WELLS
Real Estate Funds℠

March 10, 2004

Ms. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, N.W.
Washington, DC 20006-1500

Re: **NASD Notice to Members 04-07**
Proposed Amendments to NASD Conduct Rules 2710 and 2810

Dear Ms. Sweeney:

We submit this letter in response to NASD Notice to Members 04-07 (the "Notice"), in which the NASD requested comments from its members on various proposed amendments to NASD Conduct Rules 2710 and 2810 (collectively referred to herein as the "Rules"). Please accept the following comments to the proposed amendments regarding payment of commissions on reinvested dividends and the location of training and education meetings.

I. The Proposed Amendment Regarding Payment of Commissions on Investments of Reinvested Dividends in REITs and DPPs.

In the Notice, the NASD requests comments from its membership as to whether distinctions between Direct Participation Products ("DPPs") and publicly registered, non-traded REITs on one hand, and investment company and variable insurance products on the other hand, justify variations in the applicable rules regarding the payment of commissions on reinvested dividends. For the reasons discussed below, we respectfully submit that the significant differences in the subject products provide ample justification to treat dividend reinvestments in DPPs and REITs differently than investment company and variable insurance products.

A. <u>Less Liquid DPP and REIT Programs Require Members to Provide more Ongoing Services in Connection with Dividend Reinvestment Programs than those Required for a Mutual Fund.</u>

In contrast to mutual funds, sales of DPP and publicly registered, non-traded REIT products are typically not made through retail broker-dealers, but are primarily made through financial planners, investment advisors and other financial advisors. These financial planners and advisors generally handle and monitor their clients' entire investment portfolios and have long-term and continuing relationships with them. In contrast to merely making securities recommendations in a vacuum, the financial planners and other advisors selling products such as REITs and DPPs typically recommend a purchase of these types of financial products in the context of a complete review and evaluation of their investors' entire financial portfolio, giving due consideration to the suitability of the investment, the liquidity needs of the investor, and the need to diversify their portfolio into real estate products.

In our experience, recommendations to invest in dividend reinvestment plans of DPP and non-traded REIT products are generally made with a view toward further investment diversification into real estate. Furthermore, we have found that, at such time as a financial planner may determine that a specific investor has reached an adequate level of real estate diversification in his portfolio, advice is provided to the client to discontinue further investments in the applicable dividend reinvestment plan. In other words, the financial planners involved in dividend reinvestment plans of DPP and non-traded REIT products typically continue to monitor their clients' financial portfolios and perform valuable services for their clients on an ongoing basis.

In addition to monitoring their clients' portfolios on a continuing basis, because of the limited liquidity opportunities, financial planners who place their clients in DPP and non-traded REIT products must also monitor the program portfolio more closely than their counterparts who place their clients in liquid investments such as mutual funds. In the context of real estate related investments, such as REITs and many of the direct participation products regulated by Rule 2810, portfolio changes resulting from property acquisitions, market conditions affecting real estate investments, diversification of portfolios including geographical diversification and tenant mix, as well as the hiring or firing of employees of the sponsor who manage the real estate business underlying the products, can have a significant impact on the nature and performance of an investment product. Thus, in order to be able to properly advise a client as to whether to make an additional investment in such products, whether through dividend reinvestment or otherwise, or whether to apply for participation in a redemption program, the registered representative must continually review and analyze the properties contained in the investment portfolio, prevailing market conditions, and the management of the portfolio by the sponsor. Registered representatives should be compensated for this ongoing review and analysis, both because they are providing a valuable ongoing service to their clients and, to put it bluntly, because without such compensation they may not be as motivated to do the required work, which is clearly in the best interests of their clients. The payment of commissions on dividend reinvestments is the only rational means by which compensation for such services can be made.

In summary, we believe that the financial planners receiving selling commissions for dividend reinvestments of DPP and publicly registered, non-traded REIT products are performing continuing and valuable services for their clients and, accordingly, should continue to be appropriately compensated for the performance of these ongoing services.

B. The Terms of the Dividend Reinvestment Commissions are Fully Disclosed in the Program Prospectuses.

As demonstrated above, registered representatives provide significant and ongoing services to investors with respect to publicly registered, non-traded REITs and DPPs and we believe should earn commissions on reinvested dividends in such products. Furthermore, we see no justification for the conclusion set forth in the Notice that the payment of sales loads on reinvested dividends may be confusing to investors. The terms, conditions and amounts of all such commissions are, as a normal matter, fully and fairly disclosed in the prospectuses of these programs and, if they are not, the offering should not receive a no objection letter from the Corporate Finance Department. If the adequacy of such disclosures is the primary concern of the NASD, it should be addressed by requiring clear, concise and accurate disclosures and not by a wholesale prohibition of the payment of such commissions.

C. Discouraging Reinvestment in REITs and DPPs May Reduce the Funds Available for Share Redemption Programs.

We believe that a likely outcome of the adoption of a rule prohibiting the payment of commissions on reinvested dividends is that registered representatives will be motivated to move investor funds to other investments for which they will be paid a commission, regardless of whether further investment in the REIT or DPP is necessarily in the best interests of the investor. Should this happen on a large scale basis, it would put at risk the share redemption programs for many of these investment products, which pursuant to prospectus, are generally funded out of proceeds received from their dividend reinvestment plans. REIT and DPP sponsors recognize that, notwithstanding the illiquid nature of their investment products, circumstances arise that require an investor to redeem his or her shares. Careful consideration should be given as to whether this proposed amendment will in fact be detrimental to investors as it may reduce their ability to redeem their shares pursuant to existing stock redemption programs.

II. The Proposed Amendment Regarding the Location of Training and Education Meetings.

We strongly support this proposed change in the Rules governing educational and training conferences. As the NASD notes in the Notice, many of the subject DPPs and REITS are asset-based programs. As discussed above, registered representatives must stay apprised of matters affecting the real estate portfolio of the fund, and this would clearly seem to include the need to review in person significant assets of the specific REITs and DPPs.

Thank you for your consideration of these comments. If you have any questions, please contact me at 770-449-7800.

Very truly yours,

Philip M. Taylor, President
Wells Investment Securities, Inc.
Member of the NASD