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July 25, 2018

Nicole Puccio
Branch Chief
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2521

Re: File No. 34-83463: Draft 2018-2022 Strategic Plan for Securities and Exchange Commission

Dear Ms. Puccio:

Nareit appreciates the opportunity to provide comments to the Securities and Exchange Commission (SEC) on File No. 34-83463, the Commission's draft strategic plan for fiscal years 2018 through 2022 (the Draft Strategic Plan). In particular, we are pleased that the Draft Strategic Plan prioritizes the SEC's "continued focus on the long-term interests of Main Street investors".

Nareit is the worldwide representative voice for real estate investment trusts (REITs) and listed real estate companies with an interest in U.S. real estate and capital markets. Nareit advocates for REIT-based real estate investment with policymakers and the global investment community.

REITs are real estate working for you. Through the properties they own, finance and operate, REITs help provide the essential real estate we need to live, work and play. All U.S. REITs own approximately $3 trillion in gross assets, public U.S. REITs account for $2 trillion in gross assets, and stock-exchange listed REITs have an equity market capitalization of over $1 trillion. In addition, more than 80 million Americans invest in REIT stocks through their 401(k) retirement and other investment funds.

U.S. REITs were established by Congress in 1960 to give all investors, especially small investors, access to income-producing real estate. Since then, the U.S. REIT approach has flourished and served as the model for more than 35 countries around the world. Investments by Main Street investors in REITs support properties including offices, apartment buildings, warehouses, retail centers, medical facilities, data centers, cell towers, infrastructure, and hotels.

As the SEC finalizes the Draft Strategic Plan and takes steps toward implementing it over the next five years, Nareit urges the SEC to consider focusing additional attention and resources on the following areas:

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I. Provide Useful Information to Main Street REIT Investors

Nareit supports the Draft Strategic Plan initiative 1.4 to "modernize design, delivery, and content of disclosure so investors, including, in particular, retail investors, can access readable, useful, and timely information to make informed investment decisions." To this end, Nareit submitted comments to the SEC supporting its 2015 Request for Comment on the Effectiveness of Financial Disclosures about Entities other than the Registrant[1], 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K;[2] and its related Disclosure Update and Simplification Proposal.[3]

These Nareit comments and related efforts have specifically focused on areas where our members believe that existing SEC disclosure rules and regulations might be streamlined to reduce reporting requirements that have become outdated and/or burdensome. We believe that these suggested modifications, summarized below, would enhance the usefulness of REIT disclosure for Main Street investors. Accordingly, we suggest that the SEC consider addressing the following as part of its Strategic Plan efforts:

Streamline industry-specific disclosures applicable to real estate companies, including REITs

Nareit continues to support revisiting industry-specific disclosure requirements on a regular basis to ensure that disclosure requirements continue to provide meaningful disclosure to the users of financial statements. We believe that SEC CF Industry Guide 5[4], which addresses disclosure for REITs and other real estate companies, could be usefully updated.[5] As stated in our 2016 comment letter, Nareit recommends that the SEC review several overlapping requirements and consider eliminating the following duplicative REIT disclosures:

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[1] Nareit comment on SEC *Request for Comment on the Effectiveness of Financial Disclosures about Entities other than the Registrant*; Release No. 33-9929; 34-75985; File No. S7-20-15 (November 30, 2015) available at https://www.sec.gov/comments/s7-20-15/s72015-17.pdf

[2] Nareit comment on SEC *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 (July 21, 2016) available at https://www.sec.gov/comments/s7-06-16/s70616-268.pdf

[3] Nareit comment on *SEC Proposed Rule on Disclosure Update and Simplification* (17 CFR Parts 210, 229, 230, 239, 240, 249, and 274; Release No. 33-10110, 34-78310; IC32175; File No. S7-15-16; RIN 3235-AL82) (Oct. 28, 2016) available at https://www.sec.gov/comments/s7-15-16/s71516-39.pdf

[4] SEC, Industry Guides, Preparation of registration statements relating to interests in real estate limited partnerships available at https://www.sec.gov/about/forms/industryguides.pdf

[5] In its FY 2019 Budget Request, the SEC requested resources to "modernize and streamline industry-specific disclosures applicable to real estate companies, including real estate investment trusts." SEC, *Congressional Budget Justification Annual Performance Plan* (April 2018) at 19 available at https://www.sec.gov/files/secfy19congbudgjust.pdf. Nareit supports this effort and stands ready to assist the SEC with this task.

- Undistributed Gains or Losses on the Sales of Properties

  Nareit supports the SEC's 2016 suggestion to delete Rule 3-15(a)(2) of Regulation S-X. Nareit agrees that Regulation S-X's current requirement that REITs present undistributed gains or losses on the sale of properties on a book basis does not provide meaningful information to investors.

- Status as a REIT

  Nareit concurs with the SEC's 2016 observation that Regulation S-K and Regulation S-X currently contain overlapping disclosure requirements about an issuer's status as a REIT. Nareit observes that issuers typically repeat the disclosures of REIT status. We further note that U.S. GAAP, in ASC Topic 740, also requires disclosure when an entity is not subject to entity level income taxes because its income is taxed directly to its owners.

- Tax Status of Distributions

  Nareit suggests that the SEC eliminate the requirement in Rule 3-15(c) of Regulation S-K for REITs to disclose the tax status of distributions as ordinary income, capital gain, or return of capital. This information is provided to shareholders in Form 1099 much earlier than when the Form 10-Ks are generally filed with the SEC. Additionally, this information is publicly available on Nareit's website[6]. Therefore, Nareit does not believe that duplicative disclosure is necessary.

- Gain or Loss on Sale of Properties by REITs as required by Rule 3-15 (a)(1) due to its conflict with existing U.S. GAAP guidance

  Rule 3-15(a)(1) of Regulation S-X has presented a potential conflict between SEC and U.S. GAAP requirements for some time. The SEC's current rule requires all gains and losses on the sale of properties to be presented outside of continuing operations, whereas U.S. GAAP does not permit that presentation unless the properties sold meet the definition of a discontinued operation. That conflict was manageable when most sales of properties met the U.S. GAAP definition of a discontinued operation. However, in 2014 the FASB issued new financial reporting guidance narrowing the definition of a discontinued operation.[7] As a result of the FASB's new definition, Nareit believes that very few sales of properties by REITs are permitted to be presented outside of continuing operations under U.S. GAAP. This creates a clear and frequently occurring conflict

[6] See, e.g., https://www.reit.com/data-research/data/year-end-tax-reporting-data-collection-%E2%80%93-forms-1099-div-and-2439

[7] UPDATE NO. 2014-08—PRESENTATION OF FINANCIAL STATEMENTS (TOPIC 205) AND PROPERTY, PLANT, AND EQUIPMENT (TOPIC 360): REPORTING DISCONTINUED OPERATIONS AND DISCLOSURES OF DISPOSALS OF COMPONENTS OF AN ENTITY (April 2014).

between U.S. GAAP and Rule 3-15(a)(1). Therefore, Nareit welcomes and fully supports the SEC's proposal to eliminate Rule 3-15(a)(1).

Streamline disclosure requirements for investments in and acquisitions of real estate

In the context of real estate transactions, Nareit's members believe that many more transactions meet the threshold of significance currently set forth in Rule 3-14 of Regulation S-X (Rule 3-14)[8] than was originally intended. One possible solution is to raise the significance threshold under Rule 3-14 to focus the users of financial statements on transactions that are truly material to the acquirer. Raising and aligning the Rule 3-14 significance threshold and reducing the required reporting periods to one year would balance the cost and benefit of the Rule 3-14 requirements. Preparers cite audit fees and time constraints as examples of the costs and complexities associated with the current S-X regulations. Further compounding these challenges are situations where the acquired investment is in a private entity.

Streamline disclosure requirements for individual properties

As set forth in Nareit's prior comment letter to the SEC[9], many of our members have noted that the overlapping—and at times conflicting—reporting requirements of Item 102[10] and Schedule III as defined by Rule 210.5- 04(c) of Regulation S-X[11] are burdensome and can create confusion for investors. Further, the SEC's rules related to interactive data now require that many REITs undertake the tagging of literally thousands of discrete items, producing Schedule III disclosures that may be overly complex, difficult to compare and often of little incremental value to investors. Nareit recommends that this duplication be eased by incorporating those requirements of Schedule III that do provide additional useful information into Item 102.

II. Reform of the Proxy Proposal Process for Resubmission Thresholds

Nareit also supports Draft Strategic Plan initiative 2.2, to identify and take steps to address existing SEC rules and approaches that are outdated or are not "functioning as intended." We believe that the resubmission rule for shareholder proxy proposals, set forth in SEC Rule 14a8(i)(12) on resubmission thresholds, is an important example of a rule that is not functioning as intended.

Under current SEC rules, an issuer may only exclude a shareholder proposal when it has failed to receive the support of 3% of shareholders if voted on once in the last five years; 6% if voted on twice in the last five years; and 10% if voted on three or more times in the last five years. In other words, under

[8] 17 CFR 210.3-14 - Special instructions for real estate operations to be acquired.
[9] Nareit comment to the SEC, supra note 2, at 4-5.
[10] 17 CFR 229.102 - (Item 102) Description of property.
[11] 17 CFR 210.5-04 (c) - What schedules are to be filed.

the current rule, a proposal that has been rejected by 90% of shareholders on multiple occasions may be resubmitted for a shareholder vote. This situation does not benefit the overwhelming majority of shareholders who have voted against the proposal; to the contrary, it is costly to them and is distracting for both management and shareholders.

In 1997, the SEC proposed a rule that would have changed the current 3%/6%/10% regime to a more workable 6%/15%/30% threshold level, thus limiting the number of times that the vast majority of shareholders who oppose a measure would be compelled to pay the costs of an additional vote on an unpopular measure.[12] Nareit recommends that the SEC's initiatives to address outdated rules include an analysis of whether the Rule 14a-8(i)(12) resubmission thresholds are functioning in a manner that is beneficial to Main Street investors and other market participants.[13]

III. Provide Transparency for Main Street Investors About Proxy Advice and Voting

As part of its efforts to ensure that Main Street Investors receive appropriate information to make informed investment decisions, we also urge the SEC to review the existing regulatory framework applicable to dissemination of voting recommendations by proxy advisory firms to investors and to assess its current authority to improve this framework.

Although proxy advisory firms can and do play an important role for many capital market participants, recent congressional hearings[14] have documented a variety of concerns expressed by investors, corporate governance experts and other market participants about the outsized influence of the two dominant U.S. proxy advisors in the annual proxy voting process. Our members share many of the concerns that have surfaced in testimony about the "one-size-fits all approach" frequently reflected in voting recommendations, the tendency to ignore relevant industry, or sector, distinctions, inconsistent approaches to industry peers, the factual accuracy of some reports and the adequacy of their resources to undertake meaningful analysis of thousands of issuers each year. We note, with some concern, that under current rules, these firms, notwithstanding their outsize influence, operate largely without

[12] Proposed Rule: Amendments to Rules on Shareholder Proposals Release No. 34-39093. Sep. 19, 1997 ("SEC 1997 Proposal") available at https://www.sec.gov/rules/proposed/34-39093.htm

[13] Nareit notes that there is a petition pending before the SEC seeking amendment of the Resubmission Rule that was signed by the U.S. Chamber of Commerce, the National Association of Corporate Directors, the National Black Chamber of Commerce, the American Petroleum Institute, the American Insurance Association, the Latino Coalition, the Financial Services Roundtable, the Center on Executive Compensation and the Financial Services Forum (Apr. 9, 2014) available at https://www.sec.gov/rules/petitions/2014/petn4-675.pdf

[14] See United States Senate Committee on Banking, Housing, and Urban Affairs, Hearings, Full Committee Hearing, Legislative Proposals to Examine Corporate Governance (June 28, 2018), https://www.banking.senate.gov/hearings/legislative-proposals-to-examine-corporate-governance; United States House Financial Services Committee, Hearing before the Subcommittee on Capital Markets, Securities, and Investment, Legislative Proposals to Help Fuel Capital and Growth on Main Street (May 23, 2018) available at https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403426.

regulatory oversight in U.S. capital markets, much like the dark pools that the SEC recently appropriately brought into the light.

Recent hearings have focused on a bill pending before the 115th Congress, *The Corporate Governance Reform and Transparency Act*, H.R. 4015[15], which would require proxy advisory firms to register with the SEC, disclose and manage conflicts of interest and become more transparent. Nareit members believe that bringing greater transparency and fairness to the operation of proxy advisors would benefit Main Street investors and other market participants. While it is unclear whether H.R. 4015, or any similar bill, will advance in the near-term, we urge the SEC to review its existing authority to determine what steps it can take to bring greater transparency and fairness to the proxy voting recommendation process. We further suggest that the SEC's review include revisiting the Egan Jones and IS no-action letters that were issued by the SEC staff in 2004.[16]

Nareit supports the SEC's mission to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation"[17] and believes that the Draft Strategic Plan represents a solid plan to achieve that overall objective. Nareit would welcome the opportunity to discuss our views on the Draft Strategic Plan with the SEC staff. If there are questions regarding this comment letter, please contact either Nareit SVP, Policy & Regulatory Affairs, Victoria P. Rostow at [redacted] or [redacted] or VP, Financial Standards, Christopher T. Drula at [redacted] or [redacted].

Respectfully submitted,

Victoria P. Rostow

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[15] Available at https://www.congress.gov/bill/115th-congress/house-bill/4015
[16] See Egan Jones Proxy Services, May 27, 2004 available at https://www.sec.gov/divisions/investment/noaction/egan052704.htm; and Institutional Shareholder Services, Inc., September 15, 2004 available at https://www.sec.gov/divisions/investment/noaction/iss091504.htm
[17] https://www.sec.gov/files/sec-strategic-plan-2018-2022.pdf at page 3.