NATIONAL ASSOCIATION OF REAL ESTATE INVESTMENT TRUSTS®

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REITS: BUILDING DIVIDENDS AND DIVERSIFICATION®

July 21, 2015

VIA Email: *e-ORI@dol.gov and e-OED@dol.gov*

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary" (RIN 1210-AB32);
Best Interest Contract Exemption (ZRIN 1210-ZA25)

Ladies and Gentlemen:

Thank you for the opportunity to review the Department's regulatory package expanding the definition of fiduciary investment advice and preventing conflicts of interest in advice provided to ERISA-covered retirement plans and Individual Retirement Accounts ("IRAs").

We share the Department's goal of improving the quality of investment advice provided to plans, plan participants and IRA owners. Retirement investors should receive advice in their best interests. We believe that this goal is best achieved without limiting retirement investors' access to the full range of investment products and services available to plans and IRAs.

One of the legal obligations of a prudent investment fiduciary is to diversify investments within the investment portfolio, taking into account the role various asset classes play within the portfolio's investment strategy.[1] Preserving the ability of retirement plan investors and their advisors to construct portfolios from a wide array of asset classes, including a broad range of real estate investments, is vitally important to proper diversification

About REITs:

REITs were established by Congress in 1960 to enable all Americans to enjoy the benefits of investment in real estate. There are two main types of REITs, generally referred to as equity REITs and mortgage REITs. Equity REITs invest in "bricks and mortar" real estate by acquiring leasable space in properties, such as apartments, shopping malls, office buildings, and other properties, and collecting rents from their tenants. Mortgage REITs primarily invest in

[1] *See* ERISA §404(a)(1)(C) and 29 CFR §2550.404a-1(b).

mortgages and mortgage-backed securities, providing financing for residential and commercial properties. More than 2 million single-family homes are estimated to be currently financed by mortgages owned by mortgage REITs.

REITs in the United States may be public companies whose securities are registered with the Securities and Exchange Commission (SEC) and listed on a stock exchange (so-called Listed REITs); public companies whose securities are registered with the SEC, but which are not listed on a stock exchange (so-called, "Public Non-Listed REITS" or PNLRs); or private companies[2]. At the end of June 2015, 327 REITs were registered with the SEC, and 229 of these REITs were Listed REITs on U.S. stock exchanges, primarily the New York Stock Exchange (NYSE).

Like Listed REITs, PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors. PNLRs are subject to the same IRS requirements that a Listed REIT must meet, including distributing all of their taxable income to shareholders annually to be subject to just one level of taxation. In addition, PNLRs are required to make regular SEC disclosures, including quarterly and yearly financial reports. All of these PNLR filings are publicly available through the SEC's EDGAR database. PNLRs are primarily sold by broker-dealers registered with and regulated by the SEC, the Financial Industry Regulatory Association (FINRA), and the relevant state securities regulatory authorities.

About NAREIT:

The National Association of Real Estate Investment Trusts ("NAREIT") is the worldwide voice for REITs and real estate companies with interests 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 commercial and residential real estate.

PNLRs participate at NAREIT through the Public Non-Listed REIT Council (the "PNLR Council"), which consists of 44 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.

NAREIT's PNLR Council has carefully reviewed the proposed regulation redefining fiduciary investment advice under ERISA §3(21)(A)(ii) (the "Proposal"),[3] and the new proposed prohibited transaction class exemption, the

[2] Private REITs are not traded on stock exchanges or registered with the SEC. They are regulated by the SEC, and are sold to accredited investors under Regulation D and to qualified institutional buyers (QIBs) under Rule 144A.

[3] 80 Fed. Reg. 21,928 (Apr. 20, 2015).

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Best Interest Contract Exemption (the "BIC Exemption"),[4] and has developed the attached comment letter for submission and consideration by the Department.

NAREIT and its PNLR Council look forward to working with the Department as it continues its work on this important regulatory project, and we would be pleased to answer any questions the Department may have.

Please feel free to contact me if you would like to discuss our positions in greater detail.

Respectfully submitted,

Steven A. Wechsler
President & CEO

[4] Id at 21,960.