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Aug. 6, 2018

Mr. Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. S7-07-18: Regulation Best Interest

Dear Mr. Fields,

Attached is a cover letter from Nareit's Public Non-Listed REIT (PNLR) Council. The PNL Council appreciates the opportunity to provide its comment to the Securities and Exchange Commission (SEC) on the SEC's proposed new Regulation Best Interest ("Reg. BI Proposal"). Nareit's PNL Council commends the SEC for moving forward with this principles-based Reg. BI Proposal, which it believes would preserve investor choice while prohibiting conduct that inconsistent with an investor's best interests.

Nareit and its PNL Council look forward to working with the SEC as it continues its work on this important regulatory project. Please feel free to contact me if you would like to discuss our positions in greater detail.

Sincerely,

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

Steven A. Wechsler  
President & CEO



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*Via electronic submission to rule-comments@sec.gov*

Mr. Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Dear Mr. Fields,

The Public Non-Listed REIT (PNLR) Council of Nareit (PNLR Council) appreciates the opportunity to provide comments to the Securities and Exchange Commission (SEC) on the SEC's proposed new Regulation Best Interest<sup>1</sup> (Reg. BI Proposal). The PNL Council is pleased to join the Institute for Portfolio Alternatives (IPA)<sup>2</sup>, the U.S. Chamber of Commerce, and other groups in supporting the SEC's principles-based Reg. BI Proposal. We also commend the SEC for grounding the Reg. BI Proposal in its existing disclosure framework, which has well-served retail investors for more than 80 years.

## **About Nareit**

Nareit is the worldwide representative voice for real estate investment trusts (REITs) 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.

REITs are real estate working for you. 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 80 million Americans invest in REIT stocks through their 401(k) retirement and other investment funds.

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); public companies whose securities are registered with the SEC, but which are not listed on an established stock exchange (PNLRs); or private companies. At the end of July 2018, 330 REITs were registered with the SEC, and 230 of these REITs were Listed REITs on established U.S. stock exchanges, primarily the New York Stock Exchange (NYSE).

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<sup>1</sup> Regulation Best Interest, 83 Fed. Reg. 21,574 (May 9, 2018).

<sup>2</sup> On April 9, 2018, the Investment Program Association became the Institute for Portfolio Alternatives. See, <http://www.ipa.com/>.



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Like Listed REITs, PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors. 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.

## **About PNLRs and Nareit's PNLR Council**

PNLRs are subject to IRS requirements that include distributing all of their taxable income to shareholders annually in order to be subject to just one level of taxation; and must make regular SEC filings, including quarterly and yearly financial reports, which are publicly available through the SEC's EDGAR database. Interests in a PNLR 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.

As with mutual funds or any other pooled investment, there are certain fees associated with PNLR sales that are reflected in net returns and clearly disclosed in each prospectus, which is declared effective by the SEC and provided prior to making an investment. These fees became even more transparent to PNLR shareholders when FINRA Regulatory Notice 15-02 became effective in 2016.

PNLRs participate at Nareit through the PNLR Council, which consists of 21 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.

## **The SEC's Reg BI Proposal**

The PNLR Council agrees with others that the SEC, as the primary US securities and financial market regulator, is the appropriate agency to regulate the relationship of broker-dealers with retail investors. The SEC is well positioned to propose, adopt and enforce a best interest standard that would promote fair and consistent treatment of investors and would align the obligations of broker-dealers and investment advisers. We believe that the comprehensive approach reflected in the Reg BI Proposal would benefit both investors and other market participants and would minimize confusion.

The PNLR Council is pleased that the Reg BI Proposal reflects the SEC's understanding that certain practices and financial products--such as charging commissions and fees--are not per se incompatible with an investor's best interests. We strongly support a principles-based approach underlying the Reg BI Proposal, which would require broker-dealers "to act in the best interest of the retail consumer" at the time a recommendation is made to an investor, "without placing the financial or other interest [of the

broker-dealer] ahead of the interest of the retail customer.”<sup>3</sup> Broker-dealers who satisfy the Reg BI disclosure, duty of care and conflict mitigation requirements would be able to offer investors a full range of account arrangements and financial products, including products that are commission-based. The PNLR Council concurs that this approach is likely to best promote circumstances enabling retail investors to make informed choices about the type of account and type of financial product that best serves their needs.

The PNLR Council endorses the “reasonableness” standard for the disclosure obligations set forth in Reg BI proposal. Under the Reg BI proposal, all broker-dealers would be required to “reasonably disclose” to their customers “in writing, the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation.”<sup>4</sup> We agree that the reasonableness standard would provide necessary flexibility to broker-dealers and would incentivize effective communications with retail investors.

The PNLR Council further supports the SEC’s decision to integrate the “reasonableness” standard into the duty of care standard set forth in the Reg BI proposal. Reg BI would require that broker-dealers exercise reasonable diligence, care, skill, and prudence in determining if a recommendation is in a retail customer’s best interest. Importantly, under Reg BI, broker-dealers would not be obligated to recommend the least expensive option to clients or to justify a single “best” option for an investor.

## Conclusion

The PNLR Council commends the SEC for proposing the principles-based BI Proposal, which we believe would importantly preserve investor choice while prohibiting conduct that is inconsistent with an investor’s best interests. We urge the SEC to move forward expeditiously with this important regulatory project.

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<sup>3</sup> Regulation Best Interest, *supra* note 1 at 21,546.

<sup>4</sup> *Id.* at 21,681.



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We appreciate your consideration of our comments, and please feel free to contact us if you would like to discuss our positions in greater detail, or have any questions regarding PNLRs or REITs generally.

Respectfully submitted,

Executive Committee  
Nareit PNLR Council

CHAIR:  
Daniel L. Goodwin  
Chairman and CEO, The Inland Real Estate Group, Inc.

Charles J. Schreiber  
CEO, KBS Realty Advisors

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Senior Managing Director/CEO, Hines Interests Limited Partnership

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