Investment
Program
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HAND DELIVERY

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

re: NTM 04-07

Dear Ms. Sweeney:

The Investment Program Association ("IPA") thanks you for the opportunity to comment on NASD Notice to Members 04-07 ("NTM 04-07") with respect to the Regulation of Compensation Fees and Expenses in Public Offerings of Real Estate Investment Trust ("REITs") and Direct Participation Programs ("DPP's").

IPA, organized in 1985, is the national trade association representing the interests of investors in non-traded investment programs including partnerships, non-traded REITs and limited liability companies. Most major program sponsors belong to the IPA. Website: www.ipa-dc.org.

Non-Cash Compensation

Location of Training and Education Meetings

The IPA appreciates the NASD's recognition that, with respect to REITs and DPP's, the inspection of assets may be an important component of training and education meetings ("T & E Meetings"). The NASD is correct that, with respect to selling REIT's and DPP's, many associated persons believe it is important to visit an issuer's assets to better understand the business of the issuer. This becomes especially important when you

are selling non-liquid investments to customers in situations in which their money may be locked up for significant periods (sometimes 8 – 10 years or more).

We believe that the concept of significance may be workable. We recognize that different issuers may view significance in different ways. Just as the SEC and the accounting literature do not quantify materiality (and materiality is viewed differently in different situations), we believe that the use of the standard of "significant" if treated similarly will also provide the flexibility to deal with different situations. An asset may be significant because of, among other reasons, its size or because it represents a new segment or class of assets in which an issuer has determined to invest or it may be representative of a geographic focus of the issuer. We believe it would be helpful in adopting the proposed rules if the NASD would include a comment indicating that significance might vary from sponsor to sponsor and may be determined based on indicia in addition to the size of the asset.

We believe it would also be appropriate to expand the language in 2710(i)(2)(C)(ii) (and the comparable provision under 2810(c)(2)C)(ii)) to say ".....or a location at which a significant or representative asset of the program is located;"

The addition of the underlined language would clarify that those programs which have fairly "cookie cutter" assets are permitted to hold T & E Meetings in a venue in which members can inspect such programs assets, even if such assets are of approximately the same size or type or are located in one geographic area.

We would also like to note that we believe that footnote 7 to NTM 04-07 was drafted more narrowly than it should be. The reference to local broker/dealers and their associated members should actually be to local or regional broker/dealers and their associated members. Issuers and members may hold meetings for associated persons in various regions (sometimes as broad as the Midwest or the Westcoast) and although we believe the NASD would permit such meetings as regional meetings, the reference in footnote 7 to local meetings creates unnecessary confusion.

With respect to the issue of whether changing the language relating to the location of T & E Meetings would somehow create a significant risk that locations would be chosen in order to provide incentives and awards for selling products, we strongly believe the changes will not create such a risk. The existing NASD rules are clear that T & E Meetings cannot have attendance conditioned on meeting sales thresholds, cannot include entertainment (such as golf outings and the like) and cannot include reimbursement for guests. The industry is aware that its agendas must address training and education activities and that extracurricular activities aren't part of these agendas. With the need to stick to the agendas, get people in and out quickly and abide by the aforementioned restrictions, we do not believe that allowing associated persons to view assets of issuers will create the risk they will be influenced by sales incentives to sell products which are not suitable for their customers.

Public Offering Review Issues.

Due Diligence

We appreciate the clarification of how due diligence expenses should be treated.

Allocation of Compensation and Organization and Offering Expenses

We welcome your clarifications of how compensations and other organization and offering expenses will be allocated among underwriting compensation and organization and offering expenses ("O & O Expenses"). We believe it is very important to recognize that in order to reduce costs and make it possible to afford to launch programs, sponsors employ people in more than one capacity. It is not unusual for a person to be licensed with an affiliated broker/dealer, yet spend most of his or her time providing services for the issuer (or a series of issuers created by the sponsor). Historically, sponsors were encouraged to license employees so that they would be better educated on the securities laws and in case they ever had the type of contact with the broker/dealer or retail community which would require such licensing. Historically, their functions are neither wholesaling nor, frequently, even sales. We believe your clarification will go a long way in facilitating the registration process by clarifying your interpretations.

With respect to (i) Dual Employees, we find the new bright line standards to be very helpful. We believe that your discussion of (ii) Legal Fees is accurate and understandable. With respect to (iii) Training and Education Meetings, we want to clarify how you would like these items to appear on the Compensation Screen. Please clarify that. Regardless of whether there are expenses of the issuer for conducting T & E Meetings or for paying entrance or other expenses for attending unaffiliated broker/dealer meetings, these expenses can be aggregated under a single line item under Retailing or Wholesaling, as appropriate. There is some confusion because although we believe the NTM 04-07 requires members to aggregate these expenses, there have been comments from the staff in the past asking for a breakdown between the T & E expenses (i) paid to third party broker/dealers, and (ii) incurred by the issuer or paid to other third parties. We believe the Compensation Screen should be simplified as much as possible. With respect to (iv) Advertising and Sales Material, we welcome your proposed clarification.

Additional Comment

Finally, we acknowledge that in conversations with the NASD staff they have made it clear that the non-cash compensation rules do not apply to private offerings (recognizing that anti-fraud rules and other rules may still apply). Nevertheless, because of how the rules are drafted, we would appreciate it if the NASD would clearly state when you adopt amendments to Rules 2710 and 2810 that the non-cash compensation rules do not apply to private offerings. We have received numerous inquiries from our members and believe this would be a welcome addition.

Once again, on behalf of the members of the Investment Program Association we want to thank you for taking the time and making the effort to clarify and simplify your rules so as to facilitate the capital formation process, while protecting the rights of investors.

Sincerely yours,

Christopher L. Davis
President