JLL
Income Property Trust℠

333 West Wacker Drive, Suite 2300, Chicago Illinois 60606
Tel +1 312 897 4000 Fax +1 312 897 4001
www.jllipt.com

July 14, 2017

VIA EMAIL

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506
(pubcom@finra.org)

Re: FINRA Regulatory Notices 17-14 and 17-15

Dear Ms. Mitchell:

This letter is submitted by Jones Lang LaSalle Income Property Trust, Inc. ("JLL Income Property Trust") and LaSalle Investment Management Distributors, LLC ("LaSalle Distributors"), a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"), in response to FINRA's requests for comment issued on April 12, 2017 pursuant to FINRA Regulatory Notices 17-14 and 17-15. JLL Income Property Trust is an institutionally managed, daily net asset value ("NAV") real estate investment trust ("REIT") that has operated as a perpetual-life, publicly offered non-listed REIT ("PLR") since 2012. As of December 31, 2016, JLL Income Property Trust owned interests in a total of 70 properties, 69 of which are located in 18 states and one of which is located in Canada, with an investment amount of approximately $2.2 billion and comprising approximately 13.5 million net rentable square feet. LaSalle Distributors has been a FINRA member since 2012 and serves as the dealer manager for JLL Income Property Trust's continuous public offering by coordinating the distribution effort, managing relationships with participating broker-dealers and providing assistance with compliance matters. JLL Income Property Trust's sponsor, Jones Lang LaSalle Incorporated, is a leading professional services firm that specializes in real estate and investment management with a portfolio of approximately three billion square feet worldwide, and LaSalle Investment Management, Inc., JLL Income Property Trust's advisor, is one of the world's largest managers of institutional capital invested in real estate and real estate-related assets. Together we are pleased to submit this letter in response to FINRA's request for comment relating to FINRA rules affecting capital formation. We appreciate FINRA's efforts to engage in continued review of its rules in response to changes in the capital markets and its willingness to consider the effectiveness and efficiency of its existing rules in practice.

Under FINRA Regulatory Notice 17-15, FINRA's proposed amendments to FINRA Rule 5110 (the "Corporate Financing Rule") include adding follow-on offerings of closed-end "tender offer" funds ("Tender Offer Funds")[1] that routinely make self-tender offers and need to be in continuous distribution to offset net redemptions to the list of offerings exempt from the filing requirements of the Corporate Financing Rule, although they would remain subject to the Corporate Financing Rule's prohibitions on unreasonable underwriting terms and arrangements. FINRA Regulatory Notice 17-15 also proposes

[1] Tender Offer Funds are registered closed-end management investment companies that make periodic self-tenders in compliance with Rule 13e-4 and Schedule 13E-4 under the Securities Exchange Act of 1934, as amended.

making compensation for distribution of continuously offered Tender Offer Funds subject to the limitations of FINRA Rule 2341 (Investment Company Securities). We believe that FINRA should extend similar treatment to that which it proposes to give to continuously offered Tender Offer Funds to PLRs by exempting PLRs from the filing requirements of the Corporate Financing Rule and by making PLRs subject to the sales charge limitations of FINRA Rule 2341 rather than the limitations of FINRA Rule 5110 and FINRA Rule 2310 (Direct Participation Programs) or, alternately, amend FINRA Rule 2310 to provide sales charge limits similar to FINRA Rule 2341 for continuously offered PLRs.

With respect to sales charge limitations, we believe that FINRA should take the same approach with continuously offered PLRs that it takes with open-end investment management companies under the Investment Company Act of 1940, as amended (the "1940 Act") ("Open-End Funds"),[2] certain closed-end management companies ("Closed-End Funds")[3] that make periodic repurchases of their securities under Rule 23c-3(b)[4] of the 1940 Act ("Interval Funds") and offer their shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933, as amended (the "Securities Act"),[5] and proposes to take with continuously offered Tender Offer Funds because PLR's are structured in a manner more like Open-End Funds and continuously offered Interval Funds and Tender Offer Funds. Given the similarities between the manner in which PLRs are offered and sold to investors and the means by which PLR investors obtain liquidity for their shares to the manner in which Open-End Funds, continuously offered Interval Funds, and continuously offered Tender Offer Funds are offered and sold and by which their investors obtain liquidity, we believe that the limit on underwriting compensation under FINRA Rule 2310 of 10% of the gross proceeds of an offering (excluding securities purchased through the reinvestment of dividends), taking into account "the total amount of all items of compensation from whatever source, including compensation paid from offering proceeds and in the form of 'trail commissions,' payable to underwriters, broker-dealers, or affiliates thereof" is inappropriate for PLRs.[6] Rather, we believe that, similar to Open-End Funds and continuously offered Interval Funds, and as proposed for continuously offered Tender Offer Funds, FINRA Rule 2341's requirements that anticipate ongoing asset-based sales charges for continuous offerings, as opposed to a hard cap on the gross proceeds of an offering, would be more appropriate for PLRs.

We believe that relief for PLRs from the filing requirements of the Corporate Financing Rule relief and the application of the sales charge limitations of FINRA Rule 2341 would greatly improve investor access to PLRs, allowing PLRs to raise capital more effectively and efficiently, which in turn would allow investors greater potential for diversification among asset classes and types and across investment vehicles without compromising investor protections. Furthermore, if this relief is granted, we believe that small and

---

[2] Section 5(a)(1) of the 1940 Act defines "open-end company" as "a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer." 15 U.S.C. 80a-5(a)(1).

[3] Section 5(a)(2) of the 1940 Act defines "closed-end company" as "any management company other than an open-end company." 15 U.S.C. 80a-5(a)(2). While Closed-End Funds are subject to the core provisions of the 1940 Act that also apply to Open-End Funds, including prohibitions on affiliated transactions, obligations requiring stockholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements, they are not subject to other 1940 Act restrictions applicable to Open-End Funds, including limitations on leverage and obligations pertaining to the liquidity of investments.

[4] 17 CFR 270.23c-3(b).

[5] We note that not all "interval funds" are continuously offered. *See* Securities Exchange Act Release No. 42965 (June 20, 2000); 65 F.R. 39640 (June 27, 2000).

[6] FINRA Rule 2310(b)(4)(B)(ii).

large real estate investment management firms would create substantial new jobs and spur economic growth, consistent with FINRA's stated objectives in FINRA Regulatory Notice 17-14.

PLRs vs. Traditional Non-Listed REITs

A PLR is a type of non-listed REIT that registers with the Securities and Exchange Commission (the "SEC" or the "Commission") pursuant to a registration statement on Form S-11 under the Securities Act. Public offerings of non-listed REITs are generally subject to the sales charge limitations of Rule 2310. Currently, there are two types of non-listed REITs offering shares to the public in the market, traditional non-listed REITs, which have offered shares for over 20 years, and PLRs, which have only begun to raise significant capital in the last few years. Traditional non-listed REITs have a finite date for liquidation (generally five to ten years after the initial public offering begins) and offer only very limited liquidity prior to the consummation of a liquidity event, which may be a listing of the REIT's shares on a national securities exchange, a sale or merger in which stockholders receive cash and/or listed securities in exchange for their shares of the REIT or a liquidation of the REIT's assets followed by a distribution of the cash proceeds to stockholders. Prior to a traditional non-listed REIT's liquidity event, liquidity is available through the traditional non-listed REIT's share repurchase plan only on a very limited basis at steep discounts and is generally intended to be available only for unexpected circumstances such as death or disability. Traditional non-listed REIT share repurchase plans also typically only redeem up to 5% of the outstanding shares on an annual basis.

In contrast, PLRs intend to conduct a continuous offering of an unlimited amount of shares of common stock, generally of multiple share classes, over an unlimited time period, by filing a new registration statement prior to the end of the three-year period described in Rule 415 under the Securities Act. PLRs have no finite date for liquidation, and the only anticipated source of liquidity for stockholders is the PLR's share repurchase plan. While traditional non-listed REITs generally offer shares to the public at an arbitrary fixed price, PLR shares are offered for sale on a daily or monthly basis at the NAV per share for shares of such share class, plus any applicable up-front fees, and the PLR repurchases such shares on a daily or monthly basis at the NAV per share for such share class.

The PLR's perpetual-life structure was designed to address the well-known shortcomings associated with traditional non-listed REITs by simplifying the capital raising process to benefit investors through lower fees payable to broker-dealers and the REIT's external advisor, more liquidity and flexibility with respect to investment timing decisions and better alignment of the advisor's interests with those of investors. Greater details on customary fees and repurchase programs of PLRs are provided below, but the principal benefits include:

- *Greater Portion of Offering Proceeds Immediately Available for Investment and lower fees over the traditional non-listed REIT.* A greater percentage of the PLR's offering proceeds will be immediately available for investment because the PLR will pay lower up-front selling fees. Approximately 87% of a traditional non-listed REIT's offering proceeds are available for immediate investment after the payment of selling commissions, dealer manager fees and acquisition fees, whereas PLRs frequently have 97% or higher offering proceeds available for immediate investment. This enables PLRs to generate higher returns for investors over time than traditional non-listed REITs. Over a seven-year investment holding period (the approximate average expected life of traditional non-listed REITs), an investor is also likely to pay less selling compensation compared with the total up-front selling compensation typically paid with respect to traditional non-listed REITs due to the lower up-front fees.

- *Alignment of Financial Advisors' Incentives with Investors' Goals.* By structuring a portion of the selling compensation in the form of NAV-based trail fees, PLRs create an ongoing incentive for financial advisors to monitor and service their clients' investments in the PLR, as well as for financial advisors to continue to market the PLR to create a larger investment base. Traditional non-listed REITs, which offer very limited liquidity and require up-front payment of all selling compensation, provide little incentive to service a stockholder's investment on an ongoing basis. There is little need for financial advisors to monitor stockholders' investments in traditional non-listed REITs in order to determine the optimal time for liquidation, review investment performance or to ensure the investment is consistent with an investor's financial goals because, as described above, these products are offered at a static, arbitrary amount for extended periods of time without valuing the underlying assets and these stockholders do not have the opportunity to liquidate their investment at the time of their choosing absent the very limited redemption plans that are intended for emergency use only.

  Traditional non-listed REIT shares are offered at a single price and even the current customer account statement requirements under FINRA Rule 2340 only require an annual valuation of the REIT shares commencing 150 days after the two year anniversary of the escrow break for the REIT's initial public offering. As a result, financial advisors do not need to monitor investments in traditional non-listed REITs on a regular basis because the share values change so infrequently. However, for PLRs the share prices change on a monthly or even daily basis, as in the case of JLL Income Property Trust, to reflect changes in the underlying value of the REIT's changing portfolio of investments. These frequent pricing adjustments require that financial advisors constantly monitor investments in PLRs on behalf of stockholders. In addition, the fact that PLRs exist for an indefinite amount of time means that these financial advisor responsibilities remain in place permanently (so long as the investor's investment remains outstanding), and financial advisors should continue to be compensated appropriately while they are providing these and other stockholder servicer services, rather than be limited by arbitrary offering-based caps. The PLR's perpetual life structure also allows financial advisors to keep investors in an investment that fits their portfolio and investment goals without having to recycle, as they would in the case of a traditional non-listed REIT upon its liquidity event. Moreover, to the extent liquidity is available to a stockholder of a traditional non-listed REIT through its limited share repurchase program, the up-front payment of all selling compensation creates a perverse incentive for financial advisors to encourage their clients to seek redemption of their shares sooner than may otherwise be in the client's best interest in order to reinvest in other products for the sole purpose of generating additional fees. Finally, the ongoing fees paid by PLRs provide incentives for financial advisors to continue to expand a PLR's stockholder base, which helps to lower the overall overhead costs incurred by the PLR due to the expanding stockholder base over which a PLR can spread these expenses. This means that more funds are available for investment and distribution to stockholders of the PLR.

- *More opportunity to redeem shares without penalty and participate in share appreciation*. As described below, PLRs have expanded share repurchase programs, which allow investors to hold their investments for widely varying periods of time.

> PLRs provide daily or monthly valuations of their share values based on the appraised value of the underlying assets and redeem their shares based on these valuations. PLRs also charge substantially lower up-front fees. These features allow investors to immediately participate in any appreciation in value in their shares over the time period for which they hold their shares, rather than having to wait seven years or longer for a liquidity event to participate in any appreciation in value of the underlying assets, and enable stockholders with relatively shorter holding periods to redeem their shares without incurring a 10% loss (the typical penalty charged by traditional non-listed REIT repurchase plans), which loss unfairly penalizes redeeming stockholders with relatively shorter holding periods. This means that an investor in a PLR can redeem out without losing a large portion of his or her investment immediately due to up-front costs, while at the same time experiencing an appreciation in the underlying value of his or her shares.

Unlike traditional non-listed REITs, a PLR's share repurchase plan is intended to be the primary source of liquidity for stockholders. Subject to certain limitations, PLR share repurchase plans are intended to allow stockholders the opportunity to request that the PLR repurchase their shares in an amount up to approximately 20% of the PLR's NAV per year. Some PLRs, including JLL Income Property Trust, require a one-year holding period before shares are eligible for repurchase. Others do not have any holding period requirement, but rather impose a short-term trading discount of 2% for shares redeemed within the initial year after purchase. Even with the short-term trading discount however, a stockholder would still be able to participate in any appreciation in the NAV and would have lower up-front costs than the traditional non-listed REIT's costs of 10% up-front sales charges. This frequently means that a PLR will redeem up to 5% of its NAV in any given quarter and potentially up to 10% in a given quarter because unused amounts in a previous quarter can be rolled over into subsequent quarters, whereas a traditional non-listed REIT is generally limited to redeeming 5% of its shares in a calendar year. PLR repurchase requests are generally fulfilled on a first-come, first-served basis, but may be filled on a per stockholder allocation basis, if the cap is reached in any given quarter.

While a PLR's board of directors' primary objective regarding share repurchase plans is generally to maintain the uninterrupted repurchase of shares in order to provide stockholders with liquidity in respect of their investment in the PLR, the board of directors has the ability to suspend the repurchase of shares in appropriate circumstances, as well as to make appropriate modifications to the share repurchase plan to ensure its effective operation. The fiduciary duties of the board of directors require that any decision to modify or suspend the share repurchase plan must be made in good faith, with a reasonable belief that the action is in the best interest of the PLR and its stockholders.

Sales charges for PLRs typically consist of a combination of up-front and trailing commissions and fees. The up-front sales commission usually ranges from 0% to 3.5%, the upfront dealer manager fee usually ranges from 0% to 0.5%, and the trailing distribution, dealer manager or stockholder servicing fees ("trailing fees") are paid annually on a trailing basis and range from 0.05% to 1.05% of average daily net assets, each of which varies by share class. We note that the cumulative fees, including stockholder servicing fees, remain subject to the overall 10% cap on underwriting compensation and the 15% cap on organization and offering costs under FINRA Rule 2310, and PLRs are currently required to monitor such fees and stay within the caps. In practice this means that PLRs must monitor FINRA Rule 2310's caps for purposes of each three-year offering that they conduct under Rule 415 under the Securities Act and have to terminate all fees with respect to shares sold in an offering once they reach the caps for the offering. We believe that regulating PLRs under FINRA Rule 2341 instead would greatly simplify the sales and monitoring process, again lowering costs and increasing capital flows, which would benefit all investors.

Traditional non-listed REITs, by contrast, have typically only had a one-time up-front sales commission of approximately 7% and a one-time up-front dealer manager fee of approximately 3%. Although traditional non-listed REITs typically do not have trailing fees, we note that some have recently begun incorporating annual trailing fees of up to 1.125%, in connection with marginally lower up-front fees. These fees are also subject to the overall 10% cap of the gross offering proceeds of FINRA Rule 2310 and the traditional non-listed REIT would need to terminate such fees if it reached the 10% cap.

The dealer manager fees, whether upfront or trailing, for PLRs are generally paid to the dealer manager in consideration of the distribution, marketing and ongoing services that the dealer manager provides to the PLR in connection with the continuous offerings. All or a substantial portion of the dealer manager fee and/or distribution fee is reallowed to participating broker-dealers as compensation to the participating broker-dealers based on, among other factors, certain asset thresholds of shares under management and to compensate the participating broker-dealers for their role in distributing and marketing the PLR's shares. All or a substantial portion of the stockholder servicing fees are generally reallowed to participating broker-dealers for providing ongoing services to those stockholders who invest through that particular broker-dealer, thus saving the dealer manager that expense. Stockholder services provided by participating broker-dealers in consideration for these trailing fees include: assistance with recordkeeping; answering investor inquiries regarding the PLR, including regarding distribution payments and reinvestments; helping investors understand their investments upon their request; and assistance with share repurchase requests. PLRs utilize various combinations of trailing fees to compensate for a variety of distribution and stockholder servicing expenses, whereas traditional non-listed REITs have only begun to utilize trail fees to compensate for providing stockholder services.

Regulating PLRs under FINRA Rule 2341 would also be fairer to stockholders of varying share classes not sold through wrap or other similar accounts. Investors through wrap or other similar accounts pay their financial advisors a fee based on the client's assets under management and are eligible to purchase PLR share classes that do not bear any upfront sales charges or trailing fees. The financial advisors to wrap and similar account investors provide similar monitoring and stockholder services that investors in other share classes receive from their financial advisors who are paid the trailing fees in consideration for such services. Allowing PLRs to be regulated under FINRA Rule 2341 would enable all financial advisors whose clients hold PLR shares to receive appropriate compensation for providing similar services to investors for the life of their investment, regardless of share class, as opposed to an arbitrary cut-off date for compensation paid on brokerage account share classes during the life of the investment under current rules.

Similarities Between PLRs, Open-End Funds and Continuously Offered Interval Funds

The manner in which shares of PLRs are structured, and in which stockholders realize liquidity for their shares, as discussed above, is more like Open-End Funds and continuously offered Interval Funds than it is like traditional non-listed REITs. Like Open-End Funds and continuously offered Interval Funds, which price and offer their shares daily at NAV, PLRs generally conduct a series of continuous offerings of an unlimited amount of shares of common stock, over an unlimited time period, by filing a new registration statement prior to the end of the three-year period described in Rule 415 of the Securities Act.

Like Open-End Funds and continuously offered Interval Funds, PLRs offer to repurchase their shares at NAV from stockholders. More like Open-End Funds, PLRs offer to repurchase their shares on a daily or monthly basis, while continuously offered Interval Funds do so periodically. Unlike Open-End Funds but similar to continuously offered Interval Funds, the amount of a PLR's assets that can be repurchased during a particular period is limited to a certain percentage of the PLR's total assets (*i.e.*, in an amount up to approximately 20% of the PLR's NAV per year).

Additionally, PLRs' trailing fees are much more like the fees charged by Open-End Funds and continuously offered Interval Funds than they are like the fees of traditional non-listed REITs. While traditional non-listed REITs typically have a high up-front sales commission of 7%, as well as an up-front dealer manager fee of 3%, PLRs generally have a lower up-front sales commission and upfront dealer manager fee, and a trailing distribution and/or stockholder servicing fee. Open-End Funds and continuously offered Interval Funds tend to have an up-front sales commission of up to 5.75% and an ongoing distribution and/or shareholder servicing fee, or in the case of an Open-End Fund, a Rule 12b-1 fee,[7] of up to 1.00%, depending upon share class. We believe that the trailing fees that PLRs pay are comparable to distribution and/or shareholder servicing fees paid by Open-End Funds pursuant to Rule 12b-1 under the 1940 Act, as well as the equivalent fees paid by continuously offered Interval Funds pursuant to exemptive relief under the 1940 Act.[8] Under FINRA Rule 2341, however, the shareholder servicing component of these trailing fees paid by Open-End Funds and continuously offered Interval Funds, whether paid pursuant to or outside of a Rule 12b-1 plan, are not subject to the asset-based sales charge limits of the Rule.[9] Similar fees paid by continuously offered PLRs, on the other hand, are currently subject to the 10% cap on underwriting compensation under FINRA Rule 2310, thereby limiting how long such fees for the provision of ongoing stockholder services may be paid to those continuing to provide such services.

Distinctions Between PLRs, Open-End Funds and Continuously Offered Interval Funds

While continuously offered PLRs have numerous similarities to Open-End Funds and continuously offered Interval Funds in the manner in which their shares are offered and sold, we acknowledge that there are some differences between the vehicles, namely that PLRs, unlike Open-End Funds and continuously offered Interval Funds, are not registered under the 1940 Act. Additionally, both Open-End Funds and continuously offered Interval Funds are required by the 1940 Act to redeem their shares at certain periods – daily in the case of Open-End Funds. In the case of an Interval Fund, Rule 23c-3(b)(2)(i) of the 1940 Act requires that the Interval Fund's board of directors establish as a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the Interval Fund, that they will make periodic repurchases of the Interval Fund's shares.

Distinctions Between PLRs, Open-End Funds and Continuously Offered Interval Funds Should not be Determinative with Respect to the Requested Relief

While Not Subject to the 1940 Act, PLRs are Subject to Extensive Regulation

While PLRs are not regulated under the 1940 Act, both PLRs and traditional non-listed REITs are highly regulated under the Internal Revenue Code of 1986, as amended (the "Code") and the Statement of Policy Regarding Real Estate Investment Trusts, as revised and adopted by the NASAA membership on May 7, 2007 (the "NASAA REIT Guidelines") through the blue sky jurisdictions. Unlike typical corporations, the Code requires REITs to annually distribute 90% of their taxable income as distributions to their stockholders. The Code also has strict parameters regarding the type of investments REITs can make and how REITs can generate income. REITs must invest at least 75% of their total assets in real estate assets and cash; they must derive at least 75% of their gross income from real estate related sources, including rents from real property and interest on mortgages financing real property; they must derive at least 95% of their gross income from such real estate sources and dividends or interest from any source; and they must have no more than 25% of their assets consist of non-qualifying securities or stock in taxable

[7] 17 C.F.R. § 270.12b-1. Rule 12b-1 fees can be used to pay for distribution and/or shareholder servicing. Under FINRA Rule 2341, up to 75 basis points of this fee may be for distribution and up to 25 basis points may be for shareholder services with an effective annual cap of 100 basis points for Rule 12b-1 fees.

[8] Pursuant to multi-class exemptive orders, many Interval Funds offer multiple classes of shares that include distribution fees and/or shareholder servicing fees that are similar to Rule 12b-1 fees.

[9] We acknowledge that FINRA Rule 2341 caps shareholder servicing fees at 25 basis points annually.

REIT subsidiaries. These requirements force REITs to invest in income producing real estate-related assets and to automatically distribute that income to stockholders, unlike regular corporations that can be operated for any lawful purpose and are not required to make distributions to their stockholders.

PLRs, which are continuously offered, are also continually subject to the NASAA REIT Guidelines and the disclosure requirements under the Securities Act, unlike regular corporations. In addition to owing duties to the PLR and its stockholders under state corporate law, the board of directors of a PLR has specifically enumerated responsibilities under the NASAA REIT Guidelines. The board of directors:

(1) Must have a minimum of three directors, a majority of which must be independent directors, and all of which must have had at least three years of relevant experience acquiring and managing the type of assets being acquired by the REIT, and at least one of the independent trustees must have three years of relevant real estate experience;

(2) Must take on a specific fiduciary duty to the stockholders to supervise the relationship with the REIT's external advisor;

(3) Must establish written policies on investments and borrowing and monitor the administrative procedures, investment operations and performance of the REIT and the advisor to ensure such polices are carried out;

(4) Must annually review the performance, qualifications and compensation of the advisor based on enumerated factors under the NASAA REIT Guidelines; and

(5) Must at least annually determine (with a majority of the independent directors concurring) that the total fees and expense 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, and each such determination must be reflected in the minutes of the board of directors.

A PLR's advisor and sponsor must also make additional commitments to the PLR, unlike typical corporations that may not have the ongoing support and expertise of larger, experienced entities. The advisor is required to agree to be a fiduciary to the REIT and its stockholders, and the advisor's contract, qualifications, payment and performance must be reviewed annually by the board of directors. The sponsor is also required to make an initial contribution to the REIT not less than $200,000.[10] The sponsor may not sell this investment while the sponsor remains the sponsor (although it may transfer the interest to an affiliate), in order to align its interests with those of the stockholders. Unlike traditional corporations that may have no minimum investment requirements or protections, the sponsor must propose a minimum income and net worth standard that is reasonable given the type of REIT and the risks associated with the purchase of the shares. Minimum suitability amounts are an annual gross income of $70,000 and a minimum net worth of $70,000 or a minimum net worth of $250,000, and net worth must be determined exclusive of home, home furnishings and automobiles. In addition to the minimum suitability amounts, the sponsor and each person selling shares must make every reasonable effort to determine that the purchase of shares is a suitable and appropriate investment for each stockholder by ascertaining that the stockholder meets the minimum income and net worth standards established; can reasonably benefit from the investment based on the stockholder's overall investment objectives and portfolio structure; is able to bear the economic risk of the investment based on the prospective stockholder's overall financial situation; and that the stockholder has an apparent understanding of (1) the fundamental risk of the investment, (2) the risk that the stockholder

[10] While a $200,000 investment is required, PLR sponsors generally invest in substantially greater amounts. Jones Lang LaSalle Incorporated, for example, has made a $50 million investment in JLL Income Property Trust.

may lose the entire investment, (3) the lack of liquidity of the shares, (4) the restrictions on transferability and (5) the tax consequences of investment. The sponsor and each person selling shares must obtain information from the stockholder in order to make this determination and must keep the information used to determine that an investment is suitable and appropriate for six years. These suitability requirements provide additional protections to the stockholders of PLRs that are not necessarily required for investors in regular corporations.

Stockholders of PLRs also are guaranteed certain voting rights under the NASAA REIT Guidelines, including the right to amend the declaration of trust, terminate the REIT and remove directors on a majority vote. Without a majority of the outstanding shares, the board of directors may not amend the charter to adversely affect the rights of the stockholders, sell all or substantially all of the REIT's assets, cause the merger or other reorganization of the REIT, or to dissolve or liquidate the REIT. The NASAA REIT Guidelines also provide for certain voting and appraisal rights in connection with any roll-up transaction. Stockholders are entitled to annual reports including certain disclosures related to capital raised, fees, affiliated transactions and whether the independent directors have determined that the REIT's policies are in the best interest of stockholders and must have appropriate access to records. These items are in addition to the corporate requirements under state law and the disclosures required in the PLR's offering documents under the Securities Act and the ongoing disclosure requirements of the Securities and Exchange Act of 1934, as amended.

PLRs also have additional restrictions under the NASAA REIT Guidelines on the fees that can be paid in connection with their operations and common transactions. These are additional restrictions over regular corporations and even publicly-listed REITs or private REITs, which are not subject to the NASAA REIT Guidelines. On an ongoing basis, the PLR's total operating expenses may not be greater than 2% of the average invested assets or 25% of the net income for each year, and the aggregate borrowings of the PLR must be reasonable in relation to its net assets and reviewed quarterly by the board of directors. The PLR's borrowings in relation to its net assets also generally must not exceed 300%. With respect to each continuous offering of the PLR, organization and offering expenses may not exceed 15% of the proceeds raised. Any incentive fees paid by the PLR should generally not exceed 15% of the balance of proceeds once stockholders have received a return of their initial capital and an amount equal to 6% of the original price of the shares per annum cumulative. The NASAA REIT Guidelines also provide additional restrictions on fees paid to affiliates and the types of options or warrants issuable to affiliates in order to prevent dilution of the stockholders' interests.

FINRA's Proposed Change of the Treatment of Continuously Offered Tender Offer Funds Suggests that a Fundamental Policy is no Longer Required

We note that the National Association of Securities Dealers ("NASD"), predecessor to FINRA, determined in NASD Notice to Members 00-53[11] that continuously offered Interval Funds should be exempt from the filing requirements and limitations on underwriting compensation of the Corporate Financing Rule (formerly NASD Rule 2710) and instead, similar to Open-End Funds, should be subject to the sales charge limitations of NASD Rule 2830 (now FINRA Rule 2341). At the time of Notice to Members 00-53, NASD had long applied the Corporate Financing Rule to Closed-End Funds, including continuously offered Interval Funds, on the basis that Closed-End Fund offerings were structured and marketed in a manner that was more similar to and competitive with corporate securities offerings than to Open-End Funds.[12] NASD determined, however, that, as the distribution of continuously offered Interval Fund shares was conducted and financed in a manner more similar to that used by Open-End Funds than the method used by traditional

[11] Jun. 20, 2000 (available at http://www.finra.org/industry/notices/00-53).

[12] Securities Exchange Act Release No. 42965 (June 20, 2000); 65 F.R. 39640 (June 27, 2000).

Closed-End Funds, the sales charge limitations of NASD Rule 2830 were more appropriate for continuously offered Interval Funds.[13]

At the time of NASD Notice to Members 00-53, while NASD exempted continuously offered Interval Funds from the filing requirements and limitations on underwriting compensation of the Corporate Financing Rule, and instead subjected continuously offered Interval Funds to the sales charge limitations of NASD Rule 2830, NASD declined to grant the same relief to continuously offered Tender Offer Funds.[14] NASD's reason for declining to grant similar relief to continuously offered Tender Offer Funds was that continuously offered Tender Offer Funds, unlike continuously offered Interval Funds, did not have an equivalent fundamental policy requiring that they make periodic repurchases.[15] NASD further reasoned that the discretion afforded to continuously offered Tender Offer Funds as to whether or not they made periodic repurchases allowed such continuously offered Tender Offer Funds the ability to determine if they needed to continuously offer shares to replenish fund assets, which could in turn allow such continuously offered Tender Offer Funds to compensate broker/dealers in a manner similar to corporate issuers.[16]

As noted above, in FINRA Regulatory Notice 17-15, FINRA has proposed amendments to the Corporate Financing Rule that include adding follow-on offerings of Tender Offer Funds that routinely make self-tender offers and need to be in continuous distribution to offset net redemptions to the list of offerings exempt from the filing requirements of the Corporate Financing Rule, although they would remain subject to the Corporate Financing Rule's prohibitions on unreasonable underwriting terms and arrangements. The proposed amendments would instead make compensation for the distribution of continuously offered Tender Offer Funds subject to the limitations of FINRA Rule 2341. FINRA's proposed amendments to the Corporate Financing Rule would apply to a Tender Offer Fund that: (i) makes continuous offerings pursuant to Securities Act Rule 415; (ii) prices its securities monthly; (iii) limits the total amount of compensation paid to participating members to the amount permitted by the sales charge limitations of Rule 2341, in which case the underwriting compensation provisions of the Corporate Financing Rule would not apply; (iv) makes at least two repurchase offers per calendar year; (v) does not list its securities on an exchange; and (vi) files its initial public offering of equity with FINRA.

Most notably, the proposed amendments do not require that Tender Offer Funds have a fundamental policy regarding periodic repurchases, like Interval Funds, to be subject to FINRA Rule 2341 rather than the Corporate Financing Rule. Continuously offered Interval Funds would merely have to make two repurchase offers in a calendar year. While PLRs, like Tender Offer Funds, do not have a fundamental policy that they will make periodic repurchases, PLRs would typically make repurchases even more frequently (daily or monthly) than continuously offered Tender Offer Funds would be required under the proposed amendments.

Similar Treatment for Similarly Offered and Sold Investment Products

We believe that, for purposes of the Corporate Financing Rule, continuously offered PLRs more closely resemble Open-End Funds, continuously offered Interval Funds and continuously offered Tender Offer Funds ("Continuously Offered Investment Companies") than traditional non-listed REITs. That is, the distribution and compensation arrangements for and liquidity features of continuously offered PLRs are very similar to Continuously Offered Investment Companies. Additionally, we believe that PLRs offer

[13] *See id.* at 39642.

[14] *See id.*

[15] *See id.*

[16] *See id.*

considerable benefits to investors over traditional non-listed REITs, including: (i) providing investors the flexibility to increase or decrease their investments in the PLR as their individual situations change; (ii) minimizing the risk that their long-term investment goals will conflict with short-term liquidity needs; (iii) allowing investors to seek returns of their capital and monetize any investment gain at a time of their choice, rather than being forced to wait for a terminal liquidity event outside of their control; (iv) aligning financial advisors' incentives with investors goals and providing additional incentives for financial advisors' to continue to expand the stockholder base, thus continuing to lower the costs to individual stockholders over time; and (v) lowering fees overall, which PLRs believe will lead to greater returns over time.

As PLRs are highly regulated like Continuously Offered Investment Companies, although not by the 1940 Act, and as Regulatory Notice 17-15 seems to suggest that a fundamental policy regarding periodic repurchases is no longer a requirement, we believe that, given the similarities of how continuously offered PLR shares are structured, offered and sold compared to how shares of Continuously Offered Investment Companies are structured, offered and sold, as well as the benefits offered investors in PLRs as compared to traditional non-listed REITs, continuously offered PLRs should be afforded the same treatment as FINRA currently proposes to take with continuously offered Tender Offer Funds.

Accordingly, consistent with the goal of modernizing FINRA rules to reflect changes in the industry (and in this case, the development of a new type of non-listed REIT that is designed to be more favorable to investors than traditional non-listed REITs), we request that FINRA revise the Corporate Financing Rule and FINRA Rule 2310 to exempt continuously offered PLRs from their requirements and instead subject such PLRs to the requirements of FINRA Rule 2341. Alternatively, we request that FINRA Rule 2310 be amended to provide sales charge limits similar to FINRA Rule 2341 for continuously offered PLRs and, in particular, exclude trailing fees paid for ongoing stockholder services from such limits.

* * *

Once again, we appreciate the opportunity to submit these comments.

Sincerely,

C. Allan Swaringen
Chief Executive Officer
Jones Lang LaSalle Income Property Trust, Inc.

Jon E. Abrahamovich
Head of Intermediary Distribution
LaSalle Investment Management Distributors, LLC