

**House Bill 1280 Testimony by Garry Pierce
December 10, 2009**

Mr. Chairman and members of the Committee,

My name is Garry Pierce. I started in the securities business in 1970. My company, Garry Pierce Financial Services, LLP, is a member firm of FINRA or the Financial Regulatory Authority (formerly the National Association of Securities Dealers). My firm sells real estate investment trusts (REITS) which are similar to mutual funds but invest in income properties, mainly in North Dakota. North Dakota is unique because it has three real estate investment trusts. No other state in the six state region has even one. Two of North Dakota's real estate investment trusts are non-publicly traded. These investments are sold by prospectus which must be examined and cleared for sale by the North Dakota Securities Department. In recent years, the Department has required suitability standards (included at the end of this testimony) which investors must meet before they are allowed to invest. These include income and net worth. These standards were issued by the North American Securities Administrators Association, Inc. or NASAA which is not a branch of government but an association of state regulators, each of whom is responsible to their respective state legislatures. Since these standards are required by the Department before a prospectus can be used, the Department, in effect, puts the burden on the brokers to enforce these requirements on the public.

This is no different than the Transportation Department requiring all North Dakota car dealers to obtain proof of a certain income or net worth from a customer before they could purchase a vehicle. Or the Real Estate Commissioner requiring all licensed agents to require proof of a certain income or net worth before someone could purchase a home. In each case, that is the buyer's business - not the State's. Securities are also property. These requirements are denying American citizens the right to own property. The Fifth Amendment to the Constitution says that we may not be denied life, liberty or property without due process of law. I don't think NASAA even considered the political implications of what they were doing. The Securities Department has argued that there was public input for these NASAA standards because they were published on the Commerce Clearing House website. I would invite the Committee to consider how many North Dakota families routinely consult the Commerce Clearing House website to see if there might be regulations pending that would affect their ability to invest. They rightfully look to their state government for such information.

Brokers around the country already are extensively regulated by FINRA, and have been for decades. Our first duty is to ensure that an investment is suitable for the investor. Here is our Rule Book. On page 4,261, Rule 2310 states:

(a) "In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

Notice that this rule does not contain dollar amounts but allows the broker flexibility in each situation. And, after all, it is the broker who is directly responsible for any investment sale and yet, under these standards, the broker does not have the authority to decide what is best for the customer. Our FINRA Rule Book contains everything in the NASAA standards and then some. By rejecting the NASAA standards, all the Committee would lose would be an unnecessary layer of rules.

The Securities Department informed me that these standards were "guidelines" but mandatory. The United States Supreme Court addressed this very issue recently in the Blakely decision. The Justice Department had issued guidelines to District Court judges requiring them to sentence crack cocaine offenders more severely than other drug offenders. The District Court judges disagreed and the matter went to the Supreme Court. The Supreme Court decided in favor of the District Court judges and against the Justice Department, stating that a guideline was just that. Although the District Court judges were bound to consider the guidelines in their deliberations, they had a better understanding of the facts in each particular case than did the Justice Department back in Washington, D.C. Likewise, brokers can make a better decision for their customers than a one-size-fits-all guideline from the Securities Department. And these standards affect real people. Many times over the years, I have worked with people who were good candidates for these real estate investment trusts, only to have to tell them, if they asked, that they wouldn't qualify. Invariably, I would see the same puzzled look. But the saddest cases were those who I knew before hand couldn't qualify, so I never explained the investments to them. They never had a chance. They were left to invest in companies that regulators, up until two years ago, deemed acceptable, requiring no suitability standards - large, publicly traded, respected companies - names like Fannie Mae, Freddie Mac, Lehman Brothers, AIG, General Motors. All these companies are now bankrupt or their share prices have been decimated. And our local real estate investment trusts? INREIT's share price is still \$14. Their dividend is still 5.32%. Dakota REIT's share price is still \$8, and their dividend is still 5.88%. In March of this year, when the New York markets were in free fall and there was panic in the air, I called Jim Knutson, the executive vice president of Dakota REIT and asked him what the outlook was for their dividend. His answer? "Gee, I don't think we can raise it right now".

Real estate investment trusts are sometimes misunderstood even by regulators. In earlier testimony the Securities Department referred to REITS as illiquid investments, confusing them with limited partnerships in which a general partner can deny an investor the right to sell their units. All real estate investment trust shares are freely transferable. And both INREIT and Dakota REIT have had secondary markets for their shares for years - it's in their prospectuses. Brokers are allowed to match buyers and sellers at the current prospectus offering price with the real estate investment trust settling the transaction. I know that this is true because I devised this method and had it approved by our national regulator, FINRA, through their District Office number 4 in Kansas City on September 3, 2004

These NASAA standards are an example of the culture of our national regulators in recent years - it's easier to make new rules rather than enforce the rules that are already there. I can think of no better example than the case of Bernard Madoff. An investment manager named Harry Markopolis attempted to alert the Securities and Exchange Commission six years ago to the fact that Bernard Madoff could not possibly be paying the returns he was paying based upon the investment strategy that Madoff claimed he was using. Markopolis said the calculations to prove this took him less than an hour. The SEC investigated Madoff several times after that but never seemed to ask the right questions. The SEC never did uncover the scandal. Madoff turned himself in.

Warren Buffet, the pre-eminent investor of our time, wrote to the SEC about the dangers of not regulating derivative investments. They ultimately contributed to the Crash of 2009. Warren Buffet wrote his letter in 1982.

I would respectfully suggest that the Committee reject the NASAA suitability standards and direct the Securities Department to notify any real estate investment trusts subject to the standards that they no longer apply in North Dakota.

Thank you Mr.Chairman and members of the Committee.

INREIT

WHO MAY INVEST

The Subscriber will become a Shareholder when the following representations are made to the Trust:

- 1.....The Subscriber is not a minor under the laws of the State of North Dakota and warrants and represents to be a bona fide resident of the State of North Dakota.
- 2.....The undersigned acknowledges receiving, prior to executing this Subscription Agreement, the Prospectus of the INREIT, to include its exhibits and attachments.
- 3.....The Subscriber has either (i) a minimum annual gross income of at least \$45,000 and a net worth (exclusive of home, home furnishings, and automobiles) of \$45,000; or (ii) a net worth (determined with the foregoing exclusions) of at least \$150,000. Assets included in the computation of net worth may be valued at fair market value. Gross annual income is based upon actual income an investor had during the last tax year, or is estimated to have during the current tax year.
- 4.....This suitability standard will not apply to purchases of less than \$25,000 of Shares in cases where such subscription does not exceed ten percent (10%) of the Subscriber's net worth, which in all cases will be calculated exclusive of home, furnishings, and personal automobiles.
- 5.....The Subscriber, if acting in a representative or fiduciary capacity, the above representations and warranties shall be deemed to have been made by the person(s) or entity, any of whom are bona fide residents of the State of North Dakota.
- 6.....The Subscriber, if acting in a representative or fiduciary capacity for a corporation, limited liability company, partnership, pension plan or trust, or as custodian or agent for any person or entity, has full authority to enter into this agreement in such capacity and on behalf of such entity.
- 7.....Upon the Subscription Agreement being executed and accepted by the Trust, the sale occurs effective as of that date. When the entire consideration is paid and received by the Trust as required herein, an acknowledgment certificate representing the Shares/Units purchased will thereafter be issued.
- 8.....The Subscriber hereby acknowledges and agrees that Subscriber is not entitled to cancel, terminate or revoke this subscription or any agreements of the Subscriber hereunder and that such subscription and agreements shall survive the death or disability of the Subscriber.
- 9.....Upon the execution of the Subscription Agreement and the delivery thereof, the Subscriber covenants and has agreed to be bound by and governed by each and all of the provisions of the Declaration of the Trust, (attached here to as **Exhibit A**), to the Prospectus, and also to any valid and enforceable amendments thereto which may be subsequently adopted, and that the requested information as disclosed on page 2 of the Subscription Agreement is true and correct and the Trust is entitled to rely upon its accuracy and completeness.
- 10.....Subscriber will provide the necessary and required information to the Trust so as to qualify the investment as a REIT under Internal Revenue Service laws, rules and regulations.

SUMMARY OF THE OFFERING

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Prospectus. Certain capitalized terms used in this Summary and throughout this Prospectus are defined under "Glossary."

The Trust. INREIT Real Estate Investment Trust ("INREIT") is a registered but unincorporated business trust and has been formed under North Dakota law. The trust intends to qualify as a REIT. The Trust has a term of existence which qualifies under North Dakota law. The Trust will initially invest in properties primarily in North Dakota that the Board of Trustees considers suitable investments. Properties can and may include commercial properties and multi-family dwellings, such as apartment buildings and senior assisted or independent living centers. The Trust's principal office is located at 216 South Broadway, Suite 202, Minot, North Dakota 58701, phone 701-837-1031.

Dakota REIT

WHO MAY INVEST

This offering is available to residents of the state of North Dakota who have either (i) a minimum annual gross income of at least \$45,000 and a minimum net worth (exclusive of home, home furnishings and automobiles) of \$45,000; or (ii) a net worth (determined with the foregoing exclusions) of at least \$150,000. Assets included in the computation of net worth may be valued at fair market value. Gross annual income is based upon actual income an investor had during the last tax year, or is estimated to have during the current tax year.

This suitability standard will not apply to purchases of less than \$25,000 of Shares in cases where such subscription does not exceed ten percent (10%) of the Subscriber's net worth, which in all cases will be calculated exclusive of home, furnishings, and personal automobiles.