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Via Email (nasaacomments@nasaa.org)

Mark Stewart, Esq.
NASAA
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:

The Cornell Securities Law Clinic ("Clinic") submits this comment letter in support of the proposed amendment to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (known as "REIT Guidelines").

The Clinic is a Cornell Law School curricular offering, in which law students provide representation to public investors and public education as to investment fraud in the largely rural "Southern Tier" region of upstate New York. For more information, please see: http://securities.lawschool.cornell.edu

I. Background: Problems Identified with Non-Traded REITs

On July 27, 2016, the North American Securities Administrators Association ("NASAA") opened the comment period on proposed amendments to its REIT Guidelines. If adopted, the proposal would introduce a uniform concentration limit of ten percent (10%) of an individual's liquid net worth.

Both the Financial Industry Regulatory Authority ("FINRA") and the Securities and Exchange Commission ("SEC") have issued warnings to investors about the complexities and risks associated with non-traded REITs. Among other things, non-traded REITs are illiquid investments. This poses a problem for investors who may have to wait more than 10 years after the investment to achieve liquidity.[1]. Although there are opportunities to redeem shares early, such redemption programs are subject to limitations and may require that shares be redeemed at a discount.[2]

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[1] www.sec.gov/oiea/investor-alerts-bulletins/ib_nontradedreits.html.
[2] *Id.*

Non-traded REITs also charge high upfront fees to offset any costs to a firm and compensation to the individual selling the investment. These fees can lower the value and return of an investment and leave less money for the REIT to invest.[3] An individual or firm may be paid high transaction fees for services that may not align with the interests of investors. Individual investors who may not fully understand the risks associated with non-traded REITs may be sold a product that is illiquid, complex, and expensive.

High sales commissions on non-traded REITs could be a reason why salespeople often aggressively push this investment rather than traded REITs.[4] This may motivate salespeople to recommend such patently bad investments.[5] There is the additional concern that non-traded REITs annualized historical returns were 4.82% compared to traded REITs' 10.44%[6].

In light of the above, there are serious questions as to why non-traded REITS are sold so heavily to unsophisticated individual.

II. The Proposal Would Help Protect Unsophisticated Individual Investors from Suffering Catastrophic Financial Losses

NASAA's proposed amendment strikes a good balance between permitting lawful sales of non-traded REITS while also protecting less sophisticated individual investors.

The uniform concentration limit is a form of monitoring and restriction that prevents too much of an investor's savings being steered into a non-traded REITs. It is a form of restriction that ensures that the losses do not financially cripple an individual investor. This is particularly important to the Clinic in that the Clinic represents investors who may not have the resources to ride out such financial losses or lack of liquidity.

Non-traded REIT investors may need this form of bright-line regulation (protection) because, unlike traded REIT shareholders, individual investors cannot easily observe traded market transaction prices when assessing the value of their shares.[7]

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[3] *Id.*

[4] Massachusetts Fines Five Brokerage Firms for Sale of Non-Traded REITs http://blog.slcg.com/2013/05/massachusetts-fines-five-brokerage.html

[5] More Non-traded REIT Perfidy: The Roll-up Grift (November 30, 2015) http://blog.slcg.com/2015/11/more-non-traded-reit-perfidy-roll-up.html

[6] http://blog.slcg.com/search?q=non-traded+REITS

[7] *Id.*

III. Conclusion

The complexity of non-traded REITs and the high stakes that investors face when making such investments justify a bright line limit on the percentage of an investor's liquid net worth that can be invested in such products. The Clinic appreciates the opportunity to comment on the proposed amendments. For the foregoing reasons, the Clinic supports the introduction of a uniform concentration limit.

Respectfully Submitted,

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