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Oct. 22, 2019

VIA ELECTRONIC SUBMISSION

Ms. Vanessa Countryman
Secretary
File Number S7-05-19
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-11-19: Modernization of Regulation S-K Items 101, 103, and 105

Dear Ms. Countryman,

This letter is submitted by Nareit in response to the Securities and Exchange Commission's (SEC, or, Commission) proposal, Modernization of Regulation S-K Items 101, 103, and 105 (Proposal).¹

Nareit serves as the worldwide representative voice for real estate investment trusts (REITs)² and real estate companies with an interest in U.S. income-producing real estate. Nareit's members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

This letter has been developed by a task force of Nareit members, including members of Nareit's Best Financial Practices Council. Members of the task force include financial executives of both Equity and Mortgage REITs, representatives of major accounting firms, law firms, institutional investors, and industry analysts.

Nareit Recommendations

Nareit has long endorsed the SEC's ongoing Disclosure Effectiveness Initiative to address outdated, duplicative, and confusing disclosure obligations and has previously submitted comments to the SEC supporting its 2015 Request for Comment on the Effectiveness of Financial Disclosures about Entities

¹ Modernization of Regulation S-K Items 101, 103 and 105, Release Nos. 33-10668, 34-86614; File No. S7-11-19 (Aug. 23 2019) available at <https://www.federalregister.gov/documents/2019/08/23/2019-17410/modernization-of-regulation-s-k-items-101-103-and-105>.

² 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 87 million Americans invest in REIT stocks through their 401(k) retirement and other investment funds.

other than the Registrant,³ its 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K;⁴ its related Disclosure Update and Simplification Proposal,⁵ its Proposal on Financial Disclosures About Guarantors and Issuers of Guaranteed Securities,⁶ and its Amendments to Financial Disclosures about Acquired and Disposed Businesses.⁷ Nareit also reiterated its support for the Commission's disclosure initiative in comments on the SEC's Strategic Plan 2018-2022.⁸ Nareit fundamentally believes that eliminating redundant and outdated disclosure requirements improves the effectiveness and usefulness of the information presented to investors and analysts, while also decreasing the costs of preparing that information, which ultimately benefits shareholders.

Nareit and its members are also supportive of the SEC's Proposal, which includes several changes that Nareit recommended in its comment on the 2016 Concept Release on Business and Financial Disclosure Required by Regulation S-K,⁹ which we believe will improve the effectiveness of REIT disclosures. Nareit and its members have long understood the critical importance of communicating accurate and material business and financial information to REIT investors and appreciate this historic opportunity to participate in the SEC's Disclosure Effectiveness Initiative. In particular, Nareit members agree on key foundational points reflected in the Proposal, which are summarized below:

- Nareit strongly believes that materiality, as evaluated through the eyes of a "reasonable investor" under the prevailing Supreme Court standard, should continue to be the guidepost of the SEC's disclosure regime and that reform efforts should focus on best ways to ensure the disclosure of company-specific material information to investors;¹⁰
- Nareit strongly favors a "Principles-based" approach to SEC disclosure and believes it is best suited to the constantly evolving business environment in which REITs and other businesses operate;

³ 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 www.sec.gov/comments/s7-06-16/s70616-268.pdf.

⁴ 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 www.sec.gov/comments/s7-06-16/s70616-268.pdf.

⁵ 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 www.sec.gov/comments/s7-15-16/s71516-39.pdf.

⁶ Nareit Comment on Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities Release; No. 33-10526; 34-83701; File No. S7-19-18 (Nov. 28, 2018) available at <https://www.sec.gov/comments/s7-19-18/s71918-4705884-176625.pdf>.

⁷ Nareit Comment on Amendments to Financial Disclosures about Acquired and Disposed Businesses, Release No. 34-85765, File No: S7-05-19 (May 3, 2019), available at <https://www.sec.gov/comments/s7-05-19/s70519-5879059-188747.pdf>. S7-05-19 (July 29, 2019) available at <https://www.sec.gov/comments/s7-05-19/s70519-5879059-188747.pdf>.

⁸ Nareit Comment on Strategic Plan for Securities and Exchange Commission; File No. 34-83463: Draft 2018-2022 (July 25, 2018) available at www.sec.gov/comments/34-83463/c17-4127822-171766.pdf.

⁹ Supra note 3.

¹⁰ TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976) at 449.

- We agree that the disclosure requirements should be streamlined and suggest that limiting prescriptive “line-item” disclosure requirements would reduce “over-disclosure” of irrelevant, outdated or immaterial information.

Additionally, Nareit supports the following aspects of the Proposal, which would:

- Streamline the reporting of core company business information required under Reg. S-K 101 generally;
- Streamline reporting under Reg. S-K Item 101(a) by eliminating the prescribed five-year or three-year timelines, updating the non-exclusive list of disclosure topics, and permitting issuers to update material business developments with a hyperlink to the registrant’s most recent filing, together with the update;
- Tailor disclosures made to Reg. S-K Item 101(c) regarding the Narrative Description of Business and expand narrative regulatory disclosure under Item 101 to include the material effects of compliance with government regulations;
- Streamline disclosures of Legal Proceedings disclosed pursuant to Reg S-K Item 103, by using hyperlinks and cross-references to disclosures located elsewhere in a periodic report; and,
- Improve Risk Factor Disclosure under Reg S-K Item 105, by permitting issuers to group and reorder risk factors under relevant headings.

Additionally, Nareit’s member task force has developed the following suggestions, which, in our view, may provide further clarity in applying the Proposal and also improve the information available to REIT investors:

- **Extend the ability to use a hyperlink to previous filings to update information reported pursuant to Item 101(c)**

Nareit endorses the proposed change to permit issuers to update material business developments reported in Item 101(a) with a hyperlink to the registrant’s most recent filing. We also believe that this same methodology would usefully streamline compliance with issuers’ narrative disclosures describing their businesses. However, some members expressed concerns that because sequential updates would not be cumulative, the registrant would be required to provide complete Item 101(a) disclosure with every-other update. Because the hyperlink accommodation is allowed for only one update, registrants may choose to provide the full Item 101(a) disclosure rather than keeping track of whether the full disclosure or the hyperlink only is required for any given filing. Our task force is not aware of an easy fix for this, but we urge the SEC to explore ways to address this.

- **Consider merging Regulation S-K Items 101(a) and 101(c)**

In its 2016 Concept Release, the SEC posed questions concerning the continued relevance of Item 101(a) for registrants with a reporting history. We agree that this is a valid concern and for this reason welcome the proposed change to permit issuers to update material business developments reported in Item 101(a) with a hyperlink to the registrant's most recent filing. However, Nareit task force members note that certain information regarding business development updates reported in Item 101(a) may be repeated Item 101(c) and suggest that further efficiencies might be realized if Items 101 (a) and (c) were to be merged for registrants with a reporting history.

- **Clarify the requirement to disclose material effects of compliance with “material government regulation”**

Nareit is supportive of the Proposal's expansion of narrative regulatory disclosure under Item 101(c) to include the material effects of compliance with government regulations. A few task force members also expressed concerns that issuers may be reluctant to omit any regulation from the list of “material regulations,” and that this requirement may lead to over-disclosure and long lists of regulations that may minimally affect their businesses. Related to this, task force members found the phrasing “material effects... of material government regulations” to be confusing and question whether the requirement might be clarified if it were phrased, per below, dropping the second “material”:

*The material effects that compliance with **material** government regulations, including Environmental regulations may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries.*¹¹

- **Consider Additional Ways to Streamline of Risk Factor Disclosure**

We believe that Commission's proposal to improve risk factor disclosure under Reg S-K Item 105 is useful and appropriate, particularly the proposal to reorder risk factors under relevant headings. Several task force members noted that the disclosure of generic risk factors remains a burden for many REITs and other issuers. Some experts have suggested that the SEC consider revising Item 503(c) to also include examples of generic disclosure and other items that do not need to be included as risk factors. Our task force members agree that this might be useful, but question whether this could be accomplished, as a practical matter.

Task force members expressed a variety of concerns about the new requirement that risk factor disclosure exceeding 15 pages must be accompanied by a summary. Some worry that the summary

¹¹ Supra at 1, p 110.



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could evolve into another instance of common over-disclosure, because issuers will be required to repeat risk factor disclosure in the summary as well as in the full risk factors section. Despite the proposed requirement to provide a series of short, concise statements to summarize the principal risks, some believed that issuers will provide more lengthy summaries of their risks out of concern about liability for any omissions.¹²

Additionally, the proposed requirement to summarize a registrant's "principal" risk factors would effectively require registrants to rank their risk factors in order of importance, which some registrants may find difficult to do. Some task force members believe that different investors assign different degrees of importance to any particular risk factor, making it difficult for registrants to identify the factors that pose the greatest risk. For this reason, and because of concerns about liability for omissions from the risk factor summary, some believe that registrants will be inclined to provide more lengthy summaries, adding to the length of already lengthy risk factor disclosure.

While we appreciate the Commission's objective of addressing the lengthy and generic nature of the risk factor disclosure presented by many registrants, we do not believe that an additional requirement to include a risk factor summary will achieve this goal. Instead, we support the Commission's efforts to improve the navigability of the risk factors disclosure through the proposed requirement to organize risk factors under relevant headings, which should facilitate investors' ability to more readily focus on the areas of risk important to them.

Conclusion

Nareit appreciates the opportunity to participate in this additional rulemaking related to the SEC's ongoing Disclosure Effectiveness Project and would be pleased to discuss our comments, or any related questions that the SEC or its staff may have. Please contact: Victoria Rostow, Nareit's Senior Vice President, Regulatory Affairs & Deputy General Counsel ([REDACTED]); Christopher Drula, Senior Vice President, Financial Standards ([REDACTED]); or George Yungmann, Senior Vice President, Financial Standards ([REDACTED]), if you would like to discuss these issues in greater detail.

¹² See Fenwick comment letter on S-K Concept Release, pp. 18-19 ("The existence of risk factor discussions is an essential element of modern disclosure practice, because of the safe harbor provisions, Section 21E of the Securities Exchange Act of 1934 ("Exchange Act") and Section 27A of the Securities Act of 1933 ("Securities Act"), added by the Private Securities Litigation Reform Act of 1995, as well as the judicially developed "Bespeaks Caution" doctrine. These statutes and this doctrine provide a defense for forward looking statements that turn out to be inaccurate if such statements are accompanied by meaningful cautionary language.

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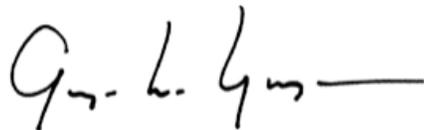
Respectfully submitted,



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