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August 22, 1995

NAREIT  
BY FAX

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Mr. Michael Marinelli  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Real Estate Investment Trusts

Supplement To  
AOR 1995-27

National  
Association  
of  
Real Estate  
Investment  
Trusts  
1129 Twentieth  
Street, N.W.  
Suite 305  
Washington, D.C.  
20036-3402  
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202-785-8723

Dear Mr. Marinelli:

In response to your request for additional information, NAREIT does not have access to the shareholder records of our member REITs. However, there can be no doubt that our 80-plus REIT trust members have both corporate and individual shareholders. Moreover, approximately 58 of NAREIT's REIT trust members are traded on the New York Stock Exchange, American Stock Exchange or NASDAQ. As publicly traded companies, thousands of their shares change hands every day. Often shares are held by brokers in "street name" for the real beneficial owners who may be corporations or individuals. Generally, however, we believe that roughly half of REIT investors are individuals, while the other half consists of institutional investors, largely mutual funds.

The real estate investment trust industry has grown dramatically in the last 14 years. In 1981, when Advisory Opinion 81-52 was issued, there were only 76 publicly traded REITs, and the majority of these REITs were organized as trusts rather than corporations. Today, NAREIT's membership includes more than 200 publicly traded REITs. While a significant number are organized as trusts, most are corporations. Moreover, a 1986 tax law change has allowed REITs to become active managers and operators of their real estate properties (like most other publicly traded companies). Conversely, in 1981 REITs had to be much more passive in nature. Finally, in the last 14 years the state trust laws have been modified significantly to make trusts much more like corporations.

For example, in 1992 the California legislature added a new provision to California's REIT statute providing that trust REITs could merge with another REIT or a limited partnership. See Cal. Corp. Code § 23006 (added by Stats. 1992, c.1023 (S.B. 1686), § 36). In 1989, the Texas REIT Act was amended in a number of respects. See Acts 1989, 71st Leg., ch 801, §§ 68 et seq. A new provision was added to authorize a REIT trust to issue shares of one or more classes, including preferred shares, redeemable shares and convertible shares. See Tex. Civ. Stat. § 3.1. The Texas statute was also amended to conform the provision governing bylaw amendments to the provision for amending a corporation's bylaws. See Tex. Corps. & Assn's Code Ann. § 9. Specifically, the Texas statute was changed to authorize the trustees, in addition to the shareholders, to amend the REIT's bylaws. Also, new provisions authorizing a REIT trust to indemnify its trustees and officers and to merge with another REIT or a corporation were added. See Tex. Corps. & Assn's Code Ann. §§ 9.1 and 23.1.

As noted in our opinion request, the Maryland REIT statute has been amended from time to time to conform to the Maryland General Corporate Law (the "MGCL"). Most recently, this year the statute was amended by House Bill 749 (effective as of October 1, 1995), among other things: (i) to permit so-called "auction rate" or "resettable term" shares, the terms of which "may be made dependent upon facts ascertainable outside the declaration of trust," paralleling language, also amended in 1995, in the MGCL, see Md. Corps. & Assns Ann. § 8-203(c)(2); (ii) to permit shareholders of a REIT trust to remove any trustee, with or without cause, by a majority vote, conforming to the analogous provision in the MGCL, see Md. Corps. & Assn's Ann. § 8-205; and (iii) to conform procedures for amending the declaration of trust to the procedures for amending the charter of a corporation under the MGCL, see Md. Corps. & Assn's Ann. § 8-501.

These amendments to the Maryland, California and Texas REIT statutes evidence the intent of those states' legislatures that a trust REIT operate in the same manner as a corporation organized under that state's laws. Similarly, we believe that trust REITs should be treated in the same manner as a corporation for purposes of soliciting contributions to NAREIT PAC from NAREIT's REIT members in accordance with the Federal Election Act of 1971, as amended



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Please contact me if you require any additional information in your consideration of our advisory opinion request.

Very truly yours,



Margaret A. Campbell  
Associate Counsel

cc: Tony M. Edwards

