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**Via E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

Nancy M. Morris, Secretary  
U. S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File No. SR-NASD-2005-114; SEC Release 34-44118

Dear Ms. Morris:

On behalf of David Lerner Associates, Inc., ("DLA"), I appreciate the opportunity to comment upon FINRA's proposed rule revisions relating to compensation, fees and expenses in connection with real estate investment trusts ("REITs"). My comments focus on the portion of the proposed rule which relates to sales loads on reinvested dividends. The proposed rule, if adopted, would likely have the harmful effects of: 1) reducing investor participation in dividend reinvestment programs; and 2) significantly reducing liquidity available to REIT investors. I am, therefore, opposed to that portion of the proposed rules which would prohibit sales loads on reinvested dividends.

### **Background**

DLA is a regional, full service broker/dealer serving the investing public since 1976. In addition to tax free municipal bonds, CMOs and mutual funds, DLA has offered its clients the opportunity to invest in non-publicly traded REITs since May 1993. DLA has participated in REIT offerings totaling more than \$4 billion and is proud of these REIT offerings' outstanding track records. Many of DLA's clients who invest in REITs participate in a dividend reinvestment program ("DRIP") with the laudable objective of incrementally increasing their REIT holdings to compound their investment returns.

### **The Proposal to Prohibit Sales Loads on Reinvested Dividends is a Harmful Disincentive to Investors' Participation in a DRIP**

The current FINRA proposal to prohibit sales loads on dividend reinvestment fails to consider that a client's decision to participate in a DRIP is rarely automatic. Less liquid REIT programs require more ongoing services than those services required for mutual funds. In fact, the decision to reinvest in REIT programs is generally preceded by: 1) due diligence on the part of the investment

representative to determine if the reinvestment is appropriate to the client's needs and objectives; 2) monitoring by the investment representative of the status of the client's REIT holdings to continually assess the appropriateness of dividend reinvestment; 3) personal visits and/or telephone conversations between the investment representative and the client to discuss the appropriateness of the DRIP; 4) administration of necessary forms/paperwork required to enroll a client in a DRIP.

The delineated activities are resource consuming services provided to the client with the client's potential interest in compounding investment returns firmly in the representative's mind. These services come at a cost to the investment representative and to the firm. For the FINRA to conclude that the firm and its representative should not be compensated for this valuable service ignores the fundamental realities of the REIT investment process<sup>1</sup> and is thoroughly contrary to the important investor goal of compounding returns<sup>2</sup>.

### **The Proposal to Prohibit Sales Loads on Reinvested Dividends Ultimately Reduces Liquidity Available to Investors**

Frequently, dividend reinvestment programs provide the basis for interim liquidity for investors in non-traded REITs seeking to avail themselves of unit/share redemption programs offered by REIT issuers. For many REITs, the DRIP provides the funding for investor redemption of REIT units. Over the course of several recent REIT programs, a number of DLA clients have experienced emergencies or unforeseen changes in their circumstances necessitating liquidity. The history of success in providing those investors with access to capital through a share redemption program has hinged largely on the successful and timely implementation of a DRIP.

As a foreseeable (and unfortunate) consequence of the proposed rule change, there will be substantially reduced interest and participation in the DRIP. Investment Representatives will likely be motivated to move investors into other commission generating investments, notwithstanding whether that move is in the best interests of the investor. The reduced participation in the DRIP will likely cause the issuer to either forego or, at best, delay the implementation of any unit redemption program funded by a DRIP. That result hurts the investors by

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<sup>1</sup> On this point, I must agree with previously submitted comments which point out that if sales charges on reinvested dividends are prohibited, investment representatives will be motivated to move their clients' funds into investments which would pay them current commissions, regardless of suitability.

<sup>2</sup> The benefit of compounding is compelling. A recent REIT program involving DLA customers revealed that those who held their investment through the conclusion of the program and reinvested dividends experienced an approximate 13.82% to 22.13% increase in total return (3.84% and 4.65%, annualized), varying only depending on the initial purchase price and date of purchase. Given these facts, on a hypothetical \$100,000 investment, an investor would stand to lose, overall, the benefit of between \$13,820 and \$22,130 in the absence of a DRIP.

eliminating and/or significantly delaying any potential liquidity. This cannot possibly be a consequence that FINRA considers desirable.

### **The Proposal to Prohibit Sales Loads on Reinvested Dividends Rests on Several Faulty Premises**

Finally, I believe that the FINRA's proposal relating to sales loads on reinvested dividends rests on several flawed assumptions. This has been pointed out in the following arguments set forth in previously submitted comments against prohibiting sales loads on reinvested dividends:

- The terms of the dividend reinvestment sales charges are fully disclosed in the offering prospectuses and, as such, there is no basis for the conclusion that investors are confused by the payment of sales loads on reinvested dividends.
- The purchase price per share for publicly registered, non-traded REITs are generally offered and sold to the public at fixed share prices and, consequently, those prices have not included undistributed income or imbedded capital gains. Thus, the concern that an investor may "pay a charge twice" on the same asset is unfounded.

I wholly agree with the foregoing arguments against prohibiting sales loads on reinvested dividends and urge the Commission to reconsider the flawed premises underlying this portion of the proposed rule.

### **Conclusion**

In sum, I believe that the proposal to prohibit sales loads on reinvestment of dividends in REIT programs will ultimately inure to investors' detriment: participation in dividend reinvestment programs will be reduced and/or delayed; and investors with exigent circumstances requiring liquidity will be severely restricted and/or delayed in their ability to access their capital. The proposal to prohibit sales loads on reinvestment of dividends should, therefore, not be adopted.

Respectfully submitted,  


David Lerner  
President  
David Lerner Associates, Inc.