

COMMENT LETTER

April 10, 2019

ICI and Nareit Submit Letter on Proposed Regulations under Section 199A (pdf)

By Electronic Delivery April 9, 2019 Krishna Vallabhaneni, Esq. Michael Desmond, Esq. Acting Tax Legislative Counsel Chief Counsel U.S. Department of the Treasury Internal Revenue Service 1500 Pennsylvania Avenue, NW 1111 Constitution Avenue, NW Washington, DC 20220 Washington, DC 20224 RE: Proposed Regulations on Section 199A (REG-134652-18) Dear Mr. Vallabhaneni and Mr. Desmond: The Investment Company Institute¹ and Nareit² thank the Treasury Department and the Internal Revenue Service (IRS) for the recently proposed regulations under section 199A regarding investments in real estate investment trusts (REITs) by regulated investment companies (RICs). The proposed regulations confirm that RICs may pass through to RIC shareholders qualified dividends from REITs so that RIC shareholders can take the 20 percent deduction under section 199A. We believe that the proposed regulations appropriately implement Congress' intent under the authority granted to the Treasury Department and the IRS in sections 7805(a) and 199A(f)(4).³ Section 199A, as enacted by Pub. L. No. 115-77 (commonly referred to as the Tax Cuts and Jobs Act of 2017, or the TCJA), gives taxpayers a 20 percent deduction for "qualified business income." It also provides a 20 percent deduction for "qualified REIT dividends." The TCJA does not specifically provide a mechanism for RICs that invest in REITs to pass through 1 The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$22.4 trillion in the United States, serving more than 100 million US shareholders, and US\$6.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC. 2 Nareit® is the worldwide representative voice for REITs and publicly traded real estate companies with an interest in U.S. real estate and capital markets. Nareit's members are REITs and other businesses throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses. 3 The Master Limited Partnership Association (MLPA) has submitted a letter regarding the application of section 199A to qualified publicly traded partnership (PTP) income received by a RIC and which addresses the issues raised in the preamble to the proposed regulations. ICI generally supports the MLPA's recommendations, as they would permit RICs to designate distributions attributable to qualified PTP income

and qualified REIT dividends as section 199A dividends and report those combined amounts in box 5 of IRS Form 1099-DIV. Like the MLPA, we believe the current limitations on investments in PTPs under section 851 adequately protect against the use of RICs as conduits for the avoidance of unrelated business taxable income (UBTI) by non-taxable entities or effectively connected income (ECI) by non-resident aliens. ICI emphasizes, however, that maintaining the ability of RICs to prevent distributions from being treated as UBTI or ECI is paramount. this qualified income. Absent regulations under section 199A, RIC shareholders might have been penalized for choosing to hold REIT shares indirectly rather than directly. The proposed regulations provide clear guidance on how RICs that receive qualified REIT dividends may pay section 199A dividends to the RICs' shareholders. ICI and Nareit thus recommend that the Treasury Department and the IRS issue final regulations that adopt these rules as proposed. We believe that the Congress intended to permit RICs to pass through the character of qualified REIT dividends so that RIC shareholders can take advantage of the deduction under section 199A. In general, the tax law strives to provide RIC shareholders with tax treatment comparable to the treatment that would result if they held the RIC assets directly. In issuing the proposed regulations, the Treasury Department and the IRS appropriately have used the regulatory authority granted under the Internal Revenue Code. In addition to the general regulatory authority provided under section 7805(a), section 199A(f)(4) provides that the Secretary "shall prescribe such regulations as are necessary to carry out the purposes of this section...." We believe that expressly permitting RICs to pass through qualified REIT dividends would do just that, by permitting taxpayers to take the deduction provided under section 199A. Given the intent of the statute and the regulatory authority provided, ICI, Nareit, and their respective members believe that the proposed regulations provide the guidance necessary to permit RIC shareholders to utilize the deduction under section 199A for qualified REIT dividends. We thus ask the Treasury and the IRS to adopt these rules when they finalize the regulations. Thank you for your continued consideration of our concerns. Please do not hesitate to contact Karen Gibian (202-371-5432 or kgibian@ici.org) or Cathy Barré (202-739-9422 or cbarre@nareit.com) if you would like to discuss these issues further. Sincerely, Cathy Barré Karen Lau Gibian Executive Vice President & General Counsel Associate General Counsel, Tax Law Nareit Investment Company Institute cc: Michael Novey, Esq. Holly Porter, Esq. Helen Hubbard, Esq.