

NEBRASKA ADMINISTRATIVE CODE

Title 48 - DEPARTMENT OF BANKING & FINANCE

CHAPTER 32 - REAL ESTATE INVESTMENT TRUSTS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Director has determined that this Rule relating to qualification and registration of Real Estate Investment Trusts is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case by case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes referenced herein shall mean those statutes as amended on or before the effective date of this Rule. A copy of the statutes referenced in this Rule is attached hereto.

002 DEFINITIONS. The following definitions, in addition to definitions contained in 48 NAC 2, shall apply to this Rule:

002.01 Real Estate Investment Trust ("REIT") means a corporation, trust, association or other legal entity, other than a real estate syndication, which is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate, or both.

002.02 Acquisition expenses means expenses related to selection and acquisition of properties, whether or not acquired, including, but not limited to, legal fees and expenses, travel and communications expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses.

002.03 Acquisition fee means the total of all fees and commissions paid by any party to any party in connection with making or investing in mortgage loans or the purchase, development or construction of property by a REIT.

002.03A Acquisition fee includes any real estate commission, selection fee, development fee, construction fee, nonrecurring management fee, loan fees or points or any fee of a similar nature, however designated.

002.03B Acquisition fee shall not include development fees and construction fees paid to persons not affiliated with the sponsor in connection with the actual development and construction of a project.

002.04 Adviser means the person responsible for directing or performing the day-to-day business affairs of a REIT, including a person to which an adviser subcontracts substantially all such functions.

002.05 Average invested assets means the average of the aggregate book value of the assets of the trust invested, directly or indirectly, in equity interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar non-cash reserves, for any period, computed by taking the average of such values at the end of each month during such period.

002.06 Competitive real estate commission means a real estate or brokerage commission paid for the purchase or sale of a property which is reasonable, customary and competitive in light of the size, type and location of such property.

002.07 Contract price for the property means the amount actually paid or allocated to the purchase, development, construction or improvement of a property exclusive of acquisition fees and acquisition expenses.

002.08 Construction fee means a fee or other remuneration for acting as general contractor and/or construction manager to construct improvements, supervise and coordinate projects or to provide major repairs or rehabilitation on property owned by the REIT.

002.09 Cross Reference Sheet means a compilation of the provisions of this Rule, referenced to the page of the prospectus and declaration of trust, or other exhibits, and justification for any deviation from the Rule.

002.10 Declaration of trust means the declaration of trust, by-laws, certificate, articles of incorporation or other governing instrument pursuant to which a REIT is organized.

002.11 Development fee means a fee for the packaging of a REIT's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

002.12 Independent expert means a person with no material current or prior business or personal relationship with the adviser or trustee who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the REIT.

002.13 Independent trustee means a trustee of a REIT who is not associated and has not been associated within the last two years, directly or indirectly, with the sponsor or adviser of the REIT.

002.13A A trustee shall be deemed to be associated with the sponsor or adviser if he or she:

002.13A1 Owns an interest in the sponsor, adviser, or any affiliate thereof;

002.13A2 Is employed by the sponsor, adviser or any affiliate thereof;

002.13A3 Is an officer or director of the sponsor, adviser, or any affiliate thereof;

002.13A4 Performs services, other than as a trustee, for the REIT;

002.13A5 Is a trustee for more than three REITs organized by the sponsor or advised by the adviser; or

002.13A6 Has any material business or professional relationship with the sponsor, adviser, or any affiliate thereof.

002.13B For purposes of determining whether or not the business or professional relationship is material, the gross revenue derived by the prospective independent trustee from the sponsor and adviser and affiliates shall be deemed material per se if it exceeds five percent of the prospective independent trustee's:

002.13B1 Annual gross revenue, derived from all sources, during either of the last two years; or

002.13B2 Net worth, on a fair market value basis.

002.13C An indirect relationship shall include circumstances in which a trustee's spouse, parent, child, sibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law is, or has been associated with the sponsor, adviser, any of their affiliates, or the REIT.

002.14 Initial investment means that portion of the initial capitalization of the REIT contributed by the sponsor or its affiliates pursuant to Section 003.01 of this Rule.

002.15 Leverage means the aggregate amount of indebtedness of a REIT for money borrowed, including purchase money mortgage loans, outstanding at any time, both secured and unsecured.

002.16 Net assets means the total assets, other than intangibles, at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

002.17 Net income means total revenues applicable to such period, less the expenses applicable to such period other than additions to reserves for depreciation or bad debts or other similar non-cash reserves. If the adviser receives an incentive fee, net income, for purposes of calculating total operating expenses in Section 005.04, below, shall exclude the gain from the sale of the REIT's assets.

002.18 Organizational and offering expenses means all expenses incurred by, and to be paid from, the assets of the REIT in connection with preparing a REIT for

registration and subsequently offering and distributing it to the public, including, but not limited to:

002.18A Total underwriting and brokerage discounts and commissions, including fees of the underwriters' attorneys;

002.18B Expenses for printing, engraving, and mailing;

002.18C Salaries of employees while engaged in sales activity;

002.18D Charges of transfer agents, registrars, trustees, escrow holders, depositories, and experts;

002.18E Expenses of qualification of the sale of the securities under federal and state laws, including taxes and fees; and

002.18F Accountants' and attorneys' fees.

002.19 Prospectus shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, 15 U.S.C. § 77b(10) including a preliminary prospectus; provided, however, that such term as used herein shall also include an offering circular as described in 17 CFR 230.254 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

002.20 Roll-up means a transaction involving the acquisition, merger, conversion, or consolidation either directly or indirectly of the REIT and the issuance of securities of a roll-up entity, but does not include:

002.20A A transaction involving securities of the REIT that have been for at least twelve months listed on a national securities exchange or traded through the NASDAQ Global Market; or

002.20B A transaction involving the conversion to corporate, trust, or association form of only the REIT if, as a consequence of the transaction there will be no significant adverse change in:

002.20B1 Shareholders' voting rights;

002.20B2 The term of existence of the REIT;

002.20B3 Sponsor or adviser compensation; or

002.20B4 The REIT's investment objectives.

002.21 Roll-up entity means a partnership, real estate investment trust, corporation, trust, or other entity that would be created or would survive after the successful completion of a proposed roll-up transaction.

002.22 Shares means shares of beneficial interest or of common stock of a REIT of the class that has the right to elect the trustees of such REIT.

002.23 Shareholders means the registered holders of a REIT's shares.

002.24 Specified asset REIT means a program where, at the time a securities registration is ordered effective, at least seventy-five percent of the net proceeds from the sale of shares, excluding reserves, are allocable to the purchase, construction, renovation, or improvement of individually identified assets.

002.25 Sponsor means:

002.25A Any person directly or indirectly instrumental in organizing, wholly or in part, a REIT; or

002.25B Any person who will control, manage or participate in the management of a REIT; and

002.25C Any affiliate of such person.

002.25D A person may be deemed a sponsor of the REIT by:

002.25D1 Taking the initiative, directly or indirectly, in founding or organizing the business or enterprise of the REIT, either alone or in conjunction with one or more other persons;

002.25D2 Receiving a material participation in the REIT in connection with the founding or organizing of the business of the REIT, in consideration of services, property or both;

002.25D3 Having a substantial number of relationships and contacts with the REIT;

002.25D4 Possessing significant rights to control REIT properties;

002.25D5 Receiving fees for providing services to the REIT which are paid on a basis that is not customary in the industry; or

002.25D6 Providing goods or services to the REIT on a basis which was not negotiated at arm's-length with the REIT.

002.25E Sponsor shall not include:

002.25E1 Any person whose only relationship with the REIT is that of an independent property manager of REIT assets, and whose only compensation is as such; or

002.25E2 Wholly independent third parties such as attorneys, accountants and underwriters whose only compensation is for professional services.

002.26 Total operating expenses means aggregate expenses of every character paid or incurred by the REIT as determined under generally accepted accounting principles, including advisers' fees, but excluding:

002.26A The expenses of raising capital such as organizational and offering expenses; legal, audit, accounting, underwriting, brokerage, listing, registration and other fees; printing and other such expenses; and taxes incurred in connection with the issuance, distribution, transfer, registration, and stock exchange listing of the REIT's shares;

002.26B Interest payments;

002.26C Taxes;

002.26D Non-cash expenditures such as depreciation, amortization and bad debt reserves;

002.26E Incentive fees paid in compliance with Section 005.06, below, notwithstanding Section 002.26F, below; and

002.26F Acquisition fees, acquisition expenses, real estate commissions on resale of property and other expenses connected with the acquisition, disposition, and ownership of real estate interests, mortgage loans, or other property, such as the costs of foreclosure, insurance premiums, legal services, maintenance, repair, and improvement of property.

002.27 Trustee(s) means the members of the board of trustees or directors or other body which manages the REIT.

002.28 Unimproved real property means the real property in which a REIT has an equity interest and which:

002.28A Was not acquired for the purpose of producing rental or other operating income;

002.28B Has no development or construction in process on such land; and

002.28C Has no development or construction on such land planned in good faith to commence on such land within one year.

003 REQUIREMENTS OF SPONSOR, ADVISER, TRUSTEE AND ANY AFFILIATE.

003.01 Prior to the initial public offering, the sponsor, or an affiliate, shall contribute, as an initial investment to the REIT, an amount not less than the lesser of:

003.01A Ten percent of the total net assets upon completion of the offering; or

003.01B Two hundred thousand dollars (\$200,000.00).

003.01C The sponsor or the contributing affiliate may not sell this initial investment while the sponsor remains a sponsor. The shares may be transferred to other affiliates of the sponsor.

003.02 The REIT shall have a minimum of three trustees, each of whom is elected by the shareholders of the REIT and shall serve for a term of one year.

003.02A This Section shall not apply to a trustee elected to fill the unexpired term of another trustee.

003.02B Nothing in this Section shall prohibit a trustee from being re-elected by the shareholders.

003.02C A majority of the trustees shall be independent trustees.

003.02D Independent trustees shall nominate replacements for vacancies amongst the independent trustees' positions.

003.02E The trustees may establish such committees as they deem appropriate, provided the majority of the members of each committee are independent trustees.

003.03 At or before the first meeting of the trustees, the declaration of trust shall be reviewed and ratified by a majority vote of the trustees and of the independent trustees. The prospectus shall disclose that such ratification is required.

003.04 The trustees shall establish written policies on investments and borrowing and shall monitor the administrative procedures, investment operations and performance of the REIT and the adviser to assure that such policies are carried out.

003.05 Matters to which Sections 003.01, 003.03, 003.08, 003.09, 005, 006.07, 006.10, 006.13, 007.01, 007.02D, and 007.07, of this Rule apply must be approved by a majority of the independent trustees.

003.05A The special obligations of the independent trustees should not be interpreted to lessen in any way the obligations of the affiliated trustees.

003.06 At least one independent trustee shall have had at least three years of relevant experience demonstrating the knowledge and experience required to successfully acquire and manage the type of assets being acquired by the REIT.

003.06A Relevant real estate experience means actual direct experience by the trustee in acquiring or managing the type of real estate to be acquired by the REIT for his or her own account or as an agent.

003.06B Relevant real estate experience does not include experience in buying and selling houses.

003.07 The trustees and adviser of the REIT shall be deemed to be in a fiduciary relationship to the REIT and the shareholders. The trustees of the REIT shall also

have a fiduciary duty to the shareholders to supervise the relationship of the REIT with the adviser.

003.08 It shall be the duty of the trustees to evaluate the performance of the adviser before entering into or renewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of such meeting.

003.08A Each contract for the services of an adviser entered into by the trustees shall have a term of no more than one year.

003.08B Each advisory contract shall be terminable by a majority of the independent trustees, or the adviser on sixty days written notice without cause or penalty. In the event of the termination of such contract, the adviser will cooperate with the REIT and take all reasonable steps requested to assist the trustees in making an orderly transition of the advisory function.

003.08C The qualifications of the adviser shall be set forth in the prospectus relating to the initial public offering of the shares of the REIT and the trustees shall determine that any successor adviser possesses sufficient qualifications to:

003.08C1 Perform the advisory function for the REIT; and

003.08C2 Justify the compensation provided for in its contract with the REIT.

003.09 The REIT shall not indemnify the trustees, advisers or affiliates for any liability or loss suffered by the trustees, advisers or affiliates, nor shall it provide that the trustees, advisers or affiliates be held harmless for any loss or liability suffered by the REIT, unless all of the following conditions are met:

003.09A The trustees, advisers or affiliates have determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the REIT.

003.09B The trustees, advisers or affiliates were acting on behalf of or performing services for the REIT.

003.09C Such liability or loss was not the result of:

003.09C1 Negligence or misconduct by the trustees, excluding the independent trustees, advisers or affiliates; or

003.09C2 Gross negligence or willful misconduct by the independent trustees.

003.09D Such indemnification or agreement to hold harmless is recoverable only out of REIT net assets and not from shareholders.

003.09E Notwithstanding anything to the contrary contained in this Section, the trustees, advisers or affiliates and any persons acting as a broker-dealer shall not be indemnified by the REIT for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws by such party unless one or more of the following conditions are met:

003.09E1 There has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee.

003.09E2 Such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee.

003.09E3 A court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission ("SEC") and of the published position of any state securities regulatory authority in which securities of the REIT were offered or sold as to indemnification for violations of securities laws.

003.09F The advancement of REIT funds to the trustees, advisers or affiliates for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought is permissible only if all of the following conditions are satisfied:

003.09F1 The legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the REIT.

003.09F2 The legal action is initiated by a third party who is not a shareholder or by a shareholder acting in his or her capacity as such and a court of competent jurisdiction specifically approves such advancement.

003.09F3 The trustees, advisers or affiliates undertake to repay the advanced funds to the REIT, together with the applicable legal rate of interest thereon, in cases in which such trustees, advisers or affiliates are found not to be entitled to indemnification.

003.10 The declaration of trust may contain provisions relating to the use of arbitration as a means of dispute resolution, provided, it may not require arbitration for allegations involving breach of contract, negligence, violations of state or federal securities laws, breach of fiduciary duty or other misconduct by the trustees or adviser, nor shall it provide for mandatory venue.

003.10A A declaration of trust which contains arbitration provisions shall prominently disclose such fact on the cover page of the declaration of trust.

003.10B Allocation of the cost of arbitration may be made a matter for determination in the proceedings.

003.10C This Section shall not prohibit arbitration agreements entered into as a condition for opening or maintaining an account with a broker-dealer, who may also be a sponsor.

003.10D This Section shall not prohibit separate arbitration agreements between sponsors and shareholders if the agreements are not a condition of making an investment in the REIT.

004 SUITABILITY OF SHAREHOLDERS.

004.01 The sponsor shall establish minimum suitability standards for persons who purchase shares in a REIT for which there is not likely to be a substantial and active secondary market.

004.02 Unless the Director determines that the risks associated with the REIT would require higher standards, shareholders shall have one of the following:

004.02A A minimum annual gross income of seventy thousand dollars (\$70,000.00) and a minimum net worth of seventy thousand dollars (\$70,000.00); or

004.02B A minimum net worth of two hundred fifty thousand dollars (\$250,000.00).

004.02C Net worth shall be determined exclusive of home, home furnishings, and automobiles.

004.02D In the case of sales to fiduciary accounts, these minimum suitability standards may be met by the beneficiary, by the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the shares if the donor or grantor is the fiduciary.

004.02E The sponsor shall set forth in the final prospectus:

004.02E1 The investment objectives of the REIT;

004.02E2 A description of the type of person who might benefit from an investment in the REIT; and

004.02E3 The minimum suitability standards imposed on each shareholder in the REIT.

004.02F In evaluating the proposed suitability standards, the Director may consider the following:

- 004.02F1 The REIT's use of leverage;
- 004.02F2 The tax implications;
- 004.02F3 Balloon payment financing;
- 004.02F4 The potential variances in cash distributions;
- 004.02F5 The potential shareholders;
- 004.02F6 The relationship among potential shareholders, the sponsor and adviser;
- 004.02F7 The liquidity of the REIT shares;
- 004.02F8 The prior performance of sponsor and adviser;
- 004.02F9 The financial condition of the sponsor;
- 004.02F10 The potential transactions between the REIT and the sponsor and adviser; and
- 004.02F11 Any other factors that the Director deems to be relevant.

004.03 The sponsor and each person selling shares on behalf of the sponsor or REIT shall make every reasonable effort to determine that the purchase of shares is a suitable and appropriate investment for each shareholder.

004.03A In making this determination, the sponsor or each person selling shares on behalf of the sponsor or REIT shall ascertain that the prospective shareholder:

004.03A1 Meets the minimum suitability standards established for the REIT;

004.03A2 Can reasonably benefit from the REIT based on the prospective shareholder's overall investment objectives and portfolio structure;

004.03A3 Is able to bear the economic risk of the investment based on the prospective shareholder's overall financial situation; and

004.03A4 Has apparent understanding of:

004.03A4a The fundamental risks of the investment;

004.03A4b The risk that the shareholder may lose the entire investment;

004.03A4c The lack of liquidity of REIT shares;

004.03A4d The restrictions on transferability of REIT shares; and

004.03A4e The tax consequences of the investment.

004.03B The sponsor or each person selling shares on behalf of the sponsor or REIT will make this determination on the basis of information it has obtained from a prospective shareholder, including at least the age, investment objectives, investment experience, income, net worth, financial situation, and other investments of the prospective shareholder, as well as any other pertinent factors.

004.03C The sponsor or each person selling shares on behalf of the sponsor or REIT shall maintain records of the information used to determine that an investment in shares is suitable and appropriate for a shareholder for at least six years.

004.03D The sponsor shall disclose in the final prospectus the responsibility of the sponsor and each person selling shares on behalf of the sponsor or REIT to make every reasonable effort to determine that the purchase of shares is a suitable and appropriate investment for each shareholder, based on information provided by the shareholder regarding the shareholder's financial situation and investment objectives.

004.04 Each shareholder is required to complete and sign a written subscription agreement.

004.04A The sponsor may require that each shareholder make certain factual representations in the subscription agreement, including the following:

004.04A1 The shareholder meets the minimum suitability standards established for the REIT.

004.04A2 The shareholder is purchasing the shares for his or her own account.

004.04A3 The shareholder has received a copy of the prospectus.

004.04A4 The shareholder acknowledges that the shares are not liquid.

004.04B The shareholder must separately sign or initial each representation made in the subscription agreement. Except in the case of fiduciary accounts, the shareholder may not grant any person a power of attorney to make such representations on his or her behalf.

004.04C The sponsor and/or each person selling shares on behalf of the sponsor or REIT shall not require shareholders to make representations in the subscription agreement which are subjective or unreasonable and which:

004.04C1 Might cause the shareholder to believe that he or she has surrendered rights to which he or she is entitled under federal or state law; or

004.04C2 Would have the effect of shifting the duties regarding suitability, imposed by law on broker-dealers, to the shareholders.

004.04C3 Prohibited representations include, but are not limited to, the following:

004.04C3a The shareholder understands or comprehends the risks associated with an investment in the REIT;

004.04C3b The investment is a suitable one for the shareholder;

004.04C3c The shareholder has read the prospectus; and

004.04C3d In deciding to invest in the REIT, the shareholder has relied solely on the prospectus, and not on any other information or representations from other persons or sources.

004.04C4 The sponsor may place the content of the prohibited representations in the subscription agreement in the form of advisory disclosures to shareholders, but the disclosures may not be contained in the shareholder representation section of the subscription agreement.

004.05 The sponsor or any person selling shares on behalf of the sponsor or REIT may not complete a sale of shares to a shareholder until at least five business days after the date the shareholder receives a final prospectus.

004.06 The sponsor or the person designated by the sponsor shall send each shareholder a confirmation of his or her purchase.

004.07 The Director may require minimum initial and subsequent cash investment amounts.

005 FEES, COMPENSATION AND EXPENSES.

005.01 The prospectus must fully disclose, in tabular form, and itemize all consideration which may be received in connection with REIT activities directly or indirectly by the sponsor, trustees, adviser and underwriters; the purpose for the consideration; and the time and method of payment.

005.01A The independent trustees will determine, at least annually, that the total fees and expenses of the REIT are reasonable in light of the investment performance of the REIT, its net assets, its net income, and the fees and expenses of other comparable unaffiliated REITs.

005.01B Each such determination shall be reflected in the minutes of the meeting of the trustees.

005.02 The organizational and offering expenses paid in connection with the REIT's formation or the syndication of its shares shall be reasonable and shall in no event exceed an amount equal to fifteen percent of the proceeds raised in an offering.

005.03 The total of all acquisition fees and acquisition expenses shall be reasonable, and shall not exceed an amount equal to six percent of the contract price of the property, or in the case of a mortgage loan, of the funds advanced, except that a majority of the trustees, including a majority of the independent trustees, not otherwise interested in the transaction may approve fees in excess of these limits if they determine the transaction to be commercially competitive, fair and reasonable to the REIT.

005.04 The total operating expenses of the REIT shall, in the absence of a satisfactory showing to the contrary, be deemed to be excessive if they exceed in any fiscal year the greater of two percent of its average invested assets or twenty-five percent of its net income for such year.

005.04A The independent trustees shall have the fiduciary responsibility of limiting such expenses to amounts that do not exceed such limitations unless such independent trustees shall have made a finding that, based on such unusual and non-recurring factors which they deem sufficient, a higher level of expenses is justified for such year. Any such finding and the reason in support thereof shall be reflected in the minutes of the meeting of the trustees.

005.04B Within sixty days after the end of any fiscal quarter of the REIT for which total operating expenses, for the twelve months then ended, exceed the above limitations, a written disclosure of such fact, together with an explanation of the factors the independent trustees considered in arriving at the conclusion that such higher operating expenses were justified, shall be sent to shareholders.

005.04C In the event the independent trustees determine such excess expenses are not justified, the adviser shall reimburse the REIT at the end of the twelve month period the amount by which the aggregate annual

expenses paid or incurred by the REIT exceed the limitations herein provided.

005.05 If an adviser, trustee, sponsor or any affiliate provides a substantial amount of the services in the effort to sell the property of the REIT, that person may receive up to one-half of the brokerage commission paid but in no event to exceed an amount equal to three percent of the contracted for sales price. The amount paid when added to the sums paid to unaffiliated parties in such a capacity shall not exceed the lesser of the competitive real estate commission or an amount equal to six percent of the contracted for sales price.

005.06 An interest in the gain from the sale of assets of the REIT, for which full consideration is not paid in cash or property of equivalent value, shall be allowed provided the amount or percentage of such interest is reasonable.

005.06A An interest in gain from the sale of REIT assets shall be presumed reasonable if it does not exceed fifteen percent of the balance of such net proceeds remaining after payment to shareholders, in the aggregate, of an amount equal to one hundred percent of the original issue price of REIT shares, plus an amount equal to six percent of the original issue price of the REIT shares per annum cumulative.

005.06B The original issue price of the REIT shares may be reduced by prior cash distributions to shareholders of net proceeds from the sale of REIT assets.

005.06C In the case of multiple advisers, advisers and any affiliates shall be allowed incentive fees provided such fees are distributed by a proportional method reasonably designed to reflect the value added to REIT assets by each respective adviser or any affiliate.

005.07 The independent trustees shall determine, at least annually, whether the compensation which the REIT contracts to pay to the adviser is reasonable in relation to the nature and quality of services performed and whether such compensation is within the limits prescribed by this Rule.

005.07A The independent trustees shall supervise the performance of the adviser and the compensation paid to it by the REIT to determine that the provisions of such contract are being carried out.

005.07B Each such determination shall be based on the following factors:

005.07B1 The size of the advisory fee in relation to the size, composition and profitability of the portfolio of the REIT;

005.07B2 The success of the adviser in generating opportunities that meet the investment objectives of the REIT;

005.07B3 The rates charged to other REITs and to investors other than REITs by advisers performing similar services;

005.07B4 Additional revenues realized by the adviser and any affiliate through their relationship with the REIT, including loan administration, underwriting or broker commissions, or servicing, engineering, inspection and other fees, whether paid by the REIT or by others with whom the REIT does business;

005.07B5 The quality and extent of service and advice furnished by the adviser;

005.07B6 The performance of the investment portfolio of the REIT, including income, conservation or appreciation of capital, frequency of problem investments, and competence in dealing with distress situations;

005.07B7 The quality of the portfolio of the REIT in relationship to the investments generated by the adviser for its own account; and

005.07B8 All other factors such independent trustees may deem relevant.

005.07C The findings of the independent trustees on each factor shall be recorded in the minutes of the trustees.

006 CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS.

006.01 The REIT shall not purchase property from the sponsor, adviser, trustee, or any affiliate thereof, unless a majority of trustees, including a majority of independent trustees, not otherwise interested in such transaction approve the transaction as being fair and reasonable to the REIT and at a price to the REIT no greater than the cost of the asset to such sponsor, adviser, trustee or any affiliate thereof, or if the price to the REIT is in excess of such cost, that substantial justification for such excess exists and such excess is reasonable. In no event shall the cost of such asset to the REIT exceed its current appraised value.

006.02 A sponsor, adviser, trustee or any affiliate thereof shall not acquire assets from the REIT unless approved by a majority of trustees, including a majority of independent trustees, not otherwise interested in such transaction, as being fair and reasonable to the REIT, except that a REIT may lease assets to a sponsor, adviser, trustee or any affiliate thereof only if approved by a majority of trustees, including a majority of independent trustees, not otherwise interested in such transaction as being fair and reasonable to the REIT.

006.03 No loans may be made by the REIT to the sponsor, adviser, trustee or any affiliate thereof except as provided under Section 006.13C, below, or to wholly owned subsidiaries of the REIT.

006.04 The REIT may not borrow money from the sponsor, adviser, trustee, or any affiliate thereof, unless a majority of trustees, including a majority of independent trustees, not otherwise interested in such transaction approve the transaction as

being fair, competitive, and commercially reasonable and no less favorable to the REIT than loans between unaffiliated parties under the same circumstances.

006.05 The REIT shall not invest in joint ventures with the sponsor, adviser, trustee, or any affiliate thereof, unless a majority of trustees, including a majority of independent trustees, not otherwise interested in such transactions, approve the transaction as being fair and reasonable to the REIT and on substantially the same terms and conditions as those received by the other joint venturers.

006.06 The REIT shall not invest in equity securities unless a majority of trustees, including a majority of independent trustees, not otherwise interested in such transaction approve the transaction as being fair, competitive, and commercially reasonable.

006.07 The prospectus must state the specific investment objectives of the REIT and should indicate whether the primary objective is to obtain current income, tax benefits, or capital appreciation for its shareholders.

006.07A The independent trustees shall review the investment policies of the REIT at least annually to determine that the policies being followed by the REIT at any time are in the best interests of its shareholders.

006.07B Each such determination and the basis therefore shall be set forth in the minutes of the trustees.

006.08 The method for the allocation of the acquisition of properties by two or more programs of the same sponsor or adviser seeking to acquire similar types of assets shall be reasonable.

006.08A The method shall be described in the prospectus.

006.08B It shall be the duty of the trustees, including the independent trustees, to insure such method is applied fairly to the REIT.

006.09 All other transactions between the REIT and the sponsor, adviser, trustee or any affiliate thereof, shall require approval by a majority of the trustees, including a majority of independent trustees, not otherwise interested in such transactions as being fair and reasonable to the REIT and on terms and conditions not less favorable to the REIT than those available from unaffiliated third parties.

006.10 The consideration paid for real property acquired by the REIT shall be based on the fair market value of the property as determined by a majority of the trustees, except that, in cases in which a majority of the independent trustees so determine, and in all cases in which assets are acquired from the advisers, trustees, sponsors or affiliates thereof, such fair market value shall be as determined by an independent expert selected by the independent trustees.

006.11 In connection with a proposed roll-up, an appraisal of all REIT assets shall be obtained from a competent, independent expert.

006.11A If the appraisal will be included in a prospectus used to offer the securities of a roll-up entity, the appraisal shall be filed with the Director as an exhibit to the registration statement for the offering.

006.11A1 REIT assets shall be appraised based on an evaluation of all relevant information and shall indicate the value of the REIT's assets as of a date immediately prior to the announcement of the proposed roll-up transaction.

006.11A2 The appraisal shall assume an orderly liquidation of REIT assets over a twelve month period.

006.11A3 The terms of the engagement of the independent expert shall clearly state that the engagement is for the benefit of the REIT and its investors.

006.11A4 A summary of the independent appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to the investors in connection with a proposed roll-up.

006.11A5 The issuer shall be subject to liability under the Act for any material omission or misrepresentation contained in the appraisal.

006.11B In connection with a proposed roll-up, the person sponsoring the roll-up shall offer to shareholders who vote "no" on the proposal the choice of:

006.11B1 Accepting the securities of the roll-up entity offered in the proposed roll-up; or

006.11B2 One of the following:

006.11B2a Remaining as shareholders of the REIT and preserving their interests therein on the same terms and conditions as existed previously; or

006.11B2b Receiving cash in an amount equal to the shareholders' pro-rata share of the appraised value of the net assets of the REIT.

006.11C The REIT shall not participate in any proposed roll-up which would result in shareholders having democracy rights in the roll-up entity that are less than those provided for under Sections 007.01, 007.02, 007.03, 007.04, and 007.05, below.

006.11D The REIT shall not participate in any proposed roll-up which includes provisions which would operate to materially impede or frustrate the accumulation of shares by any purchaser of the securities of the roll-up

entity, except to the minimum extent necessary to preserve the tax status of the roll-up entity.

006.11E The REIT shall not participate in any proposed roll-up which would limit the ability of an investor to exercise the voting rights of his/her securities of the roll-up entity on the basis of the number of REIT shares held by that investor.

006.11F The REIT shall not participate in any proposed roll-up in which investors' rights of access to the records of the roll-up entity will be less than those provided for under Section 007.05, below.

006.11G The REIT shall not participate in any proposed roll-up in which any of the costs of the transaction would be borne by the REIT if the roll-up is not approved by the shareholders.

006.12 The prospectus shall include an explanation of the borrowing policies of the REIT.

006.12A The aggregate borrowings of the REIT, secured and unsecured, shall be reasonable in relation to the net assets of the REIT and shall be reviewed by the trustees at least quarterly.

006.12B The maximum amount of such borrowings in relation to the net assets shall, in the absence of a satisfactory showing that higher level of borrowing is appropriate, not exceed three hundred percent. Any excess in borrowing over such level shall be approved by a majority of the independent trustees and disclosed to shareholders in the next quarterly report of the REIT, along with justification for such excess.

006.13 The REIT may not:

006.13A Invest more than ten percent of its total assets in unimproved real property or mortgage loans on unimproved real property;

006.13B Invest in commodities or commodity future contracts, except that this limitation is not intended to apply to future contracts used solely for hedging purposes in connection with the REIT's ordinary business of investing in real estate assets and mortgages;

006.13C Invest in or make mortgage loans unless an appraisal is obtained concerning the underlying property except for those loans insured or guaranteed by a government or government agency;

006.13C1 In cases in which a majority of the independent trustees so determine, and in all cases in which the transaction is with the adviser, trustees, sponsor or affiliates thereof, such an appraisal must be obtained from an independent expert concerning the underlying property. A copy of the appraisal shall be maintained in the REIT's records for at least five years,

and shall be available for inspection and duplication by any shareholder.

006.13C2 A mortgagee's or owner's title insurance policy or commitment as to the priority of the mortgage or the condition of the title must be obtained.

006.13C3 The adviser and trustees shall observe the following policies in connection with investing in or making mortgage loans:

006.13C3a The REIT shall not invest in real estate contracts of sale, unless such contracts of sale are in recordable form and appropriately recorded in the chain of title.

006.13C3b The REIT shall not make or invest in mortgage loans, including construction loans, on any one property if the aggregate amount of all mortgage loans outstanding on the property, including the loans of the REIT, would exceed an amount equal to eighty-five percent of the appraised value of the property as determined by appraisal unless substantial justification exists because of the presence of other underwriting criteria. For purposes of this subsection, the "aggregate amount of all mortgage loans outstanding on the property, including the loans of the REIT," shall include all interest, excluding contingent participation in income and/or appreciation in value of the mortgaged property, the current payment of which may be deferred pursuant to the terms of such loans, to the extent that deferred interest on each loan exceeds five percent per annum of the principal balance of the loan.

006.13C3c The standards provided in Section 006.13C3b, above, may be exceeded for a particular registration if:

006.13C3c(1) The mortgage loans are supported by sound underwriting criteria, such as the net worth of the borrower, the credit rating of the borrower based on historical financial performance, or collateral adequate to justify waiver from application of this Section; or

006.13C3c(2) The program mortgage loans are or will be insured or

guaranteed by a government or a government agency where the loan is secured by the pledge or assignment of other real estate or another real estate mortgage, where rents are assigned under a lease where a tenant or tenants have demonstrated through historical net worth and cash flow the ability to satisfy the terms of the lease, or where similar criteria is presented satisfactory to the Director.

006.13C3d The REIT shall not make or invest in any mortgage loans that are subordinate to any mortgage or equity interest of the adviser, trustees, sponsors or any affiliate of the REIT.

006.13D Issue redeemable equity securities;

006.13E Issue debt securities unless the debt service coverage in the most recently completed fiscal year as adjusted for known changes is sufficient to properly service that higher level of debt;

006.13F Issue options or warrants to purchase its shares to the adviser, trustees, sponsors or any affiliate thereof except on the same terms as such options or warrants are sold to the general public; or

006.13F1 The REIT may issue options or warrants to persons not so connected with the REIT but not at exercise prices less than the fair market value of such securities on the date of grant and for consideration, which may include services, that in the judgment of the independent trustees, has a market value less than the value of such option on the date of grant.

006.13F2 Options or warrants issuable to the adviser, trustees, sponsors or any affiliate thereof shall not exceed an amount equal to ten percent of the outstanding shares of the REIT on the date of grant of any options or warrants.

006.13G Issue its shares on a deferred payment basis or other similar arrangement.

007 RIGHTS AND OBLIGATIONS OF SHAREHOLDERS.

007.01 There shall be an annual meeting of the shareholders of the REIT upon reasonable notice and within a reasonable period, not less than thirty days, following delivery of the annual report.

007.01A The trustees, including the independent trustees, shall be responsible for complying with the meeting requirement.

007.01B Special meetings of the shareholders may be called by the chief executive officer, by a majority of the trustees or by a majority of the independent trustees, and shall be called by an officer of the REIT upon written request of shareholders holding in the aggregate not less than ten percent of the outstanding shares of the REIT entitled to vote at such meeting. Upon receipt of a written request stating the purpose(s) of the meeting, the sponsor shall, within ten days after receipt of said request, provide all shareholders with written notice of the meeting, including the purpose thereof, to be held on a date not less than fifteen nor more than sixty days after the distribution of such notice, at a time and place specified in the request, or if none is specified, at a time and place convenient to shareholders.

007.02 Voting Rights of Shareholders.

007.02A A public offering of equity securities of a REIT other than voting shares will be looked upon with disfavor.

007.02B The voting rights per share of equity securities of the REIT, other than the publicly held equity securities of the REIT, sold in a private offering shall not exceed voting rights which bear the same relationship to the voting rights of the publicly held shares of the REIT as the consideration paid to the REIT for each privately offered REIT share bears to the book value of each outstanding publicly held share.

007.02C The declaration of trust must provide that a majority of the then outstanding shares may, without the necessity for concurrence by the trustees, vote to:

007.02C1 Amend the declaration of trust;

007.02C2 Terminate the REIT; or

007.02C3 Remove the trustees.

007.02D The declaration of trust must provide that a majority of shareholders present in person or by proxy at an annual meeting at which a quorum, being fifty percent of the then outstanding shares, is present, may, without the necessity for concurrence by the trustees, vote to elect the trustees.

007.02E Without concurrence of a majority of the outstanding shares, the trustees may not:

007.02E1 Amend the declaration of trust, except for amendments which do not adversely affect the rights, preferences and privileges of shareholders including amendments to provisions relating to trustee qualifications, fiduciary duty, liability and indemnification, conflicts of interest, investment policies or investment restrictions;

007.02E2 Sell two-thirds or more of the REIT's assets, based on the total number of properties and mortgages or on the current fair market value of the assets, other than in the ordinary course of the REIT's business or in connection with liquidation and dissolution;

007.02E3 Cause the merger or other reorganization of the REIT; or

007.02E4 Dissolve or liquidate the REIT, other than before the initial investment in property.

007.02F With respect to shares owned by the adviser, the trustees, or any affiliate, neither the adviser, nor the trustees, nor any affiliate may vote or consent on matters submitted to the shareholders regarding the removal of the adviser, trustees or any affiliate or any transaction between the REIT and any of them.

007.02G In determining the requisite percentage-in-interest of shares necessary to approve a matter on which the adviser, trustees and any affiliate may not vote or consent, any shares owned by any of them shall not be included.

007.03 The declaration of trust shall provide that:

007.03A The shares of the REIT shall be non-assessable by the REIT whether trust, corporation or other entity.

007.03B The shareholders of a REIT that is not a corporation shall not be personally liable on account of any of the contractual obligations undertaken by the REIT.

007.03C All written contracts to which a REIT that is not a corporation is a party shall include a provision that the shareholders shall not be personally liable thereon.

007.04 The declaration of trust shall provide that the REIT shall cause to be prepared and mailed or delivered to each shareholder as of a record date after the end of the fiscal year and each holder of other publicly held securities of the REIT within one hundred twenty days after the end of the fiscal year to which it relates, an annual report for each fiscal year ending after the initial public offering of its securities which shall include:

007.04A Financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants;

007.04B The ratio of the costs of raising capital during the period to the capital raised;

007.04C The aggregate amount of advisory fees and the aggregate amount of other fees paid to the adviser and any affiliate of the adviser by REIT and including fees or charges paid to the adviser and any affiliate of the adviser by third parties doing business with the REIT;

007.04D The total operating expenses of the REIT, stated as a percentage of average invested assets and as a percentage of its net income;

007.04E A report from the independent trustees that the policies being followed by the REIT are in the best interests of its shareholders and the basis for such determination; and

007.04F Full disclosure, separately stated, of all material terms, factors, and circumstances surrounding any and all transactions involving the REIT, trustees, advisers, sponsors and any affiliate thereof occurring in the year for which the annual report is made. Independent trustees shall examine and comment in the report on the fairness of such transactions.

007.04G The trustees, including the independent trustees, shall be required to take reasonable steps to insure that the above requirements are met.

007.04H This Section is not intended to be exhaustive of the type and extent of information presented to shareholders in an annual report.

007.05 Any shareholder and any designated representative thereof shall be permitted access to all records of the REIT at all reasonable times, and may inspect and copy any of them.

007.05A Inspection of the REIT's books and records by the Director shall be provided upon reasonable notice and during normal business hours.

007.05B The declaration of trust shall include the following provisions regarding access to the list of shareholders:

007.05B1 An alphabetical list of the names, addresses, and telephone numbers of the shareholders of the REIT along with the number of shares held by each of them (the "shareholder list") shall be maintained as part of the books and records of the REIT and shall be available for inspection by any shareholder or the shareholder's designated agent at the home office of the REIT upon the request of the shareholder.

007.05B2 The shareholder list shall be updated at least quarterly to reflect changes in the information contained therein.

007.05B3 A copy of the shareholder list shall be mailed to any shareholder requesting it within ten days of the request.

007.05B3a The copy of the shareholder list shall be printed in alphabetical order, on white paper, and in a readily readable type size, in no event smaller than 10-point type.

007.05B3b A reasonable charge for copy work may be charged by the REIT.

007.05B4 The purposes for which a shareholder may request a copy of the shareholder list include, without limitation, matters relating to shareholders' voting rights under the REIT agreement and the exercise of shareholders' rights under federal proxy laws.

007.05B5 The REIT may require the shareholder requesting the shareholder list to represent that the list is not requested for a commercial purpose unrelated to the shareholder's interest in the REIT.

007.05B6 If the advisor or trustees of the REIT neglects or refuses to exhibit, produce, or mail a copy of the shareholder list as requested, the advisor and the trustees shall be liable to any shareholder requesting the list for the costs, including attorneys' fees, incurred by that shareholder for compelling the production of the shareholder list, and for actual damages suffered by any shareholder by reason of such refusal or neglect.

007.05B6a It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the shareholder list is to secure such list of shareholders or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a shareholder relative to the affairs of the REIT.

007.05B6b The remedies provided hereunder are in addition to, and shall not in any way limit, other remedies available to shareholders under federal law, or the laws of any state.

007.06 The REIT is neither obligated to repurchase any of the shares nor precluded from voluntarily repurchasing the shares if such repurchase does not impair the capital or operations of the REIT.

007.06A The REIT may have excess share provisions that provide for mandatory redemption.

007.06B The sponsor, adviser, trustees or affiliates are prohibited from receiving a fee on the repurchase of the shares by a REIT.

007.07 All distribution reinvestment plans shall, at a minimum, provide:

007.07A All material information regarding the distribution to the shareholder and the effect of reinvesting such distribution, including the tax consequences thereof, shall be provided to the shareholder at least annually.

007.07B Each shareholder participating in the plan shall have a reasonable opportunity to withdraw from the plan at least annually after receipt of the information required above.

007.08 The declaration of trust shall state the manner in which distributions to shareholders are to be determined.

007.09 Distributions in kind shall not be permitted, except for:

007.09A Distributions of readily marketable securities;

007.09B Distributions of beneficial interests in a liquidating trust established for the dissolution of the REIT and the liquidation of its assets in accordance with the terms of the declaration of trust; or

007.09C Distributions of in-kind property which meet all of the following conditions:

007.09C1 The trustees advise each shareholder of the risks associated with direct ownership of the property;

007.09C2 The trustees offer each shareholder the election of receiving in-kind property distributions; and

007.09C3 The trustees distribute in-kind property only to those shareholders who accept the trustee's offer.

008 DISCLOSURE AND MARKETING.

008.01 Statements made in sales material communicated, directly or indirectly, to the public may not conflict with, or modify risk factors or other statements made in the prospectus.

008.02 A prospectus which is not part of a registration statement declared effective by the SEC pursuant to the Securities Act of 1933 shall generally conform to the disclosure requirements which would apply if the offering were so registered. The format and information requirements of applicable guide(s) promulgated by the SEC shall be followed, with appropriate adjustments made for the different business of the REIT.

008.03 In connection with the offering and sale of shares in a REIT, neither the sponsor(s) nor the underwriter(s) may, in writing or otherwise, directly or indirectly, represent or imply that the Director has approved the merits of the investment or any

aspects thereof. Any reference to the REIT's compliance with this Rule or any provisions herein which connotes or implies compliance is prohibited.

008.04 Forecasts and Projections.

008.04A Neither the prospectus nor any sales material communicated, directly or indirectly, to the public shall contain a quantitative estimate of a REIT's anticipated economic performance or anticipated return to participants, in the form of investment objectives, cash distributions, tax benefits or otherwise, except as permitted by this Section.

008.04B The presentation of predicted future results of operations of programs shall be permitted but not required for a specified asset REIT if they comply with all of the following requirements:

008.04B1 The cover of the prospectus for a specified asset REIT with forecasts must contain in bold face the following language: "Forecasts are contained in this prospectus. Any representation to the contrary and any predictions, written or oral, which do not conform to that contained in the prospectus shall not be permitted."

008.04B2 Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of presentation.

008.04B3 Forecasts should be examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements and the Statement on Standards for Accountant's Services on Prospective Financial Information as promulgated by the American Institute of Certified Public Accountants, and a copy of the report of the independent certified public accountant must be included in the prospectus.

008.04B4 If any part of the forecast appears in the sales material, the entire forecast must be presented.

008.04B5 Forecasts shall generally be for a period equivalent to the anticipated holding period for REIT assets.

008.04B5a Forecasts which do not extend through the expected term of the REIT's life must show the effects of a hypothetical liquidation of program assets under good and bad conditions.

008.04B5b Yield information may not be presented for forecasts which do not extend through the expected term of the REIT's life.

008.04B6 Forecasts shall disclose possible undesirable tax consequences of an early sale of program assets.

008.04B7 In computing any rate of return or yield to investors, no unrealized gains or value shall be included.

008.04C For all other REITs, the presentation of predicted future results of operations of programs shall be prohibited. The cover of the prospectus for such a REIT must contain in bold face the following language: "The use of forecasts in this offering is prohibited. Any representations to the contrary and any predictions, written or oral, as to the amount or certainty of any present or future cash benefit or tax consequence which may flow from an investment in this program is not permitted."

008.05 The Director may require that the declaration of trust be given to prospective shareholders.

009 MISCELLANEOUS.

009.01 The requirements and/or provisions of appropriate portions of the following Sections shall be included in the declaration of trust: Sections 002; 003; 004.02; 004.03; 004.06; 005.01A; 005.01B; 005.03; 005.04; 005.05; 005.06; 005.07; 006.01; 006.02; 006.03; 006.04; 006.05; 006.06; 006.07A; 006.07B; 006.09; 006.10; 006.11; 006.12; 006.13; and 007.

009.02 A marked copy of all amendments and supplements to an application shall be filed with the Director as soon as the amendment or supplement is available.

009.03 The Cross Reference Sheet shall be included with the application for registration.

009.03A Sections which are not applicable should be noted as such.

009.03B Provisions of the REIT which vary from the Rule must be explained by endnote. Endnotes should be numbered sequentially in the column designated "Endnotes" and should be presented on a rider identified as "Endnotes" with each endnote on the rider numerically corresponding to the endnote identified on the Cross Reference Sheet.

010 WAIVER OF RULE. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain provisions of this Rule may be waived by the Director.

15 U.S.C.

United States Code, 2014 Edition

Title 15 - COMMERCE AND TRADE

CHAPTER 2A - SECURITIES AND TRUST INDENTURES

SUBCHAPTER I - DOMESTIC SECURITIES

Sec. 77b - Definitions; promotion of efficiency, competition, and capital formation

From the U.S. Government Publishing Office, www.gpo.gov**§77b. Definitions; promotion of efficiency, competition, and capital formation****(a) Definitions**

When used in this subchapter, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for

sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 77e(c) of this title not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term "research report" means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of¹ such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed

necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 77c(a)(2) of this title whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] or a business development company as defined in section 2(a)(48) of that Act [15 U.S.C. 80a-2(a)(48)]; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act [29 U.S.C. 1002(21)], which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms "security future", "narrow-based security index", and "security futures product" have the same meanings as provided in section 78c(a)(55) of this title.

(17) The terms "swap" and "security-based swap" have the same meanings as in section 1a of title 7.

(18) The terms "purchase" or "sale" of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(19) The term "emerging growth company" means an issuer that had total annual gross revenues of less than \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the

Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under this subchapter;

(C) the date on which such issuer has, during the previous 3-year period, issued more than \$1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b-2 of title 17, Code of Federal Regulations, or any successor thereto.

(b) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(May 27, 1933, ch. 38, title I, §2, 48 Stat. 74; June 6, 1934, ch. 404, title II, §201, 48 Stat. 905; Aug. 10, 1954, ch. 667, title I, §§1-4, 68 Stat. 683, 684; Pub. L. 86-70, §12(a), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, §7(a), July 12, 1960, 74 Stat. 412; Pub. L. 91-547, §27(a), Dec. 14, 1970, 84 Stat. 1433; Pub. L. 96-477, title VI, §603, Oct. 21, 1980, 94 Stat. 2294; Pub. L. 97-303, §1, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100-181, title II, §§201, 202, Dec. 4, 1987, 101 Stat. 1252; Pub. L. 104-290, title I, §106(a), Oct. 11, 1996, 110 Stat. 3424; Pub. L. 105-353, title III, §301(a)(1), Nov. 3, 1998, 112 Stat. 3235; Pub. L. 106-554, §1(a)(5) [title II, §208(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-434; Pub. L. 111-203, title VII, §768(a), July 21, 2010, 124 Stat. 1800; Pub. L. 112-106, title I, §§101(a), 105(a), Apr. 5, 2012, 126 Stat. 307, 310.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§761-774) of title VII of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(15)(i), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(15)(i), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

Words "Philippine Islands" deleted from definition of term "Territory" under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

ELECTRONIC CODE OF FEDERAL REGULATIONS**e-CFR data is current as of December 1, 2015**

Title 17 → Chapter II → Part 230 → §230.254

Title 17: Commodity and Securities Exchanges
PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**§230.254 Preliminary offering circular.**

After the filing of an offering statement, but before its qualification, written offers of securities may be made if they meet the following requirements:

(a) *Outside front cover page.* The outside front cover page of the material bears the caption *Preliminary Offering Circular*, the date of issuance, and the following legend, which must be highlighted by prominent type or in another manner:

An offering statement pursuant to Regulation A relating to these securities has been filed with the Securities and Exchange Commission. Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted before the offering statement filed with the Commission is qualified. This Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful before registration or qualification under the laws of any such state. We may elect to satisfy our obligation to deliver a Final Offering Circular by sending you a notice within two business days after the completion of our sale to you that contains the URL where the Final Offering Circular or the offering statement in which such Final Offering Circular was filed may be obtained.

(b) *Other contents.* The Preliminary Offering Circular contains substantially the information required to be in an offering circular by Form 1-A (§239.90 of this chapter), except that certain information may be omitted under Rule 253(b) (§230.253(b)) subject to the conditions set forth in such rule.

(c) *Filing.* The Preliminary Offering Circular is filed as a part of the offering statement.

[80 FR 21895, Apr. 20, 2015]

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