors since the issuance of shares or the repurchase of shares could affect the absolute measure. For example, if a company issues public equity shares, invests the proceeds and includes the return on those investments in its supplemental performance measure, it would be inappropriate to communicate the increase in the absolute measure without also recognizing the increased number of shares. In April 2002, NAREIT's leadership reaffirmed, in a National Policy Bulletin, our commitment to GAAP net income as the primary industry earnings measure.

We recommend that the final Rule allow per share reporting of non-GAAP measures in earnings releases and supplemental packages filed as exhibits to Form 8-K, while requiring that both the numerator (the non-GAAP measure) and the denominator (the applicable diluted number of

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shares) be reconciled to GAAP net income and the number of diluted shares used to calculate GAAP net income per share, respectively. This position agrees with the alternative suggested in "Questions regarding amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F" of the Release and is consistent with Section 401 of the Sarbanes-Oxley Act of 2002 ("Act"). We believe the prohibition of the use of FFO per share data diminishes the utility of earnings press releases by denying REIT investors of a long standing, broadly considered metric, and regulates communication with investors beyond the intent of Congress in adopting Section 401 of the Act.

Request for Clarification of the Use of Non-GAAP Per Share Information on Earnings Conference Calls

Section II C of the Release may be interpreted to allow non-GAAP per share reporting in conference calls or web casts that are held within 48 hours of the filing of a written earnings release or announcement, as well posting such information used in a web cast on a company's website. NAREIT requests that the final Rule explicitly state this conclusion. We believe that in the absence of company provided information regarding Non-GAAP per share measures, securities analysts will publish their own calculations of FFO per share based upon their own assumptions regarding the number of diluted shares used in the per share calculation. This may result in the communication of this information to a small group of investors with ready access to analyst reports, but not to most small investors. Additionally, this may result in the publication of inconsistent or inaccurate per share data in the marketplace.

Transition

With respect to any final rules, we urge the Commission to make the effective date no earlier than first quarter 2003 for companies with calendar fiscal year-ends.

NAREIT thanks the Commission for this opportunity to comment on the Releases. Please contact Robert Cohen at (202) 739-9415 or George Yungmann at 202-739-9432 if you would like to discuss our comments in more detail.

Respectfully submitted,

G-L. 4-

George Yungmann

Vice President, Financial Standards

Robert Cohen National Policy Counsel