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March 31, 2022

VIA ELECTRONIC SUBMISSION: rule-comments@sec.gov

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: Proposed Rule Regarding “Share Repurchase Disclosure Modernization” (File Number S7-21-21)

Dear Ms. Countryman,

Nareit is the worldwide representative voice for REITs¹ and listed real estate companies with an interest 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 residential and commercial real estate. Nareit’s member REITs include both Listed REITs, which are registered with the SEC and listed on an established stock exchange and Public Non-listed REITs, or PNLRs, which are public, SEC-registered real estate companies whose securities are not listed on an established stock exchange and are the subject of this submission. PNLRs participate at Nareit through the PNLR Council, which consists of 20 Nareit PNLR corporate members. The mission of the PNLR Council is to advise Nareit’s Executive Board on matters of interest and importance to PNLRs.

On behalf of Nareit’s PNLR Council, I am happy to submit the attached comments responding to the Securities and Exchange Commission’s (SEC or Commission) Feb. 15, 2022, proposed rule regarding disclosures about repurchases of an issuer’s equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 (the Proposal).²

Because there is no public market for their shares, Nareit’s PNLR Council respectfully requests that the SEC exclude PNLRs from coverage under the Proposal. Subjecting PNLRs to the reporting requirements set forth in the Proposal would impose considerable burdens on PNLRs, without corresponding benefits, because it would not advance the Commission’s stated objectives of deterring share price manipulation for purposes including achieving short-term earnings and/or executive compensation goals. Accordingly, Nareit endorses and joins the PNLR Council’s request urging the Commission to exclude PNLRs from the Proposal and suggests that the

¹ Through the diverse array of properties they own, finance, and operate, REITs help provide the essential real estate that revitalize neighborhoods, enable the digital economy, power community essential services, and build the infrastructure of tomorrow, while creating American jobs and economic activity along the way. REITs of all types collectively own more than \$3.5 trillion in gross assets across the U.S., with public REITs owning approximately \$2.5 trillion in real estate assets. U.S. listed REITs have an equity market capitalization of more than \$1.6 trillion. REITs provide everyday Americans the opportunity to invest in real estate, and 145 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, pension plans, and other investment funds.

² Share Repurchase Disclosure Modernization, 87 Fed. Reg. 8443 (Feb. 15, 2022) (Release).



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Commission consider limiting the Proposal to registrants whose shares are registered under Section 12(b) of the Securities Exchange Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S.A. Wechsler".

Steven A. Wechsler
President & CEO
Nareit



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Re: Proposed Rule Regarding “Share Repurchase Disclosure Modernization” (File Number S7-21-21)

Dear Ms. Countryman,

The Public Non-Listed REIT (PNLR) Council of Nareit (PNLR Council) appreciates the opportunity to submit these comments responding to the Securities and Exchange Commission’s (SEC or Commission) Feb. 15, 2022, proposed rule regarding disclosures about repurchases of an issuer’s equity securities that are registered under Section 12 of the Securities Exchange Act of 1934 (the Proposal).¹ Nareit and its members have long understood the critical importance of communicating accurate and material business and financial information to real estate investment trust (REIT) investors, and Nareit has previously submitted several comments supporting proposals developed by the SEC pursuant to its Disclosure Effectiveness initiative.

Nareit is the worldwide representative voice for REITs² 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. PNLRs participate at Nareit through the PNLR Council, which consists of 20 Nareit PNLR corporate members. The mission of the PNLR Council is to advise Nareit’s Executive Board on matters of interest and importance to PNLRs.

Executive Summary

Nareit’s PNLR Council respectfully requests that the SEC exclude PNLRs from coverage under the Proposal. Because there is no public market for their shares, PNLRs repurchase their shares at prices based on the Net Asset Value (NAV) of their underlying real estate assets, pursuant to repurchase programs that are fully disclosed in their prospectuses and periodic SEC filings. The sole purpose of these share repurchases is to provide shareholders with liquidity and these repurchases occur only upon the request of shareholders.

¹ Share Repurchase Disclosure Modernization, 87 Fed. Reg. 8443 (Feb. 15, 2022) (Release).

² Through the diverse array of properties they own, finance, and operate, REITs help provide the essential real estate that revitalize neighborhoods, enable the digital economy, power community essential services, and build the infrastructure of tomorrow, while creating American jobs and economic activity along the way. REITs of all types collectively own more than \$3.5 trillion in gross assets across the U.S., with public REITs owning approximately \$2.5 trillion in real estate assets. U.S. listed REITs have an equity market capitalization of more than \$1.6 trillion. REITs provide everyday Americans the opportunity to invest in real estate, and 145 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, pension plans, and other investment funds.

Requiring PNLRs to report under the provisions of the Proposal does not serve the Commission's stated objectives of deterring share price manipulation for purposes including achieving short-term earnings and/or executive compensation goals. In addition, the Proposal would impose considerable burdens and costs on PNLRs without any corresponding benefit. Accordingly, Nareit's PNLR Council urges the SEC to exclude PNLRs from the Proposal and suggests that the Commission consider limiting the Proposal to registrants whose shares are registered under Section 12(b) of the Securities Exchange Act.

REITs and PNLRs: Background

REITs in the United States may be public companies whose securities are registered with the SEC and listed on an established stock exchange (so-called Listed REITs) or public companies whose securities are registered with the SEC, but are not listed on an established stock exchange, so-called Public Non-listed REITs or PNLRs, which are the subject of this comment letter.

Both listed REITs and PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors. PNLRs, like listed REITs, are subject to the statutory operating framework set forth in Section 856 of the Internal Revenue Code (the Code) intended to ensure that REITs confine their activities to the business of real estate as a landlord or lender. Of relevance to the Proposal, among other requirements to qualify as a REIT, a REIT must distribute 90% of its taxable income each year and satisfy rigorous asset and income tests that effectively require that REITs primarily invest in qualifying real estate assets and primarily derive their income from such assets.

As SEC-registered public companies, PNLRs must make regular SEC filings, including quarterly and yearly financial reports, which are publicly available through the SEC's EDGAR database. Interests in PNLRs are public offerings, exchanged primarily through broker-dealers registered with and regulated by the SEC, the Financial Industry Regulatory Association (FINRA), and the relevant state securities regulatory authorities.

There are two PNLR organizational models. Net Asset Value (NAV) PNLRs, which constitute nearly all new PNLR issuance in recent years,³ are perpetual-life products that continuously offer and repurchase up to a prescribed limit their shares at a price based solely upon the NAV of their underlying real estate assets and liabilities pursuant to repurchase programs that are fully disclosed in their prospectuses and periodic SEC filings. NAV PNLRs report updated NAVs on a periodic basis.

This model contrasts with so-called Lifecycle PNLRs, which are designed to be limited-life products that undergo a lifecycle of fundraising followed by a liquidity event of some form. Typically, Lifecycle PNLRs often disclose in their offering prospectus that they plan to consider a liquidity event within a certain number of years following their capital raise, and may be bound by such liquidity event deadlines in their governing documents.

³ In 2021, [PNLRs](#) (nearly all NAV REITs) raised around \$36B in common offerings. In comparison, [listed REITs](#) raised around \$69B in common, preferred, and ATM secondary offerings.

Although Lifecycle PNLR shares are not continuously offered and repurchased, many Lifecycle PNLRs maintain share repurchase programs to provide investors with liquidity. Based on FINRA regulatory requirements, all current Lifecycle PNLRs must periodically report their assets' appraised value (generally NAV) to their shareholders.⁴

Both NAV and Lifecycle PNLRs are typically externally managed or advised.

NAV PNLRs

Nareit estimates that public REITs own \$2.5 trillion in real estate assets, and public non-listed REITs represent about 10% of that amount. NAV PNLRs establish their NAVs through a rigorous valuation process, typically undertaken by an independent third-party valuation advisor. The valuation process generally includes annual third-party appraisals of each property, conducted in accordance with the Uniform Standards of Professional Appraisal Practice, or similar industry standards, which are then reviewed by the independent valuation advisor for reasonableness as part of the process of developing the PNLR's NAV. This independent appraisal and valuation process is subject to the oversight of the NAV PNLR's board of directors, including a majority of the independent directors and the resulting valuations are reported in the PNLRs' periodic reports to the SEC.

Because their shares do not trade in secondary markets, NAV PNLRs offer liquidity to their shareholders by continuously offering and repurchasing some of their shares pursuant to repurchase programs, which are disclosed in their prospectuses and other SEC filings. Repurchase programs typically remain open indefinitely, unless modified or suspended by the NAV PNLR's board. Pursuant to these programs, which typically set forth the repurchase calendar, NAV PNLRs may repurchase shares daily, monthly or quarterly at a price disclosed in advance based solely upon the NAV of the underlying assets and liabilities, as determined by the process described above. Importantly, the repurchase price is not affected by the volume of repurchases, or demand for shares.

It is important to recognize that the sole reason for NAV PNLR share repurchase programs is to provide their shareholders with liquidity. Repurchases occur *only* at the request of shareholders and not at the discretion of NAV PNLR's external advisor, or board.

Lifecycle PNLRs

Lifecycle PNLRs are designed to be limited-life products that undergo a lifecycle of fundraising followed by a liquidity event, disclosed in their offering prospectus. Lifecycle REITs generally provide their first independent appraisal-based NAV at a maximum of two years and 150 days after fundraising escrow break, and at least annually thereafter.⁵

⁴ See [FINRA Regulatory Notice 15-02](#).

⁵ Pursuant to [FINRA Rule 2231](#), following an initial public offering, Lifecycle PNLRs may use a "net investment" method to value shares for a period up to 150 days after the second anniversary of breaking escrow. The "net investment" value is the offering price less

In addition to target liquidity events, Lifecycle PNLRs may also provide liquidity to their investors, upon request, through share repurchase programs, subject to certain restrictions and limitations. As is true of NAV PNLRs, the share repurchase price is based on an independently derived appraisal of the Lifecycle PNLR's real estate assets and liabilities and is not affected by the volume of repurchases, or demand for shares. Similarly, Lifecycle PNLR share repurchases pursuant to these plans occur at the request of shareholders.

The Objectives of the SEC's Share Repurchase Proposal Are Not Served by Including PNLRs

In its release, the SEC states that the objectives of the Proposal include: i) deterring earnings management to achieve short term earnings goals; ii) preventing issuers from repurchases intended to enhance management compensation; and, iii) preventing share price manipulation.⁶ None of these goals are served by requiring PNLRs to report repurchases of shares at a price based solely on the NAV, undertaken pursuant to fully disclosed repurchase plans intended to provide investors liquidity.

PNLR repurchase programs cannot be employed to boost the share price, or to "manipulate" the value of PNLR shares, because PNLRs do not have a share price on a listed exchange like most SEC issuers. PNLR share repurchases have no effect on the price of shares, because repurchases are based on the NAV of the appraised value of underlying assets and liabilities. Additionally, PNLR executives are commonly employees of the external advisor, which is typically compensated by a formula disclosed in SEC filings based on a stated percentage of the PNLR's NAV or on total assets under management. For this reason, PNLR share repurchases cannot be used to enhance management compensation.

The Costs and Burdens to PNLRs Would be Considerable

As noted above, PNLR share repurchase programs, which exist solely for liquidity management, raise none of the issues that the Commission describes in the Release accompanying the Proposal. Yet complying with the Proposal would present considerable burdens and costs for PNLRs, particularly for NAV PNLRs, which repurchase shares upon the request of shareholders monthly, or even daily. As the Commission itself notes, the burdens and costs of compiling and reporting the information required by the Proposal would be significant and "would be largest for issuers that repurchase more frequently and thus have to provide more disclosures"

Moreover, many of the Proposal's reporting requirements are simply inapplicable to PNLR repurchase programs. For example, the proposed requirement that issuers disclose the number of shares purchased on

upfront selling commissions and fees and issuer organization and offering expenses. Following this period, under FINRA rules, Lifecycle PNLRs annually report an "appraised value," conducted by an independent third party using a methodology that conforms to standard industry practice, typically the NAV based on third party appraisals of the underlying real estate assets and liabilities.

⁶ Release at 7-8.



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the open market, the average market share and the rationale and criteria used to determine repurchase volume makes little sense for NAV PNLRs that only repurchase shares at the request of investors and do so at prices predicated on NAV rather than a price set by a securities market.

Conclusion

Because there is no public market for their shares, Nareit's PNLR Council urges the Commission to exclude PNLRs from coverage under the Proposal.

If you would like to discuss this submission further, please contact Victoria Rostow, Nareit's senior vice president of regulatory affairs and deputy general counsel at vrostow@nareit.com or (202) 739-9431.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Allan Swaringen".

C. Allan Swaringen
Chair, Nareit Public Non-listed REIT Council
President & CEO
JLL Income Property Trust, Inc.