W. P. CAREY

November 11, 2011

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice to Members 11-44; Proposed Amendments to NASD Rule 2340 to Address Values of Unlisted Direct Participation Programs and Real Estate Investment Trusts in Customer Account Statements

Dear Ms. Asquith:

W. P. Carey & Co. LLC ("W. P. Carey") appreciates this opportunity to provide comments to the Financial Regulatory Authority, Inc. ("FINRA") regarding the recently released Regulatory Notice 11-44 ("Notice 11-44") containing a proposed amendment (the "Proposed Amendment") to NASD Rule 2340 (Customer Account Statements) and a request for comments concerning how unlisted direct participation programs ("DPPs") and non-traded real estate investment trusts ("REITs") report per share estimated values on customer account statements.

W. P. Carey is a New York Stock Exchange listed real estate advisory and investment management company that provides long-term sale-leaseback and build-to-suit financing for companies worldwide and manages a global investment portfolio approaching $11.5 billion (as of June 30, 2011). Member firm Carey Financial, LLC is an affiliate of W.P. Carey. W. P. Carey has previously sponsored and advised 16 DPPs, comprised of nine partnerships and seven real estate investment trusts, mostly under the Corporate Property Associates brand name during W. P. Carey’s more than 35-year history. Of the 16 DPPs previously sponsored by W. P. Carey, 13 have completed liquidity events, all of which generated positive returns for investors.

As set forth in Notice 11-44, the Proposed Amendment would require FINRA's member firms to, among other things, (1) deduct organization and offering expenses from the estimated value per share of a DPP or REIT[1] included in its annual customer account statements, (2) limit the time period during which the offering price may be used in customer account statements to the Initial Offering Period[2] of an offering, and (3) remove or amend a per share estimated value, from any source, if the member firm "knows or has reason to know that the value is unreliable," based upon public or non-public information that has come to such member firm's attention.

We support FINRA's efforts to improve transparency for investors. W. P. Carey's historical practice has been to obtain and publish independent valuations of its DPP portfolios annually, beginning after

[1] Unless otherwise specified, the terms "DPP" and "REIT" refer only to those issuers that are public, non-traded real estate investment trusts.

[2] As used in this letter and consistent with the Proposed Amendment, the term "Initial Offering Period" means the three-year period under Rule 415(a)(6) of the Securities Act of 1933, as amended, and any "carryover period" under Rule 415(a)(5)(A) of the Securities Act of 1933, as amended.

completion of a program's offering.[3] We agree with FINRA's proposal to shorten the delay between the end of the Initial Offering Period and the date of the first valuation. In addition, as discussed below, we believe it would be helpful if FINRA were to provide guidance to member firms on the characteristics of a reliable valuation. Finally, while we share FINRA's objective of improving transparency, we believe that certain aspects of the Proposed Amendment raise logistical questions that warrant further consideration.

Reliability of Estimated Values

The Proposed Amendment would prohibit a member firm from using a per share estimated value, from any source, if it "knows or has reason to know that the value is unreliable," based upon public or non-public information that has come to its attention. We appreciate that member firms may be in a better position than many investors to evaluate the reliability of a net asset value (referred to herein as "NAV"); however, we believe it would be very helpful for FINRA to provide member firms with guidance on how to assess what constitutes a reliable NAV because member firms are not necessarily experts in real estate valuations. We note that FINRA has provided guidance to member firms in similar contexts, such as in the area of due diligence for Regulation D offerings where member firms are required to perform an investigation that is reasonable. For example, in Regulatory Notice 09-09, FINRA reminded member firms of their due diligence obligations, prior to participating in a public offering of a REIT, to, among other things, ascertain all material facts relating to a sponsor's financial stability and experience.

The obligation to assess reliability requires an inherently subjective assessment, leaving it up to each member firm to determine what types of information and criteria would support knowledge or reason to know that a REIT's estimated NAV is unreliable. Given the variances in methodologies among REITs, it may be challenging for a member firm to navigate through these differences to distinguish the more reliable methods from those that are less reliable. With such a subjective assessment, and without more clarity on what constitutes a reliable NAV, the Proposed Amendment may result in significant variance among the methodologies used by REITs, making it very difficult for member firms to determine whether an NAV is reliable. Therefore, in an effort to provide member firms with more clarity as to the scope of its determination and minimize discrepancies in carrying out this obligation, we suggest that FINRA consider providing member firms with guidance on the factors and aspects of NAVs that FINRA deems indicators of reliability or unreliability.

For example, such guidance could highlight the following three aspects of NAV disclosure: (1) the process, (2) the methodology, and (3) comparative measures.

We believe that understanding the process a REIT utilizes in deriving its NAV is an important element to determining whether an NAV is reliable. While every REIT may use different valuation techniques (including the use of multiple techniques), a critical aspect of the valuation process is determining the parties who are involved, each party's role and responsibility, and in particular, whether external third-party advisors are used. When third-party valuations are obtained in addition to internal valuations performed by the REIT, it may provide a member firm with reasonable assurance that the NAV has been calculated without potential biases if that third-party is truly independent from the REIT. If FINRA were

[3] See Registration Statement on Form S-4 (Registration No. 333-171538) filed by Corporate Property Associates 16 —Global Incorporated for a description of W.P. Carey's customary valuation process.

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to provide guidance on the process of deriving NAVs, we request FINRA consider providing their views on third-party valuations, as well as conflicts of interest disclosure.

The methodology used to calculate NAV is another critical factor to understanding its reliability. However, in order for member firms to determine whether the methodology used is reliable, they must first have a proper understanding of the methodology used. This understanding may be achieved through disclosure. We believe that it is important for REITs to supplement the NAV provided with sufficient disclosure describing its methodology. We suggest that FINRA consider alerting member firms as to the types of disclosure that is particularly relevant or important to describing the methodology used, such as the key assumptions used, holding periods, discount rates, as well as the various components of the calculation (e.g., properties, cash, securities, other assets and liabilities).

We believe it would also be helpful for FINRA to provide guidance to member firms on certain aspects of NAV methodologies that may support a more accurate outcome. As previously discussed, we believe that certain aspects of a methodology may warrant more scrutiny than others. For example, we suggest that a methodology grounded in an asset-level valuation is more reliable than a methodology based on general overall factors of the REIT's business or comparisons with trading range multiples of listed REITs. An asset-level review involves the valuation of each asset separately, which allows the valuator to take into account the type and specific characteristics of each asset, which may ensure a more accurate and thorough analysis. In our view, an underlying real estate valuation is more insightful than a methodology that only measures aggregate asset performance, includes broad categories of a business' assets, such as goodwill and other financial projections, or relies on listed company multiples for support. Regardless of the methodology used, however, we believe that member firms would benefit from FINRA's guidance.

Comparative measures, such as historical NAVs of the REIT, showing how values have changed over time may provide an investor with useful information regarding trends as it seeks to evaluate the NAV of its investment. This type of information, especially when provided on an annual basis, may also help member firms better assess the reliability of NAVs in light of changing market conditions.

Each of the three aspects of NAV disclosure discussed above contains valuable insight into the overall calculation and methodology of NAVs. With guidance and clarity from FINRA as to the factors within each aspect that may or may not indicate an NAV's reliability, member firms will be better equipped to make the determination as to whether it "knows or has reason to know that the value is unreliable."

<u>Recommendation</u>: Consider providing guidance or standards to member firms on the factors relating to the process, methodology and comparative measures in disclosures of NAV by DPPs and REITs.

Timing and Frequency of Appraisals

We request FINRA to consider its rationale for the Proposed Amendment's requiring appraisals beginning on the very first day following the Initial Offering Period. As noted in Notice 11-44, appraisals of an issuer's assets and operations will be an extremely helpful tool for investors to gain a greater understanding of a REIT's value and performance.[4] However, we question the ability and feasibility of REITs to obtain an appraisal shortly after the end of the Initial Offering Period, and the usefulness of such an appraisal.

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4 See page 3 of Notice 11-44.

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Significantly reducing the time by which a REIT must obtain an initial appraisal does not take into account the legitimate concerns of expense and difficulty in conducting appraisals at a time when assets may have been recently acquired and cash may not yet have been invested. In addition, the appraisals will be more relevant if they are done at a time when it is reasonably likely that a significant portion of the offering proceeds will have been invested.

We believe that 12 months (as opposed to 18 months) following the end of the Initial Offering Period will provide a sufficient amount of time for REITs to obtain appraisals, and at the same time, will benefit investors by ensuring that they receive this information six months earlier than they would under the current requirement of NASD Rule 2340(c)(2). Furthermore, we believe that shortening the time period from 18 months to 12 months strikes a balance among (1) the substantial time and expense necessary for a REIT to obtain an appraisal, (2) investors' need to receive the results of such appraisal, and (3) selecting an initial appraisal date that is after the REIT is likely to have invested a significant portion of its offering proceeds and, therefore, makes the appraisal more informative.

We also recommend that, once appraisals are obtainable (i.e., 12 months following the termination of the offering, as per our recommendation above), updated valuation information should then be provided to investors on a quarterly basis to reflect material changes that may have occurred since the annual appraisal arising from, among other things, updated appraisals that may have been obtained and changes in indebtedness, other liabilities, working capital, acquisitions and dispositions and other material items. While this modification to NASD Rule 2340(c)(1)(C) may be somewhat burdensome to REITs and DPPs, it is our opinion that the investors' need for the most current and up-to-date information regarding the value of its shares outweighs the potential burden to REITs of providing the information on a quarterly basis.

Recommendations:

1. *Consider reducing the 18 month period following the Initial Offering Period that a REIT has to provide an appraised value to 12 months.*

2. *Once appraisals are obtainable (i.e., 12 months following the termination of the offering, as per our recommendation above), consider requiring that updated information be provided to investors on a quarterly basis, prior to the next full annual appraisal.*

Presenting Per Share Estimated Value, Net of Organization and Offering Expenses

The Proposed Amendment assumes that there is a concrete amount of organization and offering expenses (including selling commissions) or at a minimum, that this amount is easily calculable. The reality, however, is that a REIT's organizational and offering expenses as well as the applicable underwriting compensation associated with its shares are constantly changing. The only certainty regarding the amount of a REIT's organization and offering expenses (including selling commissions) is that they will not, in the aggregate, exceed 15% of the gross proceeds of an offering.

The variables inherent in the amount of organization and offering expenses are numerous. For example, the specific portion of selling commissions that may be allocated to selected dealers varies considerably among shares sold in an offering. As each purchased share may be attributed a different amount of commission, it would be extremely difficult for member firms to calculate the commission on a per share

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basis. We observe that these varying levels of commissions would result in different estimated net values for each share of a particular REIT. Furthermore, the portion of selling commissions paid to selected dealers may change over the course of the Initial Offering Period. This inserts an additional layer of complexity into any attempt to calculate the value per share net of commissions. We respectfully request FINRA to consider whether the Proposed Amendment was intended to result in presenting different estimated net values to each investor and, even more importantly, how firms are expected to overcome the operational difficulties they face in calculating and disseminating information lacking uniformity. We respectfully note that neither the Proposed Amendment nor Notice 11-44 provides any guidance on these critical aspects.

Organization and offering expenses are continuously being incurred. As a result, estimated net values per share as of a certain date in a REIT's offering period may be rendered stale and potentially inaccurate almost immediately after the net value's appearance in an annual statement. Additionally, there is no particular point in time during an Initial Offering Period when organization and offering expenses stop being accumulated or incurred, until the point at which the REIT reaches the maximum amount of expenses permitted to be incurred under the FINRA rules. We respectfully request FINRA to consider whether the goal of helping investors better understand and appreciate a REIT's value and fee structure is truly served by providing them with an arbitrary, estimated net value per share that, while accurate as of a certain date, is guaranteed to change (potentially dramatically) in the next statement. We respectfully note that neither the Proposed Amendment nor Notice 11-44 provides any insight as to whether this concern has been considered.

<u>Recommendation</u>: *Consider continuing to allow DPPs and REITs to use the offering price, or "par value," as the basis of the per share estimated value required under NASD Rule 2340.*

Conclusion

The importance of transparency and full disclosure to investors cannot be overstated. We believe that it would be useful for FINRA to expand its Proposed Amendment by giving member firms guidance on the characteristics of a reliable valuation. While we have expressed concerns on the timing of preparing an initial valuation, as well as some technical issues regarding the "net value" portion of the Proposed Amendment, we believe that improving DDPs' valuation processes will ultimately provide the most benefit to investors.

In your consideration of the questions and concerns posed in this letter, we would be happy to discuss our views or answer any questions. Please contact Richard J. Paley at your convenience at (212) 492-1175.

Very truly yours,

W. P. CAREY & CO. LLC

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