



10401 North Meridian St.
Suite 202
Indianapolis, IN 46290

317.663.4180 main
317.815.0871 fax
866.353.8422 toll free

adisa.org

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VIA EMAIL to Michael Pieciak (Michael.Pieciak@vermont.gov); Mark Heurman (mark.heurman@com.state.oh.us); and nasaacomment@nasaa.org

North American Securities Administrators Association
Mr. Mark Stewart, Counsel
Ms. Anya Coverman, Deputy Director of Policy and Associate General Counsel
NASAA Legal Department
750 First Street, NE Suite 1140
Washington, DC 20002

Re: Proposed Amendment to the NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Mr. Stewart and Ms. Coverman:

On behalf of the Alternative & Direct Investment Securities Association (“ADISA”)¹, we are submitting this comment letter regarding the Notice of Request for Public Comment Regarding a Proposed Amendment (the “Proposed Amendment”) to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (“REIT SOP”). ADISA appreciates the opportunity to provide comments on behalf of its members. ADISA also appreciates the time and industry input prior to the Proposed Amendment being circulated for public comment and the ability to now have more formal input into the Proposed Amendment.

The Proposed Amendment posits inclusion in the REIT SOP of a uniform ceiling on an investor’s exposure to non-traded REITs and the sponsor’s other affiliated programs – a so-called “concentration limit.” If adopted, it would establish a ceiling (subject to adjustment, as discussed below), of ten percent of an investor’s “liquid net worth,” subject to several important exceptions. While ADISA and its members appreciate the notion that, in general, uniformity and certainty are worthwhile goals, ADISA believes that a “one size fits all” concentration limit serves neither the investing public nor industry participants well. Thus, while we applaud several elements of the Proposed Amendment,² we believe that the problematic elements that we

¹ ADISA (Alternative & Direct Investment Securities Association), is the nation’s largest trade association for the non-traded alternative investment space. ADISA represents over 4,000 financial industry members, reaching over 30,000 investment professionals (with over \$142 billion AUM) who handle over 1 million investors.

² In particular, and as discussed herein, ADISA commends NASAA for excluding accredited investors from the proposed limit. Furthermore, ADISA believes that differentiating between concentration limits and a suitability determination is helpful both to the investor and the investment professional.

identify and briefly elaborate on below more than outweigh any potential benefit associated with having a single concentration limit. For that reason, ADISA on behalf of its members, does not support the Proposed Amendment as drafted, and requests that NASAA either withdraw the Proposed Amendment or drastically re-work it to create a more flexible approach that better recognizes the investor community's need for, and interest in, diversified investment portfolios.

ADISA's fundamental concerns with the Proposed Amendment are focused on the following areas:

1. A "one size fits all" approach, even with the proposed exception for accredited investors, simply does not take into account each individual investor's circumstances and the responsibilities of his or her financial advisor to determine the optimal mix of investments for that individual investor's portfolio.
2. While the Proposed Amendment suggests a uniform concentration limit, each state administrator can use any of fourteen listed qualitative and quantitative factors to modify the concentration standard for any given program.
3. The inclusion of the term "affiliate" in the Proposed Amendment has the potential to create a different limit for each program subject to the REIT SOP, as the term is very broad and may cause various other programs and entities to be included in the proposed concentration limit.
4. Using an investor's "liquid net worth" for purposes of calculating his or her maximum exposure to non-traded REITs is not an appropriate metric, as it incorrectly links an investor's ability to invest in these programs to his or her separate decision regarding the level of liquidity the investor maintains for various and possibly wholly unrelated reasons.

"One Size Fits All" Does Not Adequately Protect Investors

FINRA Rule 2111 requires members to "have a reasonable basis" for recommending a particular investment as suitable. The FINRA member must look at the investor's "age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information" the investor provides. See FINRA Rule 2111. Registered investment advisors must adhere to a fiduciary standard with respect to recommending any investments for their clients. Given these two standards for making a recommendation to an investor with respect to a securities investment, including a non-traded REIT, ADISA does not believe that a "one size fits all" concentration limit provides any additional protection to investors different than the current regulatory system.

As we see it, given the Department of Labor's new fiduciary rule with respect to investment advice on retirement accounts and the SEC's upcoming fiduciary rule proposal expected this fall, a concentration limit should be only one factor in determining whether an investment is appropriate for any given investor and should not be limited to a set amount across the board. A particular investor may be better off with a higher concentration limit given his or her personal financial situation. Allowing financial advisors to tailor an investment portfolio that meets their client's investment needs and objectives cannot be achieved by arbitrarily limiting choices within an entire segment of the investing industry.

Importantly, NASAA has not provided any research or studies that show that investors are better protected with concentration limits in non-traded REITs. Other products, equally complex, do not have such mandated concentration limits. By singling out non-traded REITs for this type of limitation, without clear and convincing evidence that such a limitation produces the results of investor protection that NASAA is seeking, the Proposed Amendment harms investors and an entire industry that provides potential diversification options for investors.

Not Necessarily a “Uniform” Concentration Limit

While the Proposed Amendment purports to create a uniform concentration limit and requires the sponsor to propose minimum income and net worth standards for an investor, the Proposed Amendment also contains fourteen factors for state administrators to consider when determining whether to concur with a sponsor’s proposed concentration limit. These fourteen factors include factors such as the sponsor’s use of leverage, balloon payment financing, liquidity of the shares, complexity of the offering and tax implications, as well as “any other relevant factors.” Thus, a sponsor could (and probably will) propose a minimum concentration limit at the 10% liquid net worth level but each individual state administrator could determine (as it does now), that a higher (or, at least conceivably, lower) limit would be appropriate given the type of program, the sponsor’s history and the complexity of the offering, among other factors.

In addition, it is unclear whether or not a concentration limit, even at the 10% of liquid net worth level, has had or will have any benefits to investors. ADISA is not aware of any data or other evidence to suggest that the concentration limit as proposed protects investors from any perceived or actual adverse consequences of an investment in non-traded REITs.

Inclusion of “Affiliate” Creates Uncertainty and a Lack of Uniformity Across Programs

The Proposed Amendment uses the term “affiliate” and provides that investments in the REIT will be combined with any entity or program meeting this definition for purposes of the overall limit. Since the term is not defined in the Proposed Amendment, it is difficult to determine its application or reach. Since it is generally the case that various sponsors and distributors of REITs have different corporate structures and sponsor, distribute or otherwise control such entities, employing the term “affiliate” in the language of the Proposed Amendment introduces both a lack of clarity as well as likely inconsistencies in the application of the proposed standard to different programs.


“Liquid Net Worth” Is Not the Correct Measurement for Concentration Limits

“Liquid net worth” is defined as “that portion of net worth consisting of cash, cash equivalents, and readily marketable securities.” It is unclear why NASAA believes that this is the appropriate measurement for determining the limitations for investors in non-traded REITs. The federal definition of accredited investor is net worth, exclusive of home, home furnishings and automobiles. See Rule 501(a)(5) of Regulation D of the Securities Act of 1933, as amended. The federal rules do not differentiate whether the assets are liquid or illiquid, just that they do not include a person’s primary residence, its contents and automobiles. The Proposed Amendment

does not provide any compelling argument that further restricting an investor's ability to invest in non-traded REITs to a percentage of its "liquid net worth" is an appropriate measure, especially in light of each individual investor's personal decision to maintain a certain level of liquidity in its investment portfolio.

In conclusion, ADISA appreciates the opportunity to publicly comment on the Proposed Amendment. At bottom, and while we welcome the appearance of several new, constructive elements in the Proposed Amendment, such as the proposed accredited investor exception, we believe that the suggested approach does not serve investors well and should not be adopted as proposed. On behalf of our members, we stand ready to engage in additional constructive dialogue on the question of a suitable approach to the issue of concentration. ADISA would be happy to make representatives available for a follow up meeting to further discuss our concerns and continue to assist in creating appropriate protections for investors in the non-traded REIT industry.

Sincerely,



Mike Bendix
President

Drafting Committee:

Deborah S. Froling
John H. Grady