



March 12, 2014

VIA Email: rule-comments@sec.gov

NATIONAL
ASSOCIATION
OF
REAL ESTATE
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♦ ♦ ♦
REITS:
BUILDING
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AND
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Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-FINRA 2014-006--Notice of Filing of a Proposed Rule Change Relating to Per Share Estimated Valuations for Unlisted DPP and REITS (FINRA Proposal)

Dear Ms. Murphy:

The National Association of Real Estate Investment Trusts (“NAREIT”) is the worldwide voice for REITs and publicly traded real estate companies with interests in U.S. real estate and capital markets. NAREIT’s members are REITs and other real estate businesses throughout the world that own, operate and finance commercial and residential real estate.

REITs in the United States may be public companies whose securities are registered with the Securities and Exchange Commission (“SEC”) and listed on an established stock exchange (so-called, “Listed REITs”); public companies whose securities are registered with the SEC, but which are not listed on an established stock exchange (so-called, “Public Non-Listed REITs” or “PNLRs”); or private companies.

PNLRs participate at NAREIT through the Public Non-Listed REIT Council, which consists of all 44 NAREIT PNLR corporate members (the PNLR Council). The mission of the PNLR Council is to advise NAREIT’s Executive Board on matters of interest and importance to PNLRs.

NAREIT’s PNLR Council has carefully reviewed SR-FINRA 2014-006, and has developed the attached comment letter for submission and consideration by the SEC.



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NAREIT and its PNLR Council look forward to working with the SEC and with FINRA on these and other issues as we move forward.

Please feel free to contact me if you would like to discuss our positions in greater detail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. A. Wechsler". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Steven A. Wechsler

President & CEO



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Re: File No. SR-FINRA 2014-006--Notice of Filing of a Proposed Rule Change Relating to Per Share Estimated Valuations for Unlisted DPP and REITS (FINRA Proposal)

Dear Ms. Murphy:

This comment letter regarding SR-FINRA-2014-006 (the Proposed Rule) is submitted on behalf of the Public Non-Listed REIT Council (the PNL Council) of the National Association of Real Estate Investment Trusts¹ (NAREIT), and is signed by its Executive Committee, each of whom represents an established sponsor in the public non-listed REIT industry.

We appreciate the opportunity to comment on the Proposed Rule. The PNL Council has previously submitted comments on FINRA's Regulatory Notice *11-44 - Customer Account Statement* (FINRA 11-44)² and *Regulatory Notice 12-14 - Customer Account Statements* (FINRA 12-14),³ and we are pleased that the Proposed Rule adopts our suggestion to permit greater flexibility in deriving valuations. The PNL Council remains supportive of efforts by FINRA and the SEC to promote the goals of accurate and relevant customer account statement reporting and fee and expense transparency.

As discussed in more detail below, the concerns with the Proposed Rule we address in this letter relate to the timing of the comment period and the timing of the effective date. However, we also share many of the concerns expressed by the Investment Program Association in its comment letter, particularly with respect to the mechanics of the "net investment" calculation and with special emphasis on the calculation of "over distribution" during the offering period. We have not addressed those concerns here only because we believe they are thoroughly addressed in the Investment Program Association letter.

¹ The National Association of Real Estate Investment Trusts (NAREIT) is the worldwide voice for real estate investment trusts (REITs) and publicly traded real estate companies with interests in U.S. real estate and capital markets. NAREIT's members are REITs and other real estate businesses throughout the world that own, operate and finance commercial and residential real estate.

² [Letter from Steven Wechsler, President and CEO, National Association of Real Estate Investment Trusts \("NAREIT"\), to Ms. Marcia E. Asquith, Office of the Corporate Secretary dated November 11, 2011](#)

³ Letter from [NAREIT to Ms. Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated April 11, 2012](#)

Request for FINRA Response to Comments and SEC Extension of Comment Period

The Proposed Rule introduces new concepts not addressed in the prior notices, most notably a new formula for reducing the share price disclosed in a customer account statement by: i) an assumed amount of underwriting commissions and offering and organizational expenses based on a disclosure item, “amount available for investment,” that is neither defined in the Proposed Rule nor an SEC rule or regulation; and, ii) the amount of cumulative dividends in excess of adjusted earnings, based on certain GAAP financial measures, with certain modifications. This share price formula is both novel and complex and has raised a number of fundamental interpretive issues that need to be addressed not only prior to effectiveness of the rule but also prior to the completion of public comment. Our immediate interpretive issues are:

- Please confirm that the reference to “cumulative distributions” in the Proposed Rule refers to dividends paid.
- Assuming it refers to dividends paid, please clarify whether or not it is limited to dividends that are paid in cash and thus reduce the issuer's cash reserves.
- Please clarify whether in addition to deducting from the per share estimated value the portion of cumulative distributions per share that exceeded GAAP net income per share (as adjusted in the Proposed Rule), a non-listed REIT may increase the per share estimated value by the portion that GAAP accumulated earnings per share (as adjusted) exceeds cumulative distributions per share.
- Since the term “amount available for investment” is not defined, please confirm that FINRA intends for this term to be interpreted in a manner consistent with the interpretive positions of the staff of the SEC’s Division of Corporation Finance as of the date of the Proposed Rule.

The PNLR Council believes that given the complexity of the Proposed Rule, a rule on which FINRA has spent well over two years developing, the 21-day comment period which expires today is not sufficient. At the very least, the PNLR Council believes the issues above, which are fundamental to understanding the impact of the proposed net investment calculation, need to be publicly addressed in order that the public have adequate opportunity to consider and comment on the Proposed Rule. Therefore, the PNLR Council requests that FINRA provide public comment on these and any other interpretive questions raised by commenters on this novel formula, and that the SEC institute a 45-day extension for consideration of responses and further comment.

Request for Adequate Transition Period

The Proposed Rule provides that the changes could be effective as soon as 180 days after SEC approval. The PNLR strongly urges FINRA to provide for a significantly longer transition period for the following reasons:

- *Additional time is necessary to minimize investor confusion:* Upon effectiveness of the Proposed Rule, non-listed REIT investors may see sudden significant changes in the values on their account statement. To avoid investor confusion, tens of thousands of retail

investors will need to be educated on the reasons for the change. Before an investor can be properly educated, the following will have to occur: i) non-listed REIT sponsors will have to work with their legal advisors to evaluate the new rule and will have to resolve inevitable interpretive issues with FINRA and the SEC; ii) the sponsors will then have to educate the broker-dealers and financial advisors that distribute their products both on the rule in general and the application to the particular issuer; and, iii) these broker-dealers and financial advisors will have to educate their customers.

- *Sponsors will have to develop new internal controls and procedures and disclosure controls and procedures to produce the disclosures necessary for both the net investment method and the independent valuation method.* While the burden will be significant for all sponsors, it will be particularly burdensome for those with REITs that are already past the second anniversary of breaking escrow at the time of effectiveness and thus have to immediately provide independent valuation method disclosure.
- *FINRA members will have to develop and apply new due diligence measures to address the net investment method and the independent valuation method disclosures.* In particular, the independent valuation method disclosures will require extensive new procedures given the dependence on assumptions in valuations.
- *The Proposed Rule will require substantial changes to legal documentation.* Sponsors and FINRA members will have to revise thousands of pages of documents. These changes will be necessary to ensure that FINRA members can comply with the new rule.
- *The proposed transition period will impose unfair costs on and could disrupt capital raising by REITs that were structured in good faith based on current rules and are currently in the offering process.* Upon effectiveness of the Proposed Rule, new non-listed REITs will structure offerings based on the new rules and market practices will significantly evolve from current practices. But REITs that already commenced the offering process prior to the issuance of the Proposed Rule will be compelled by the Proposed Rule and the resultant market changes to restructure their offerings. In addition to being very costly, the changes required to these outstanding offerings may include significant revisions to the prospectuses and accompanying materials, which in turn may, under SEC rules, require the suspension of capital raising activities.⁴ These costs and any suspension of the offering may be harmful to existing investors in these programs. Because SEC rules limit offerings to three years,⁵ a transition period consistent with that reflected below will minimize the number of REITs that will be forced to revise or suspend current offerings before the termination period already mandated by SEC rules.

Consistent with our comment letters to Notice 11-44, and Notice 12-14, the PNL Council again suggests that adequate lead time be afforded to market participants to ensure an orderly transition

⁴ See Item 512(a) of Regulation S-K.

⁵ See Rule 415(a)(5) of the Securities Act.

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to the new rule. After careful consideration of the time necessary to implement the Proposed Rule, including the time necessary to educate investors and market participants, to adjust internal controls and diligence procedures, and to minimize the number of offerings that will have to be suspended to comply with the new rule, we request that the effective date occur after December 31, 2015.

If you have any questions or you would like to discuss these matters further, please call NAREIT's President & CEO, Steve Wechsler, at (202)739-9400.

Respectfully submitted,

Executive Committee
NAREIT PNL Council

CHAIR:

Daniel L. Goodwin,
Chairman and CEO, The Inland Real Estate Group, Inc.

Nicholas S. Schorsch
Executive Chairman & Partner, AR Capital, LLC

Robert S. Aisner
President & CEO, Behringer

Thomas K. Sittema
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Sherri W. Schugart
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