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May 31, 2024

Attention: Grace Lee
U.S Department of Justice
Competition Policy and Advocacy Section, Antitrust Division.
950 Pennsylvania Ave., N.W., Suite 3337
Washington, DC 20530

Submitted electronically to www.regulations.gov

RE: Request for Information on Consolidation of Health Care Markets [Docket No. ATR 102]

Ladies and Gentlemen:

Nareit appreciates the opportunity to respond to the request for information (RFI) jointly released by the Department of Justice's Antitrust Division, the Federal Trade Commission, and the Department of Health and Human Services (collectively, the agencies) related to the consolidation of health care markets. Nareit is the worldwide representative voice for real estate investment trusts (REITs) and the millions of U.S. households who invest in them.

Nareit supports the agencies' goal of promoting robust competition in healthcare markets while fostering high-quality patient care and driving innovation across the healthcare system. Nareit also supports the agencies' goal of promoting transparency for participants operating in healthcare markets and accurate data collection. Nareit recently supported CMS's 2023 proposal¹ related to the disclosure of nursing home ownership requirements and offered comments² intended to improve the accuracy and usefulness of its proposed definition of REIT with respect to Form CMS 855A. Nareit is pleased that in its recently released final rule, CMS adopted Nareit's suggestions for improving the accuracy of its definition of REIT to ensure that it conforms to the statutory definition.³

Nareit is pleased to submit this comment to offer background information about REITs and their role in the healthcare industry, which we hope will be useful to the agencies as they move forward.

REIT Background

The statutory framework governing REITs was established by Congress in 1960 to enable all American investors to enjoy the benefits of investment in real estate.⁴ Today REITs of all types collectively own more than \$4 trillion in gross assets across the U.S., with public REITs owning \$2.5 trillion in assets.⁵

¹ Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities, 88 FR 9820 (Feb. 23, 2023).

² Nareit Comment to CMS (April 14, 2023) available at <https://www.regulations.gov/comment/CMS-2023-0031-0060>

³ Medicare and Medicaid Programs; Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities 88 FR 80141 (Nov. 17, 2023).

⁴ H.R. Rep. No. 2020, 86th Cong., 2d Sess. 3 (1960), reprinted in 1960-2 C.B. 820.

⁵ Nareit data, available at <https://www.reit.com/data-research/data/reits-numbers>.



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REITs help support nearly 3.4 million jobs in the U.S. each year, both through their own operations and indirectly through the operations of the businesses that occupy their properties.⁶ Approximately 170 million Americans live in households invested in REITs through their 401(k) plans, IRAs, pension plans, and other investment funds.⁷

There are two main types of REITs, generally referred to as equity REITs and mortgage REITs (mREITs). Equity REITs, which are most relevant here, invest in “bricks and mortar” real estate by acquiring leasable space in a wide variety of types of properties, such as apartments, shopping malls, office buildings, self-storage facilities, data centers, telecommunications towers, and other properties, including health care facilities. Equity REIT property types are categorized into thirteen property sectors, including health care.⁸ mREITs primarily invest in mortgages and mortgage-backed securities, providing financing for residential and commercial properties.

Most REIT assets are held by Securities and Exchange Commission (SEC) registered public companies. The majority of these public REITs are listed on either the NYSE or the Nasdaq exchange, with 194 companies trading on these exchanges as of Mar. 31, 2024, though some REITs are structured as SEC-registered non-listed REITs (PNLRs), which are subject to the same IRS rules and SEC reporting requirements. In 2016, in recognition of the unique attributes of the public real estate sector, Standard & Poor’s (S&P) and MSCI created a top-line real estate sector in their Global Industry Classification Standard, known as GICS, of which virtually all sector constituents are REITs.⁹

As SEC-registered public companies, healthcare REITs operate with substantial transparency. REITs file periodic and other current reports (10-Ks, 10-Qs, and 8-Ks) with the SEC in accordance with the requirements of the Securities Exchange Act of 1934, as amended, and the related rules. Their financial statements are audited by registered public accounting firms overseen by the Public Company Accounting Oversight Board, and their reporting is subject to the substantive, reporting, audit, and certification requirements of the Sarbanes Oxley Act.

REIT Statutory Framework

Congress's primary objective in authorizing the use of REITs was to provide a means "whereby small investors can secure advantages normally available only to those with larger resources" in connection with real estate investment.¹⁰ To effectuate this goal, Congress created a legal framework intended to promote longer-term real estate investment. This operating framework is delineated within the Internal Revenue Code by numerous rules, restrictions, and limitations under which REITs are required to operate, many of which are designed to ensure that REITs' activities are primarily focused on long-term real estate investments as landlords or lenders.

⁶ See <https://www.reit.com/data-research/research/sponsored-research/economic-contribution-reits-united-states>.

⁷ See, Nareit, available at <https://www.reit.com/data-research/research/nareit-research/145-million-americans-own-reit-stocks>.

⁸ See, Nareit, REIT Sectors website available at <https://www.reit.com/what-reit/reit-sectors>. In addition to health care, REITs operate in property sectors defined as data centers, diversified, gaming, industrial, lodging/resorts, office, residential, retail, self-storage, specialty, telecommunications, and timberland.

⁹ See, Nareit, GICS Classification of Real Estate available at <https://www.reit.com/investing/investor-resources/gics-classification-real-estate>.

¹⁰ H.R. Rep. No. 2020, 86th Cong., 2d Sess. 3 (1960), reprinted in 1960-2 C.B. 820.

Critically, to qualify as a REIT and to maintain that status for purposes of U.S. corporate income tax, an entity must annually satisfy rigorous asset, income, and distribution¹¹ requirements including:

- at least 75% of the value of a REIT's total assets must be represented by real estate assets, cash (and cash equivalents) and government securities (so-called "qualifying assets")¹² and,
- at least 75% of a REIT's income must be real estate related (such as rents, interest on obligations secured by mortgages on real property and long-term gain from the sale of real property)¹³

Health Care REITs

Nareit's healthcare REIT members own and lease a variety of healthcare-related real estate, such as medical office buildings, laboratory and life science properties, skilled nursing facility (SNF) properties, senior living facility properties, and other healthcare properties. As of the end of 2023, sixteen publicly traded healthcare REITs listed on either the NYSE or Nasdaq were operating in the U.S., with a combined market value of \$111.6 billion. In total, public REITs (16 stock exchange listed REITs plus five PNLRs) owned approximately 12% of CMS licensed skilled nursing assets at year-end 2023, encompassing around 1,768 facilities, 9% of senior housing and assisted living facility properties, and just 3% of all hospitals.

Research on REIT Ownership of Skilled Nursing Facility (SNF) Properties

A study by health economists published in April 2024,¹⁴ found that during the period 2011-2024, REIT investment in nursing homes was associated with higher total wages (3%), higher total nursing wages (3%) (both logged, per resident day), and an 81% higher current ratio, which is a measure of available operating liquidity. These economists observed that "[f]or [nursing homes] NHs receiving REIT investments, there was a notable rise in various nursing wages, hinting that these NH operators reinvested funds into labor, their biggest expense."¹⁵ The authors of this study also noted that their results are consistent with the results of an earlier 2023 study, and that "[t]aken together, NHs appear to have redeployed some returns from REIT investments into staff and wage increases."¹⁶

The 2023 study referenced above¹⁷ found that REITs, on average, invest in SNF properties with higher registered nurse (RN) staffing hours per resident day (staffing time) and that REIT investment is

¹¹ 26 U.S.C. § 857(a).

¹² 26 U.S.C. § 856(c)(4).

¹³ 26 U.S.C. § 856(c)(3).

¹⁴ Dunc Williams Jr*, Rahul Fernandez, David Stevenson, Mark Unruh, Robert Tyler Braun, Nursing home finances associated with real estate investment trust and private equity investments, Health Affairs Scholar, Oxford Academic (April 15, 2024), available at:<https://academic.oup.com/healthaffairsscholar/article/2/4/qxae037/7645605>.

¹⁵ Id.

¹⁶ Id.

¹⁷ Robert Tyler Braun, Dunc Williams, David G. Stevenson, Lawrence P. Casalino, Hye-young Jung, Rahul Fernandez, and Mark A. Unruh, "The Role of Real Estate Investment Trusts in Staffing U.S. Nursing Homes," Health Aff (Millwood). 2023, VOL. 42, No. 2, 207-216. See also Nareit, "REIT Investment Increases Staffing Time at Skilled Nursing Facilities," available at <https://www.reit.com/news/blog/market-commentary/reit-investment-increases-staffing-time-skilled-nursing-facilities>.



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associated with higher licensed practical nurse and certified nursing assistant staffing. This study also found no statistically significant change in RN staffing time following REIT investment.¹⁸

Nareit's own research on quality measures for residents receiving long-term care found that SEC-registered REIT-owned properties (a group that includes listed equity REITs and PNLRs) house a higher share of four- and five-star SNF operators than the general population (65% compared to 58%) and a lower share of one- and two-star SNFs (17% compared to 23%) in 2022.¹⁹

Nareit supported the transparency objectives of CMS's recent Nursing Home Ownership Disclosure rule²⁰ and was pleased that CMS adopted Nareit's recommendation to incorporate the U.S. Internal Revenue Code definition of a REIT,²¹ which we hope will enhance transparency and the accuracy of future data collection efforts.

Conclusion

Nareit appreciates the opportunity to provide this background on REITs and REIT participation in the healthcare sector. Nareit would also be pleased to provide additional information to the agencies, discuss our comments, and respond to any questions the agencies or their staff may have. Please do not hesitate to contact me at vrstow@nareit.com or (202) 739-9431 if you want to discuss these comments or related issues in greater detail.

Respectfully submitted,

Victoria P. Rostow
Senior Vice President & Deputy General Counsel, Nareit

¹⁸ Id.

¹⁹ Id.

²⁰ See 88 FR 80141, Centers for Medicare & Medicaid Services, Department of Health and Human Services (Nov. 17, 2023).

²¹ 88 FR 80141 (Nov. 17, 2023).