NATIONAL ASSOCIATION OF
REAL ESTATE INVESTMENT TRUSTS®

April 1, 2005

VIA E-MAIL

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Feedback on Section 404 (File No. 4-497)

Dear Mr. Katz:

The National Association of Real Estate Investment Trusts® (NAREIT) welcomes this opportunity to respond to the request for feedback from the Securities and Exchange Commission (SEC or Commission) on the implementation of Section 404 of the Sarbanes-Oxley Act of 2002 (the Act). NAREIT is the national trade association for real estate investment trusts (REITs) and publicly traded real estate companies. Members include REITs and other businesses that own, operate and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

NAREIT commends the Commission for actively pursuing feedback and recommendations to improve and streamline the requirements of Section 404 of the Act (Section 404). Most notably, the costs of implementing and complying with requirements have far exceeded most expectations. Our letter is separated into two broad sections: 1) the benefits realized from Section 404 implementation; and, 2) concerns noted by our members.

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Benefits Realized from Section 404 Implementation

1) **Documentation has helped to enhance business processes:**

   A number of our members have indicated that the efforts undertaken to meet the requirements of Section 404 have helped them to define, enhance and document their business processes.

2) **Developed empirical evidence that controls are working:**

   Some of our members have mentioned that going through the Section 404 process has helped them gather empirical evidence that the controls established by management are working effectively.

3) **Documentation is being used for training purposes:**

   Some of our members noted that they have been able to use the controls documentation to create policies and procedures manuals, which in turn they have utilized to train new employees, and/or retrain existing employees. This has also helped in transferring domain knowledge when a key employee within the department or company transfers, leaves or retires.

4) **Created an enterprise wide awareness:**

   Most of our members have reiterated that the efforts required to initiate the Section 404 compliance program have resulted in operational and other non-financial staff within their companies understanding how important their respective day-to-day tasks and procedures are to the company as a whole. Some of our members used the Section 404 process to conduct an enterprise-wide risk assessment.

Concerns Noted By Our Members

1) **Reporting Deadlines:**

   Based on their first experience complying with the Act, the majority of members have determined that despite preparation and extensive levels of procedures performed at interim dates, significant amounts of testing and evaluation after the balance sheet date will be necessary in order for management to obtain appropriate assurance about the effectiveness of internal controls as of the end of the reporting period. In addition, during the same year-end timeframe, management must address all of the considerations necessary to support its assessment, as well as facilitate the audit thereof. While additional investments in personnel and infrastructure have been made, the resources needed for complying with Section 404 as well as other requirements of the Act, continue to significantly overlap with those required for the preparation and review of the annual and quarterly financial statements. In that regard, we would suggest that the final implementation of the SEC's accelerated reporting deadlines be reconsidered and remain at 75 days after fiscal year-end and 40 days after quarter year-end.

2) Overemphasis on Detailed Process Documentation and Testing:

Auditing standards consider inquiry, observation, inspection of documentation and reperformance as appropriate tests of controls. However, most of our members found that while completing their Section 404 procedures, the auditors focused largely on the inspection of documentation. Essentially, the auditors took the position, that in the absence of documentary evidence, controls must be presumed to be ineffective. This is a significant Section 404 compliance issue for most companies and will increase costs if reasonable standards are not adopted. For example, the absence of supervisory sign-off on an account reconciliation may be deemed a significant deficiency, even though the supervisory review had, in fact, been performed and could have been verified by inquiry and observation. In addition, our members have noted that the current system for auditing internal control has no tolerance for the type of human error that could reasonably be expected to occur in situations involving the compilation of large amounts of data.

3) Evaluation of Deficiencies:

The PCAOB standards establish reporting requirements for material weaknesses and significant deficiencies. They effectively require companies to remediate any and all significant deficiencies, using low thresholds involving more than a "remote" probability of a more than "inconsequential" misstatement. This focus on what many believe are insignificant items makes it difficult to distinguish more significant deficiencies from matters of far less importance.

Our members note that this broad definition has required them to:

a) Report to their respective audit committees matters that, most likely, would not have a material impact on their financial statements. This in turn has required the audit committees to expend additional time, effort, and focus on items which are not likely to have a significant impact on a company's business and/or financial reporting.

b) Redefine expectations for an "adequate internal control structure" to comprehend many matters that are virtually inconsequential, focusing time, energy, and effort on matters that would not be significant to users of their financial information.

c) Remediate deficiencies meeting the definition of "significant" without regard for the cost/benefit of doing so.

While we understand the bases and reasons for the current definition of a significant deficiency, we would suggest that the reporting and remediation requirements be modified based on a higher threshold level, i.e. controls that would "likely" result in material misstatements.

NAREIT thanks the Commission for this opportunity to comment on the proposal. Please contact Gaurav Agarwal, NAREIT's Director, Financial Standards, at (202) 739-9442 or myself at (202) 739-9432 if you would like to discuss our comments.

Respectfully submitted,

George Yungmann
Vice President, Financial Standards