

July 21, 2016

Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Delivered Electronically

Re: Concept Release on Business and Financial Disclosure Required by Regulation S-K; 17 CFR Parts 210, 229, 230, 232, 239, 240 and 249; Release Nos. 33-10064, 34-77599; File No. S7-06-16; RIN 3235-AL78

NATIONAL

ASSOCIATION

Dear Mr. Fields:

OF

REAL ESTATE

INVESTMENT

TRUSTS®

The National Association of Real Estate Investment Trusts (NAREIT) is the worldwide representative voice for real estate investment trusts (REITs) and publicly-traded real estate companies with an interest in U.S. real estate and capital markets. We represent a large and diverse industry including equity REITs, which own commercial properties, mortgage REITs, which invest in mortgage securities, REITs traded on major stock exchanges, public non-listed REITs and private REITs. Public U.S. REITs collectively own nearly \$2 trillion of real estate assets and, by making investment in commercial real estate available in the form of stock, our REIT members enable all investors – importantly, small investors – to achieve what once only large institutions and the wealthy could.

NAREIT supports the goals of the Securities and Exchange Commission’s (SEC, or the Commission) Disclosure Effectiveness Initiative and appreciate this opportunity to submit comments responding to the *Concept Release on Business and Financial Disclosure Required by Regulation S-K (Concept Release)*¹.

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REITs as publicly traded real estate companies are a growing asset class, both domestically and abroad. Last year S&P and MSCI announced that for the first time since the Global Industry Classification Standard (GICS®) was created in 1999, it will create a new headline sector named *Real Estate*, which will be predominately populated by equity REITs and will become effective August 31, 2016.² Promoting *Real Estate* to a GICS® headline sector from its current

¹ All page references here in refer to the *Federal Register* version of *Business and Financial Disclosure Required by Regulation S-K*, 81 FR 23915 (April 22, 2016).

² S&P Dow Jones Indices, [S&P DOW JONES INDICES AND MSCI ANNOUNCE AUGUST 2016 CREATION OF A REAL ESTATE SECTOR IN THE GLOBAL INDUSTRY CLASSIFICATION STANDARD \(GICS®\) STRUCTURE \[Press Release, \(March 13, 2015\)\]](https://www.msci.com/documents/10199/6aac98e5-a0f6-485c-ad7c-20394024e07f), available at <https://www.msci.com/documents/10199/6aac98e5-a0f6-485c-ad7c-20394024e07f>.

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industry classification under *Financials* recognizes the growing position of REITs in the global investment landscape. Worldwide, 36 countries currently have enacted laws supporting equity REITs, which own and operate real estate assets.³

REITs as publicly traded real estate companies share many commonalities with other SEC-registered companies, but also exhibit important differences. Most relevant to disclosure, the “real estate-centric” nature of REITs presents some challenges for meaningful financial reporting. Historical cost accounting for real estate assets implicitly assumes that the value of real estate assets diminishes predictably over time, although this has not been accurate over the long periods of time in which real estate investments have historically been valued. To address this anomaly, in 1991, NAREIT, working with its corporate members and the REIT investment community, developed a non-GAAP measure of REIT performance, NAREIT Funds from Operations (FFO), which is calculated by adding depreciation and amortization related to real estate to GAAP net income and subtracting gains and losses from real estate sales.

NAREIT FFO is now widely used as a supplemental metric to measure operating performance and has been recognized by the SEC since 2002 as a standard non-GAAP performance measure for the real estate industry.⁴ REIT disclosure practices, incorporating NAREIT FFO metrics, are consistently praised by the financial and investor communities for their transparency and comparability.⁵ NAREIT continues to engage in efforts to refine the understandability and uniformity of FFO estimates.

NAREIT and its members have long understood the critical importance of communicating accurate and material business and financial information to REIT investors and appreciate this historic opportunity to participate in the SEC’s Disclosure Effectiveness Initiative. NAREIT convened groups of NAREIT members of its committees on government relations, accounting and sustainability in a series of conference calls to discuss the disclosure topics most relevant to REITs that are raised in the *Concept Release*. Although the views of NAREIT members on some

³ Available at <https://www.reit.com/investing/reit-basics/global-real-estate-investment>.

⁴ See SEC, *The Use of Non-GAAP Financial Measures* (May 17, 2016), available at <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>; See also, SEC, *Frequently Asked Questions Regarding the Use of Non-GAAP Financial Measures* (June 13, 2003), available at <https://www.sec.gov/divisions/corpfin/faqs/nongaapfaq.htm> (“Question 7: What measure was contemplated by ‘funds from operations’ in footnote 50 to the adopting release, which indicates that companies may use ‘funds from operations per share’ in earnings releases and materials that are filed or furnished to the Commission, subject to the requirements of Regulation G and Item 10(e) of Regulation S-K? Answer 7: Footnote 50 contemplated only the measure ‘funds from operations’ defined and clarified, as of January 1, 2000, by the National Association of Real Estate Investment Trusts.”).

⁵ See, e.g., Chilton Capital Management investment team, as reported in *Seeking Alpha* (May 3, 2016) (“In fact, we would argue that REIT disclosures rank near the top of all sectors, making them extremely transparent to investors. Upon spending the time to understand some of these new metrics, we believe that market participants will determine that REITs are *less* complex than the average company and FFO estimates, dividend forecasts, and valuations are *more* accurate.”), available at <http://seekingalpha.com/article/3970520-gics-change-validates-investment-merits-reits>.



topics varied, there was overwhelming agreement on key foundational points, which are summarized below:

- NAREIT strongly believes that materiality, as evaluated through the eyes of a “reasonable investor” under the prevailing Supreme Court⁶ standard, should continue to be the guidepost of the SEC’s disclosure regime and that reform efforts should focus on best ways to ensure the disclosure of *company-specific* material information to investors;⁷
- NAREIT strongly favors a “Principles-based” approach to SEC disclosure and believes it is best suited to the constantly evolving business environment in which REITs and other businesses operate. We agree that the disclosure requirements should be streamlined and suggest that limiting prescriptive “line-item” disclosure requirements would reduce “over-disclosure” of irrelevant, outdated or immaterial information;
- NAREIT appreciates the SEC’s recognition of the value of NAREIT FFO, an industry-wide Non-GAAP metric, to REIT investors;
- NAREIT believes that greater coordination between the SEC and FASB would reduce overlapping and redundant disclosure requirements and lead to better disclosure;
- NAREIT believes that Principles-based disclosure based on materiality remains the best approach to environmental, sustainability and similar disclosures and does not believe that the SEC should prescribe specific standards or reporting frameworks in this area; and,
- NAREIT suggests that SEC disclosure reform should incentivize long-term business value creation rather than short-term results. Reforms should prioritize reporting rules and metrics that highlight long-term results.

I. Core Company Business Information (Item 101)

The *Concept Release* seeks general comments on the usefulness of disclosure required by Item 101 of Regulation S-K and whether it duplicates information provided elsewhere in the reports.

NAREIT supports efforts to streamline the reporting of core company business information generally, through the elimination of redundant, outdated and excessive reporting requirements. We believe that streamlining efforts should adopt a Principles-based approach and that additional line-item reporting should be resisted.

NAREIT also generally supports the idea, raised in Question 28 of the *Concept Release*, of a rule change that would “require a more detailed discussion of a registrant’s business in the initial filing, and in subsequent filings only require a summary of the registrant’s business along with a discussion of material changes in the business as previously disclosed in the registrant’s Form

⁶ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) at 449.

⁷ NAREIT’s comments herein primarily address proposed disclosure reforms related to the requirements of SEC Forms 10-K, 10-Q and 8-K (collectively referred to herein as ‘34 Act reports).



10-K...” There are many forms that this suggestion could assume, including permitting registrants to lodge a “date and time stamped” basic company profile in the EDGAR system, which could be updated as necessary (again, date and time stamped). This would not eliminate the need for periodic reports, but would likely streamline reporting and reduce compliance burdens.

However, we do not favor core business reporting requirements that would effectively impose “continuous reporting” obligations, because we believe that the existing ‘34 Act reporting, including Form 8-K filings, are sufficient to provide investors with timely updates. Moreover, as noted in section VI below (Frequency of Interim Reporting) some NAREIT members also question whether current quarterly reporting obligations lead to excessive managerial and investor focus on short-term results at the expense of long-term sustainable value.

Item 102 of Regulation S-K

The *Concept Release* poses a series of questions about Item 102 of *Regulation S-K*, relating to the disclosure of the location and general character of important physical properties of the registrant and its subsidiaries, noting that some registrants have questioned the continuing relevance of this requirement.⁸ Item 102 clearly has more relevance for REITs than some other registrants.

NAREIT generally believes that reforms here should also be Principles-based and caution against the adoption of new prescriptive rules mandating specific forms or terms for disclosing physical property, or attempts to redefine materiality in this context. There is tremendous variation in the types and forms of real property and real property ownership among subcategories of REITs and even within REIT subcategories. Principles-based rules will continue to provide the flexibility to management to fashion meaningful communication about real properties to investors.

Most REITs are also required to submit Schedule III (as defined by Regulation S-X rule 210.5-04(c))⁹, which requires even more extensive disclosure about the individual properties held by REITs than Item 102, overlapping some Item 102 requirements and conflicting with others. The burdens of Schedule III preparation for REITs have become substantial. Many REITs devote considerable time and resources to Schedule III preparation, which requires copious details about individual properties, such as original purchase price, cumulative capital improvements, the year acquired or developed and accumulated depreciation and amortization. Moreover, some NAREIT members report that their investor feedback does not support the value to investors of the incremental detail currently required by Schedule III. They tell us that their investors are typically more interested in information about particular geographies or categories of properties, which can provide the basis of comparisons between companies.

⁸ *Concept Release* at 23937.

⁹ 17 CFR 210.12-28 - Real estate and accumulated depreciation.



Further, the SEC's rules related to interactive data¹⁰ now require extensive XBRL tagging of much of the information included in Schedule III. As noted above, there is significant variation in the types and forms of real property held by REITs. Many large REITs have complex real estate portfolios requiring customized tagging of literally thousands of discrete items that are *sui generis*, producing Schedule III disclosures that are overly complex, difficult to compare and often of little incremental value to investors.

NAREIT recommends that disclosure compliance burdens and confusing duplication be eased by incorporating those requirements of Schedule III that do provide additional useful information into Item 102. Alternatively, Schedule III could be amended to allow for aggregation of properties in a geographic region and/or by similar property types.

Industry Guides

The *Concept Release* seeks input on “whether the Industry Guides elicit disclosure that is important to investment and voting decisions.”¹¹ NAREIT generally endorses the periodic reevaluation and updates of all SEC guidance, including Securities Act Industry Guide 5 – Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships (Industry Guide 5),¹² which has particular relevance to REITs. With regard to Industry Guide 5, we note that it currently prescribes multiple quantitative disclosures in tabular format, making preparation onerous. We suggest that these requirements be reevaluated and streamlined so that material quantitative information may be disclosed into a single table.

Further, we are generally concerned that additional static, line-item requirements would not benefit investors, and we therefore urge the SEC against attempting to broadly codify guidance contained in Industry Guide 5 into Regulation S-K, as some have suggested.¹³

Similarly, the *Concept Release* alludes to past SEC efforts to integrate the disclosure requirements for the registration of an initial offering and subsequent periodic reporting. Question 203 specifically asks if the SEC should “move to consolidate industry-specific

¹⁰ *Interactive Data to Improve Financial Reporting*, Release No. 33-9002 (Jan. 20, 2009), available at <https://www.sec.gov/rules/final/finalarchive/finalarchive2009.shtml>.

¹¹ *Concept Release* at 23967.

⁷ Securities Act Industry Guide 5 by its terms, applies only to real estate limited partnerships, however, in 1991 the SEC stated that “the requirements contained in the Guide should be considered, as appropriate, in the preparation of registration statements for real estate investment trusts and for all other limited partnership offerings.” See, *Securities Act Release No. 33-6900* (June 25, 1991), available at <https://www.sec.gov/rules/interp/1991/33-6900.pdf>

¹³ See, e.g., Division of Corporation Finance, U.S. Securities and Exchange Commission, *Report on Review of Disclosure Requirements in Regulation S-K* (Dec. 2013) (the “SEC 2013 Staff Report”) at 16 and 103 (“In addition, review could be made as to whether any of the Industry Guide provisions should be codified in Regulation S-K...”). See also, *Release No. 33-10098, Modernization of Property Disclosures for Mining Registrants* (June 16, 2016) (codifying the Industry Guide 7 into new subpart 1300 of Regulation S-K), available at <http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>.



disclosure requirements,” such as those set forth in Form S-11, into Regulation S-K. NAREIT strongly believes that disclosure reform should streamline the disclosure process, not simply aggregate existing rules, or worse, increase prescriptive line-item requirements. We urge that any such consolidation efforts be guided by a Principles-based approach focused on company-specific materiality.

II. Company Performance, Financial Information and Future Prospects

Selected Financial Data (Item 301) including Instruction 2

NAREIT recommends that disclosure of Selected Financial Data only be required for three years rather than the current five years, except where the inclusion of the two fiscal years preceding those three fiscal years is required to illustrate material trends in the registrant’s business. NAREIT also believes that Instruction 2 currently provides “a reasonable balance between specified content and a flexible approach” and urges the SEC not to adopt “a more prescriptive approach”(Q. 76). Registrants should continue to have the flexibility to present selected data that best illustrates trends in their financial condition and the results of operations. For REITs, this additional information may include NAREIT FFO and other non-GAAP metrics, which may be significant to an understanding of the trends in financial condition and results of operations. Retaining the current Instruction 2 requirements would permit registrants to continue to provide additional information that is material to their business.

The *Concept Release* also seeks comment on whether the SEC should require auditor involvement (*e.g.*, audit, review or specified procedures) for Item 301 disclosure (Q. 77). NAREIT does not believe that additional auditor involvement should be required with regard to disclosures made under Items 301, 302 or 303. Currently, the registrant’s auditor is required to review the table of selected financial data to ensure that there is no inconsistency between this data and the financial statements on which the auditor has rendered an audit opinion. In addition, if any non-GAAP metric is included in the table, such metric must be reconciled to the nearest GAAP metric, which is subject to audit.

Supplementary Financial Information (Item 302)

NAREIT believes that interim results can be misleading and that including this quarterly data in annual financial statements may obscure important trends. The *Concept Release* requests comment on whether Item 302(a)(1), which requires disclosure of quarterly financial data of selected operating results, “remains useful and relevant,” noting that much of the required data has already been reported in prior quarterly reports. (Qs. 67-75). As noted in section V below, in addition to concerns about such data being misleading, many NAREIT members are concerned that quarterly reporting generally may incentivize excessive focus on short-term results at the expense of long-term performance. Based on these concerns, NAREIT suggests that the SEC should consider eliminating Item 302 (a)(1).



Finally, as noted above, we do not believe that it would provide additional benefit to investors to “require auditor involvement on the reliability of the disclosure under Item 302” (Q. 82).

Content and Focus of MD&A (Item 303 - Generally)

MD&A is a critical part of a registrant’s financial reporting to investors and other financial statement users. However, NAREIT agrees that MD&A disclosure could be streamlined and recommends that Item 303 revisions follow a Principles-based approach. NAREIT believes that management is best positioned to determine whether an operating trend or change in financial condition is material to its business and should be discussed in MD&A and does not believe that it would be useful to impose quantitative thresholds to determine the materiality of trends or to adopt other prescriptive requirements (Q. 89). Rather, Item 303 should continue to provide management the flexibility to present its own perspective of the registrant’s financial condition and results of operations.

NAREIT also agrees that it would improve the quality of MD&A disclosure if the SEC would consolidate its disparate sources of guidance on MD&A into a single place (Q. 90).

Finally, as noted above, each registrant’s auditors currently must ensure that MD&A includes no information that is materially misleading and/or inconsistent with audited financial statements. NAREIT believes that expanding auditor involvement in MD&A disclosures would be costly and is unlikely to benefit investors. (Q. 96).

Key Indicators of Financial Condition and Results from Operations

While noting that both financial and non-financial key indicators and performance measures vary considerably across industries and even among industry segments,¹⁴ the *Concept Release* requests comment on whether the SEC should mandate the disclosure of key indicators (Qs. 103-6). NAREIT believes that registrants should retain the flexibility to disclose key indicators and performance measures that they deem material or that illustrate material trends. However, NAREIT is concerned that prescriptive requirements mandating the disclosure of designated key indicators could lead to confusing disclosure overload without corresponding benefit to investors.

Disclosure rules applicable to such measures should be Principles-based and afford management the flexibility to disclose key indicators specific to its business when appropriate (and omit these when not material). Specifically, the SEC should not require registrants to disclose all

¹⁴ *Concept Release* at 23944 (“For example, electronic gaming or social media companies typically discuss their numbers of monthly active users; numbers of unique users; numbers of unique payers; and other metrics relating to usage. Software service companies typically discuss their numbers of subscribers; customer renewal rates; and customer retention rates. Hospitals typically discuss their numbers of admissions; numbers of beds; the average length of inpatient stays; and occupancy rates.”)



performance metrics and other key variables, or even a defined set of metrics. Requiring registrants to disclose *all* relevant key indicators and business drivers would be so expansive as to provide information that could easily confuse investors, rather than provide information to evaluate the investment quality of a registrant. This is especially true for key performance indicators similar to those referenced in the *Concept Release*¹⁵ that have no uniform definition.

For example, the *Concept Release* noted that “[r]etailers typically discuss comparable store sales, sales per square foot or gross merchandise value.”¹⁶ Many retail shopping centers are owned by REITs and “tenant sales per square foot” *may, in some instances*, be a useful metric to illustrate REIT operating results. However, not all retailers, retail centers, nor shopping center REITs, compile this data and/or calculate this metric, and among those who do, there is considerable variation, because it does not have a standardized definition. As a result, comparisons among retailers and /or among shopping center REITs could prove misleading to investors.

Similarly, real estate companies that operate as REITs generally report NAREIT FFO which, as noted above, is widely accepted as a standardized industry-wide performance measure and facilitates transparency and comparability. On the other hand, requirements specifying the disclosure of some, or all, business drivers that impact the calculation FFO, many of which are not uniformly defined, would be similarly confusing and possibly misleading.

Critical Accounting Estimates

Needless to say, critical accounting estimates and the disclosures related to them may represent important information to investors. However, disclosure of critical accounting estimates should be guided by materiality and should be Principles-based. In undertaking reform, NAREIT urges the SEC to coordinate with the FASB to integrate current SEC and FASB requirements, which are now often duplicative.

NAREIT agrees that the SEC should also clarify the disclosure objectives related to critical accounting estimates in MD&A and should also refine the definition of “critical accounting policies” to ensure that only significant accounting policies in financial statements that provide distinct and useful information to investors are disclosed (Q. 138).

NAREIT agrees that there is often duplication in the disclosure of accounting estimates and policies and suggests that the SEC consider rule changes to permit or require cross referencing, which would reduce repetition between MD&A and the notes to the financial statements. Alternatively, the SEC could permit registrants to post a comprehensive listing of accounting policies on a company’s website, with cross referencing through hyperlinks. Companies could update accounting policies as new standards are issued (Q. 139).

¹⁵ *Id.*

¹⁶ *Id.*



III. Risk and Risk Management

Risk Factor Disclosure

The *Concept Release* requests comment on Items 305 and 503(c) of Regulation S-K, relating to risk factor disclosure and disclosures about market risk, as well as the overall approach to risk management and risk management processes. NAREIT agrees with many of the comments from other registrants, as reported in the *Concept Release*, that risk factor disclosure has become so voluminous that material information is often obscured. NAREIT also agrees with observations by SEC Chair White, among others, suggesting that “disclosure overload” can be motivated by liability concerns, possibly exacerbated by the *Private Securities Litigation Reform Act of 1995 (PSLRA)*.¹⁷

NAREIT recommends that reform of risk factor disclosure should follow a Principles-based approach, focused exclusively on risks that are material to an understanding a *specific registrant’s business*, rather than risks “common to an industry or to registrants in general” (Q. 149). Specifically,

- NAREIT largely supports the recommendation set forth in the *SEC 2013 Staff Report*, suggesting that the consolidation of “requirements relating to risk factors, legal proceedings and other quantitative and qualitative information about risk and risk management into a single requirement.”¹⁸
- NAREIT agrees with the suggestion included in the *Concept Release* that it could be helpful if the SEC, from time to time, issued guidance specifying risks it considers to be generic to all registrants that are *not* required to be disclosed (Q. 150).
- NAREIT disagrees with several other suggestions mentioned in the *Concept Release*. Specifically, we disagree that “each risk factor be accompanied by a specific discussion of how the registrant is addressing the risk” (Q. 145). Similarly, NAREIT does not agree that the SEC should require registrants to discuss the probability of occurrence and the effect on performance for each risk factor (Q. 146), or that it should require registrants to “identify and disclose in order their ten most significant risk factors without limiting the total number of risk factors disclosed”(Q. 147). NAREIT tends to believe that this kind of reporting would be speculative, pose liability risk and provide little value to investors.

¹⁷ SEC Chairman Mary Jo White, *The Path Forward on Disclosure remarks at the National Association of Corporate Directors - Leadership Conference (Oct. 15, 2013)* available at <https://www.sec.gov/News/Speech/Detail/Speech/1370539878806>.

¹⁸ *SEC 2013 Staff Report* at 99.



Forward Looking Statements--Safe Harbor Provisions

NAREIT strongly believes that the safe harbor provisions of the *PSLRA*¹⁹ have been beneficial to REITs and their investors and have succeeded in promoting the provision of material forward-looking information to investors. We urge the SEC to ensure that any recommendations for streamlining risk factor disclosure requirements do not result in unnecessarily increasing liability exposure for registrants.

IV. Disclosure of Information Relating to Public Policy and Sustainability Matters

REITs, as a group, are highly focused on operating their properties sustainably and committed to conserving energy and other scarce resources. Moreover, many REITs have long records of leadership roles on sustainability matters.²⁰ Several listed REITs are among *Fortune* 100 pioneers in releasing comprehensive sustainability data and information to the public in the form of annual sustainability reports, or by periodic website updates.²¹ However, NAREIT believes that the existing standard of materiality coupled with the current disclosure framework is adequate and sufficiently flexible to enable REITs to disclose material sustainability information to their investors. Most importantly, NAREIT opposes any attempt by the SEC to adopt additional detailed, prescriptive sustainability disclosure requirements.

Just as real estate assets vary considerably across the REIT sector, across geographies and business models, so, too, do appropriate and successful REIT sustainability efforts. The same energy conservation strategies and measurement tools are unlikely to work for a New York City medical center and a shopping center in Duluth. The age, location, utility infrastructure and configuration of local government services will often influence, or limit, viable REIT sustainable strategies. Correspondingly, our members have told us that their investors do not uniformly seek detailed information regarding environmental matters and that those who do appropriately seek distinct information from say, a lodging REIT, than from a higher energy-use data center REIT, or from a multifamily REIT. In other words, “one size does not fit all,” even within the REIT sector.

Nevertheless, most NAREIT members readily endorse the value of developing some voluntary standard metrics of comparability regarding energy use and sustainable performance for real

¹⁹ 15 U.S. Code 77z-2 - Application of safe harbor for forward-looking statement.

²⁰ Several U.S. REITs have been named ENERGY STAR®. “Partner of the Year” by the U.S. Environmental Protection Agency (EPA) since the program’s inception, including (but not limited to) Simon Properties, Macerich, AvalonBay Communities, Inc., Boston Properties, Inc., Kilroy Realty Corporation, Prologis, HCP., Inc., Vornado Realty Trust, Hersha Hospitality Trust, and SL Green Realty Corp. The CDP (formerly the “Carbon Disclosure Project”) has also recognized several U.S. REITs for efforts toward addressing climate change, including Host Hotels & Resorts, Inc., Macerich and Simon Property Group in 2015.

²¹ Vosilla, Behrendt and Hanson, *State of the Industry: Sustainability Reporting in the REIT Sector – 2016 Update* (2016) available at <http://www.usgbc.org/resources/state-industry-sustainability-reporting-reit-sector-%E2%80%93-2016-update>.



property assets and believe such metrics increasingly contribute to a vibrant global property market for tenants and investors alike. For this reason, some NAREIT members have, for many years, voluntarily participated in the *Global Real Estate Sustainability Benchmark (GRESB)* assessment.²² *GRESB*, a unit of *The Green Building Certification Institute (GBCI)*,²³ is an industry-driven organization, based in the Netherlands, committed to assessing the environmental, social, and governance (ESG) performance of real assets globally, including the performance of real estate portfolios and infrastructure assets. In 2015, 707 property companies and funds participated in the *GRESB* annual survey. The *GRESB* database covers 49,000 assets in 46 countries.²⁴ Organizations, such as the Global Reporting Initiative (GRI)²⁵ and the Sustainability Accounting Standards Board (SASB) have drawn heavily on *GRESB* research and in some cases have adopted its metrics.²⁶

Today, many REITs already determine that certain information about their sustainability practices and/or related status of their real property assets is useful to investors and accordingly provide this information in their '34 Act reports. Also, as noted above, many REITs publish comprehensive corporate sustainability reports and/ or post this information on their websites, or on social media. Some do both and much more. In any event, NAREIT believes that a “one size fits all approach” to sustainability reporting is not appropriate. Some NAREIT members have voiced skepticism that placing detailed prescriptive reporting requirements into the '34 Act would lead to incremental conservation gains for the REIT sector.

NAREIT is generally comfortable that the existing standard of materiality coupled with the current SEC public company disclosure framework provides the flexibility to disclose material sustainability information to investors. We believe that REITs are in the best position to determine whether particular sustainability information is material to investors and whether it should be disclosed. In this regard, it is noteworthy that REITs as a group report high levels of engagement with investors. Several of our members recounted instances when shareholders have

²² See, e.g., *2015 GRESB Report* (September 2, 2015), available at <https://www.gresb.com/results2015/downloads>.

²³ GBCI is a third-party organization that provides independent oversight of professional credentialing and project certification programs related to green building. GBCI is committed to ensuring precision in the design, development and implementation of measurement processes for green building performance (through project certification) and green building practice (through professional credentials and certificates). See, <http://www.gbci.org>.

²⁴ *Id.*

²⁵ GRI reports that it is currently partnering with *GRESB* in developing construction and real estate reporting tools, See, e.g., <https://www.globalreporting.org/standards/sector-guidance/sector-guidance/construction-and-real-estate/Pages/Reporting-Tools.aspx>.

²⁶ SASB's *Research Brief, Real Estate Owners Developers and Investment Trusts* (March 2016), draws heavily on *GRESB* data, available at <http://www.sasb.org/approach/our-process/industry-briefs/infrastructure-sector-industry-briefs/>. According to its press release, SASB's recently-issued provisional Sustainability Standards for the Real Estate Sector “leverage[s] the industry-specific and widely used *GRESB* Real Estate Assessment. Over 75% of the quantitative metrics contained in the SASB standard are aligned with *GRESB* or require no additional data collection,” available at <http://www.prnewswire.com/news-releases/sasb-issues-provisional-sustainability-accounting-standards-for-infrastructure-sector-300243040.html>.



requested and have been readily provided with additional sustainability information. We also note that all investors have the option of submitting shareholder proposals to promote particular sustainability practices by particular firms if they have unmet needs.

Voluntary Sustainability Reporting Frameworks

The *Concept Release* notes that “several organizations have published or are working on sustainability reporting frameworks” (Q. 219). Not all NAREIT members are familiar with these frameworks, many of which are in early stages, although about a dozen NAREIT members participated in recent outreach sponsored by SASB’s Industry Working Group for the Infrastructure Sector.²⁷ Those who are familiar with them report a range of opinions, although relatively few have detailed knowledge of the relative merits of the alternative approaches. NAREIT does not believe that it would be helpful for the SEC to preempt these private efforts or to adopt and codify any one of them, or even to codify more than one of them into Regulation S-K at this time. We believe that voluntary standards are inherently more flexible and easier to update and adapt to new facts and investor demands than federal agency rules promulgated under the *Administrative Procedures Act*.

Costs and Burdens

Moreover, there are significant costs associated with the collection, analysis, validation and management of the data that would be required by some of the sustainability frameworks referenced in the *Concept Release*, which may impose a burden on many businesses, including REITs. In recent outreach to our members, 78% of the respondents indicated that they would likely need to implement costly new procedures and/or systems to compile and report the type of information required by these frameworks. Many companies would be required to upgrade equipment and/or acquire additional technology to capture and track data and also add additional staff to monitor performance and analyze results. Some of these frameworks would require firms to arrange costly third-party data verification. Additionally, the capture of additional reportable tenant information, as proposed by some reporting frameworks, may not be feasible for all property categories and when it is possible could add substantially to these costs estimates.²⁸

²⁷ The roster of participants in the activities of SASB’s Infrastructure Sector Task Force is available at <http://www.sasb.org/sectors/infrastructure/>. NAREIT also submitted comments to SASB’s Infrastructure Sector Task Force. See, <https://www.reit.com/advocacy/policy/other-federal-legislation/sustainability-green-initiatives>.

²⁸ RealFoundations, a professional services firm focused on the real estate industry that was retained by NAREIT estimated that the costs for an average property portfolio (containing 200 commercial assets) to implement a system capable of managing and reporting the type of data required by many of these types of sustainability frameworks would exceed \$1 million and that operational expenses associated with system data collection, normalization, monitoring and reporting may add an additional 20-40% of system purchase and installation costs on an annual basis. See, www.realfoundations.net.



V. Company Websites and Social Media for Non-Financial Information

As the *Concept Release* acknowledges, “some registrants already provide information about ESG matters in sustainability corporate social responsibility reports or on their websites” and NAREIT members are a category of registrants that make excellent use of their corporate websites for information about sustainability, corporate responsibility and other ESG-related information.

Questions 307-317 of the *Concept Release* pose a series of questions about the use of company websites in the SEC disclosure regime, including whether there are categories of business or financial information that the SEC should permit registrants to disclose by posting on their websites in lieu of including in their periodic reports (Q. 312).” NAREIT members increasingly seek avenues outside ’34 Act reports, including websites and social media, to communicate a variety of kinds of non-financial information to investors—updates about sustainability efforts being only one example. Much of this information is not “material” in the ’34 Act sense, but may be of interest or value to investors and others. Some REIT members have suggested that if there were a mechanism outside ’34 Act reporting that permitted the dissemination of a range of non-financial information without increasing liability concerns,²⁹ the value of ’34 Act reports (likely streamlined) would be enhanced. In undertaking disclosure reform, NAREIT urges the SEC to consider ways in which REITs and other businesses may more readily furnish such non-financial information, whether ESG or otherwise, outside of ’34 Act filings.

VI. Frequency of Interim Reporting

The *Concept Release* poses a series of questions regarding the frequency of ’34 Act periodic reports and asks if the SEC should allow certain categories of registrants to file periodic reports on a less frequent basis, such as semi-annually, and if so, what these categories of registrants should be and what disclosure should be provided.

Some NAREIT members believe that “short-termism,” incentivized by quarterly reporting, is a problem for U.S. businesses and capital markets generally, including for the REIT sector. Accordingly, these members have suggested that it would be beneficial if SEC disclosure reform efforts include a thorough analysis of the relative merits of a semi-annual reporting regime, such as has been adopted in other jurisdictions, as well as of other options, such as the suggestion put forth the *Concept Release* that the SEC permit abbreviated reporting for the first and third quarters of each year (Q. 282).

²⁹ In this regard, we acknowledge that corporate website content is appropriately subject to the anti-fraud provisions of the ’34 Act. Less clear is the application of the safe harbor provisions of the *PSLRA* to such non-financial disclosures. Some have suggested that the safe harbor provisions currently apply to certain sustainability disclosures and others have suggested that it would be beneficial if the SEC clarified the extent of coverage.





VII. Conclusion

NAREIT and its members have a long-time commitment to investing in efforts to serve the needs of REIT investors and appreciate this opportunity to participate in the SEC's Disclosure Effectiveness Initiative by submitting these comments. NAREIT believes that a Principles-based disclosure framework that provides REITs as publicly traded real estate companies and other registrants with the flexibility to communicate company-specific, material information to investors in an accessible form best serves investors. In reworking its disclosure framework to serve the needs of the 21st century investor community, NAREIT urges the SEC to propose Principles-based rule changes to Regulation S-K and to resist pressures to develop prescriptive rules mandating specific disclosures of either financial or non-financial information.

We would be happy to discuss these comments at any time. Please feel free to contact me at (202) 739-9431, or vrostow@nareit.com; or any of the following NAREIT professionals: Tony M. Edwards, EVP & General Counsel (tedwards@nareit.com); Sheldon M. Groner, EVP, Finance & Operations, (sgroner@nareit.com); George Yungmann, SVP, Financial Standards (gyungmann@nareit.com); or Christopher Drula, VP, Financial Standards (cdrula@nareit.com).

Respectfully submitted,



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