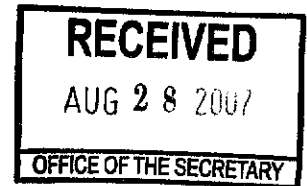




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August 27, 2007

Nancy M. Morris
Secretary
Security and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-10-07

Dear Ms. Morris:

The Investment Program Association ("IPA") is the national trade association which represents the interests of sponsors and broker-dealers in the promotion of non-traded investment programs, including non-traded real estate investment trusts, real estate programs, equipment leasing programs and oil and gas programs. Members of the IPA include most of the major publicly offered direct participation program sponsors and most of the independent broker-dealer firms which distribute these investment programs.

We appreciate and applaud the Commission's plan to extend to additional companies the ability to utilize Form S-3 for their primary offerings. By allowing companies to incorporate the reports they file under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), both prior to the filing of the Form S-3, as well as those reports that are subsequently filed, Form S-3 greatly enhances a company's ability to access the public securities markets in a timely and efficient manner. However, the proposal to expand the Form S-3 eligibility pursuant to Release No. 33-8812 (the "Proposal"), does not go far enough because it excludes an entire population of companies which should be permitted to utilize the Form in connection with their primary offerings, subject to the same 20% requirement contained in the Proposal.

Non-traded public REITs (and other public non-traded entities) (collectively "REITs") which have a class of equity securities registered pursuant to Section 12(g) of the Exchange Act and otherwise meet the eligibility requirements of Form S-3 (including the proposed revisions) should be included in the group of companies which are eligible to use Form S-3 for primary offerings, even though their securities are not listed on an exchange or traded on the Over-The-Counter Bulletin Board or in the Pink Sheets. However, we believe that under the current Proposal, non-traded public companies will not be permitted to use Form S-3, based on footnote 34 which interprets aggregate market value to be "public float [is] based on a public trading market for the registrant's common equity" and which states that "therefore, an entity with common equity securities outstanding but not trading in any public trading market

would not be entitled to sell securities in a primary offering on Form S-3 under this proposal.” We believe this position is (i) contrary to the rationale expressed elsewhere in the Proposal for expanding eligibility, (ii) outdated because it seems to be based on an assumption that market interest can only (or primarily) be demonstrated by having a number of analysts following the company, and (iii) unnecessary to protect the public.

Unlike certain of the companies described in the Proposal, many of these REITs raise billions of dollars from investors pursuant to registered offerings and have large equity market capitalizations. The average non-traded, publicly registered REIT program which completed fundraising during the past five years raised approximately \$1.4 billion of equity. Equity raised in these programs ranged from a low of \$432 million to a high of \$4.5 billion (See Exhibit 1). These amounts exclude additional equity raised via dividend reinvestment plans of these REITs. Because many of them engage in continuous best efforts follow-on offerings, there is an easy way to ascertain the share price because thousands of investors may be purchasing the securities in any given offering and the fact that they are willing to pay the set price, establishes it as the market price. Some of these REITs adjust the market price periodically (and some are even seeking to adjust them daily), based on, among other things, the net asset value of the REIT’s assets.

The reasons contained in the Proposal for enlarging the group of companies who are eligible to use the Form S-3 are equally applicable to REITs. Those reasons are:

1. All public companies (including REITs), have enhanced reporting obligations which are similar to the largest reporting companies.
2. There is wide spread accessibility through the Internet to documents filed by public companies, including REITs .
3. The ease of access to the information and the amount of information about public companies, including REITs, “should be sufficient to protect investors and inform the market place about developments in these companies.”
4. As the Commission indicates in the Proposal, “the risks to investor protection by expanding a base of companies eligible for primary offerings on Form S-3 have been significantly mitigated by technological advances affecting the manner in which companies communicate with investors, allowing widespread, direct and contemporaneous accessibility to company disclosure at little or no cost. Moreover, the scope of disclosure obligations and liability of smaller public companies under the federal securities laws are sufficiently comparable for these purposes to the largest reporting companies such that the proposed expansion of Form S-3 primary offering eligibility should not adversely impact investors”. This statement is equally applicable to REITs except that many, if not most of them, would not be regarded as “smaller public companies”.

In fact, many if not most, of the REITs would meet the existing \$75 million market cap if the SEC had not interpreted market cap to be public float and public float to mean securities which are listed.

The Proposal indicates that the Commission is mindful that “companies with a smaller market capitalization as a group have a comparatively smaller market following ...”. It goes on to say that “In this regard, to ensure that shelf eligibility is expanded with appropriate moderation and attention to the continued protection of investors, we have proposed to exclude shell companies from eligibility and to impose a 20% restriction on the amount of securities that can be sold into the market on Form S-3 in any period of 12 calendar months by issuers with a public float below \$75 million.” We believe that applying this same restriction to REITs with smaller market capitalizations should address any potential similar issues. The existing instructions and the revised instructions to the Form S-3 under the Proposal, reference the “aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant.” The definition of “common equity” in the Proposal indicates that for the purpose of computing the “aggregate market value of the registrant’s outstanding voting and non-voting common equity, “registrants shall use the price at which the common equity was last sold...” Because, many of these REITs are in continuous follow-on offerings, it is very easy to ascertain the last price at which securities were sold. It is only the Commission’s interpretation of “public float” which has precluded the recent use by REITs of Form S-3 in primary offerings and that concept of “public float” is not part of the existing Instructions in B.1, nor in the proposed amendments to the instructions. The interpretation of “aggregate market value” should not depend on listing on an Exchange or trading on the Over-the-Counter Bulletin Board or the Pink Sheets.

The Commission has acknowledged that the following of a company by research analysts is **only one indicia** of market interest. The fact that individual REITs have publicly sold billions of dollars of securities to investors (sometimes numbering more than 100,000 in a REIT) and that they utilize the services of many broker-dealer firms (sometimes more than 100 in a single offering) and that those broker-dealer firms may continue to be involved in following these companies in order to give advice to their customers regarding the enrollment in or withdrawal from distribution reinvestment plans, all provide indicia of market interest.

Based on the Commission’s own descriptions for why it is considering expanding the eligibility of companies to use Form S-3, we believe that the rationale is equally applicable to REITs and that, accordingly, the “public float” requirement and the interpretation of “aggregate market value” should be clarified to permit registrants, including non-traded public REITs, which have a class of equity securities registered pursuant to Section 12(g) of the Exchange Act and

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Ms. Nancy M. Morris
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who otherwise meet the other eligibility requirements listed in the general instructions to Form S-3, to utilize the Form S-3 in connection with primary offerings, regardless of whether their securities are listed on an exchange or traded on the Over-the-Counter Bulletin Board or in the Pink Sheets.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rosemarie Thurston". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rosemarie Thurston, Chair
Legal and Regulatory Affairs Committee



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Exhibit 1

Equity Raised* by Nontraded Publicly-Registered REITS Closed Since 2003

Source: Robert A. Stanger Co.

<u>Name</u>	<u>Year Closed</u>	<u>EQUITY RAISED*</u> \$ (mil.)
Inland American Real Estate Trust, Inc.	OPEN	\$ 4,610.6
Wells Real Estate Investment Trust	2003	\$ 4,500.0
Inland Western Retail Real Estate Investment Trust, Inc.	2005	\$ 4,200.0
Wells Real Estate Investment Trust II, Inc.	OPEN	\$ 3,372.5
CNL Hotels & Resorts, Inc.	2004	\$ 3,000.0
CNL Retirement Properties	2006	\$ 2,600.0
Inland Retail Real Estate Trust, Inc.	2003	\$ 2,100.0
Behringer Harvard REIT I, Inc.	OPEN	\$ 1,731.9
CNL Income Properties, Inc.	OPEN	\$ 1,706.7
Hines Real Estate Investment Trust	OPEN	\$ 1,449.6
Dividend Capital Trust	2006	\$ 1,400.0
Corporate Property Associates 16 Global, Inc.	2006	\$ 1,100.0
Apple REIT Seven Inc.	2007	\$ 1,000.0
Corporate Property Associates 15, Inc.	2003	\$ 1,000.0
Apple REIT Six, Inc.	2006	\$ 963.1
Dividend Capital Total Realty Trust, Inc.	OPEN	\$ 949.0
Cole Credit Property Trust II, Inc.	OPEN	\$ 637.3
KBS Real Estate Investment Trust, Inc.	OPEN	\$ 545.7
Apple Hospitality Five, Inc.	2004	\$ 486.6
G-REIT, Inc.	2004	\$ 432.2
Behringer Harvard Opportunity REIT I	OPEN	\$ 426.5
Boston Capital Real Estate Investment Trust Inc.	Withdrawn	\$ 169.2
CB Richard Ellis Realty Trust	OPEN	\$ 149.2
NNN Healthcare/Office REIT, Inc.	OPEN	\$ 121.7
Lightstone Value Plus REIT, Inc.	OPEN	\$ 102.5
Cornerstone Core Properties REIT, Inc.	OPEN	\$ 63.1
NNN Apartment REIT, Inc.	OPEN	\$ 56.9
Apple REIT Eight, Inc.	OPEN	\$ 50.0
Desert Capital REIT, Inc.	OPEN	\$ 22.6
Paladin Realty Income Properties, Inc.	OPEN	\$ 19.9
Wells Timber Real Estate Investment Trust	OPEN	\$ 5.5
Average Individual Program Equity Raised (REITs Closed)		\$ 1,408.2 *
Average Individual Program Equity Raised To Date		\$ 1,257.2 *

* Excludes proceeds raised through offering of DRIP shares.