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VIA EMAIL
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NASAA Corporate Office
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Re: Blackstone Real Estate Income Trust, Inc. Comment to NASAA's Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Chairs Seidt and Heuerman:

This firm represents Blackstone Real Estate Income Trust, Inc. ("BREIT"). BREIT thanks the North American Securities Administrators Association ("NASAA") for the opportunity to comment on the proposed amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts ("Guidelines"). As a preliminary matter, BREIT is supportive of NASAA's mission to protect individual investors from the harms caused by nefarious actors using all forms of investment products, including non-listed real estate investment trusts ("REITs"), as well as the goal of diversification to reduce the risk of loss to investors. BREIT does not oppose any of NASAA's stated goals and would like to work with NASAA to help it achieve them.

Nonetheless, regarding the four primary revisions in the proposed Guidelines, BREIT has specific concerns with the "new standardized concentration limit to the suitability section," which would limit the amount that every investor can invest in BREIT, its affiliates and other non-traded direct participation programs[1] to no more than 10% of the investor's liquid net worth. As drafted,

[1] "Direct participation programs" are not defined in the proposed Guidelines or any other applicable NASAA guideline. NASAA's coordinated review website states that "direct participation program securities include securities issued by real estate investment trusts, business development companies, equipment leasing programs, and oil and gas programs," but it is unclear if this definition is the intended definition to be used in the proposed Guidelines.

it will prevent investors and their financial professionals, including institutional[2] and high net worth investors, from diversifying their portfolio by purchasing uncorrelated and unrelated investment products. Moreover, the new limits will prevent them from making their own well-informed investment decision of whether a net-asset value based public, non-listed REIT ("NAV REIT") is the appropriate investment for them to achieve their investment goals. It may also have the unintended consequence of sponsors moving to Regulation D private placement offerings and other structures solely for the purpose of avoiding state oversight, thereby putting investors at risk by removing protections sought by state Administrators.

The proposed concentration limitations appear to have been heavily influenced by the sponsorships and negative history of early lifecycle REITs, which as explained below, have been eliminated by NAV REITs. NAV REITs make up all of the activity in the industry currently and have for a number of years.[3] When compared with the pre-2017 lifecycle REITs, NAV REITs have lower fees, more liquidity and greater transparency. Importantly, they have also outperformed listed REITs with far less volatility since the inception of the NAV REIT industry and particularly since the onset of the COVID-19 pandemic. Non-listed REITs are no longer being offered exclusively through independent broker-dealer channels. NAV REITs are now being offered by the largest broker-dealers and registered investment advisers, who are subject to Regulation Best Interest or a fiduciary standard. The public non-listed REIT industry is operating at a much higher standard than it was pre-2017 and does not now require concentration limitations. But BREIT would like to work with regulators, specifically NASAA members, to ensure that the problems that may have historically existed are appropriately addressed and eliminated.

Currently, only a small number of NASAA member jurisdictions (18) apply concentration limitations to BREIT. Importantly, not one of those jurisdictions' concentration limitations are as restrictive in scope and investor choice as the proposed Guidelines. Of the eighteen jurisdictions that apply concentration limitations to BREIT, only four jurisdictions have a concentration limit that includes "affiliates" and only three jurisdictions have a limit that includes "direct participation programs." Furthermore, four of the eighteen jurisdictions that apply concentration limitations offer relief to sophisticated investors by including an accredited investor exemption.

While BREIT opposes the adoption of the proposed concentration limitations as unnecessarily restricting investor choice, if NASAA were intent on requiring concentration limitations, BREIT is proposing an alternative, whereby the concentration limitations in the proposed Guidelines would be limited to those retail investors who are not accredited investors, as defined by the Securities and Exchange Commission ("SEC").[4] An accredited investor exemption would strike a fair and reasonable balance between NASAA's mission to protect retail investors, while still allowing financially sophisticated investors to make their own investment decisions on how to build their investment portfolio. An accredited investor exemption would also be consistent

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[2] BREIT has many institutional investors, including insurance companies, pension plans, family offices, investment funds, charities, foundations, among others.

[3] NAV REITs represented 100% of the capital raised by non-listed REITs year to date in 2022 and 2021, 99% in 2020, 97% in 2019 and 83% in 2018.

[4] *See* 17 C.F.R. §230.501

with NASAA's 2016 proposed Guidelines (which were not adopted) and four of the jurisdictions that currently apply concentration limitations to BREIT. Such a solution would also be a reflection of where the REIT industry is today, as opposed to what it had been pre-2017.

1. BREIT and Blackstone

BREIT is a NAV REIT and the fourth largest REIT (listed or non-listed) in the country with a $116 billion portfolio diversified across rental housing, industrial, data center, self-storage and other assets. BREIT is sponsored by the Real Estate Group of Blackstone Inc., a Fortune 200 company listed on the New York Stock Exchange. Blackstone is one of the world's leading investment firms, with total assets under management of $941 billion. Blackstone seeks to create positive economic impact and long-term value for its investors, the companies it invests in, and the communities in which its personnel work. They do this by using extraordinary people and flexible capital to help companies solve problems.

Blackstone's investment businesses include strategies focused on, among others, real estate, private equity, credit, infrastructure and life sciences, all on a global basis. Blackstone offers its strategies through a suite of both public and private investment vehicles in the U.S. and around the globe, including listed and NAV REITs, open and closed-end private funds, Investment Company Act registered funds (mutual funds, business development companies, listed closed-end funds) and UCITS funds, among others.

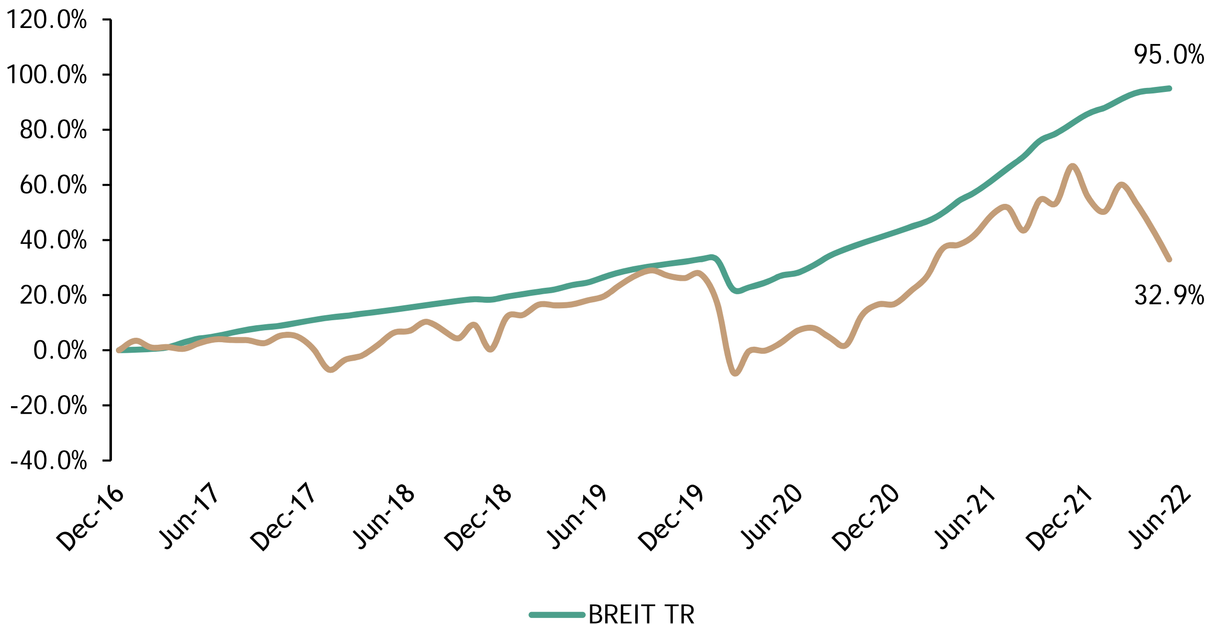
Blackstone's businesses use a solutions-oriented approach to drive better performance. Blackstone believes its scale, diversified business, long record of investment performance, rigorous investment process and strong client relationships positions it to continue to perform well in a variety of market conditions. Blackstone invests across sectors on behalf of its investors, including pension funds, insurance companies and individual investors. Blackstone's mission is to create long-term value through careful stewardship of their capital. To the extent its investment vehicles perform well, Blackstone can support a better retirement for tens of millions of individual investors and pensioners, including teachers, nurses and firefighters.

Blackstone employs approximately 4,500 people at its headquarters in New York and around the world. Blackstone's employees are integral to its culture of integrity, professionalism and excellence. Blackstone believes hiring, training and retaining talented individuals, coupled with its rigorous investment process, has supported its excellent investment record over many years. This record, in turn, has enabled it to innovate into new strategies, drive growth and better serve its investors.

Blackstone is committed to providing individual investors access to institutional-quality real estate and diversification across their investment portfolios. This was the precise goal that led Blackstone to reimagine the non-listed REIT industry in 2017 with the launch of BREIT, and the results have provided tremendous value to individual investors. BREIT's launch in 2017 marked the start of the current NAV REIT industry, with products sponsored by high-quality investment managers incorporating far better, investor-friendly features, including more liquidity, fewer and less costly fees, and greater transparency. These improvements have made legacy sponsors and their non-listed REIT offerings obsolete.

Since its inception, BREIT has significantly outperformed listed REITs by over 700 basis points with net returns of approximately 13% annually compared to 5.3% for listed REITs with significantly less price volatility, 4.8% compared to 17.8%.[5] BREIT has also met 100% of all repurchase requests since inception, including through the height of the COVID-19 pandemic.

BREIT & MSCI US REIT Index Total Return Comparison
(January 1, 2017 to June 30, 2022)



BREIT has also significantly outperformed listed REITs since the start of the pandemic by nearly 1,500 basis points with net returns of approximately 17% annually compared to 2.1% for listed REITs, again with significantly less price volatility, 6.8% compared to 23%.[6]

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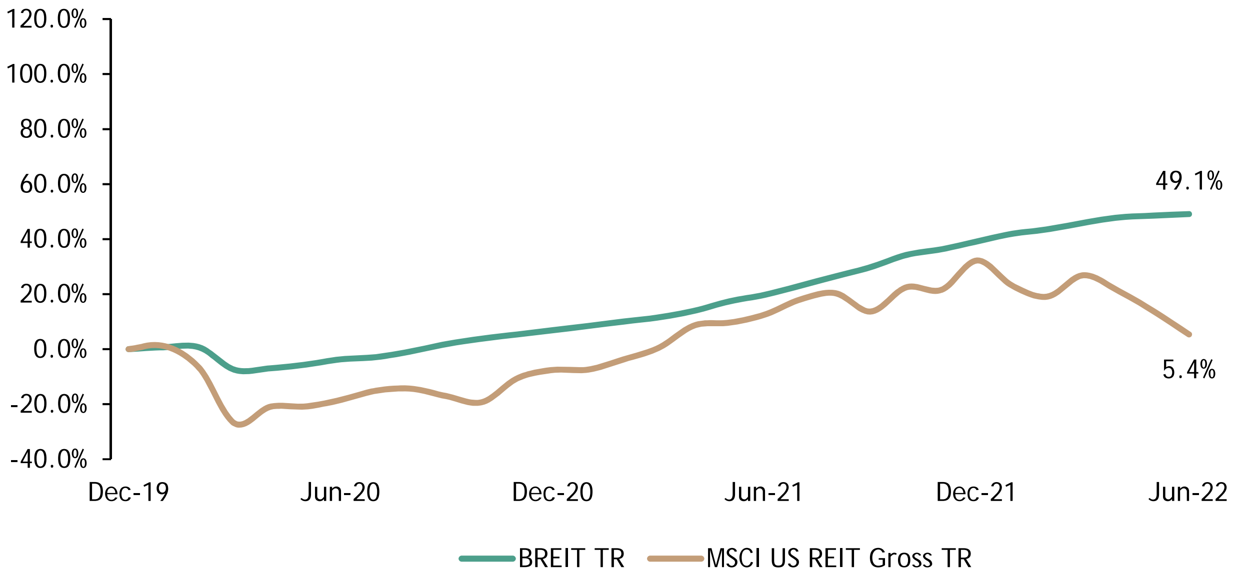
[5] Performance is based on BREIT versus the listed MSCI US REIT Index from January 1, 2017 to June 30, 2022. The BREIT Total Net Return reflects a per share blended return, assuming BREIT had a single share class, and reinvestment of all dividends received during the period. Volatility is represented by standard deviation.

[6] Performance is based on BREIT versus the listed MSCI US REIT Index from January 1, 2020 to June 30, 2022. The BREIT Total Net Return reflects a per share blended return, assuming BREIT had a single share class, and reinvestment of all dividends received during the period. Volatility is represented by standard deviation.

BREIT & MSCI US REIT Index Total Return Comparison
(January 1, 2020 to June 30, 2022)



2. Evolution of REITs

In order to address many of the statements that NASAA cites as its justification for the proposed Guidelines, a critical first step is to identify the types of REITs available to investors, the product features of each, and how those features have evolved in the last five years. The non-listed REIT industry is unrecognizable today from the pre-2017 period, with products sponsored by high-quality investment managers incorporating far better, investor friendly features.

Congress established REITs in 1960 to allow individual investors – not just the ultra-wealthy – to invest in large-scale, income-producing real estate. REITs provide a way for individual investors to earn a share of the income produced through commercial real estate ownership – without actually having to go out and buy commercial real estate.[7] REIT investors will typically receive periodic distributions with the potential for moderate long-term capital appreciation.

There are two types of public REITs currently available to retail investors – those that are available on public exchanges (listed REITs) and those that are public, but not listed on an exchange (NAV REITs). Listed REITs represent only 8% of the commercial real estate market in the United States and are highly correlated to stock market performance resulting in significant price volatility consistent with all other traded stocks. NAV REITs are not. Instead, NAV REITs are a component of the private, non-listed commercial real estate market comprising 92% of the market. Specifically, repurchases of shares are made directly through the issuer at a frequently

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[7] https://www.sec.gov/files/reits.pdf

computed net asset value based on the values of the underlying properties owned by the REIT. The value of the underlying properties is determined through a robust process that involves independent appraisals based on more than $50 billion of monthly transaction activity across the industry, independent valuation advisors, and oversight by the NAV REIT's independent directors. This makes the share price reflective of the actual real estate values and much less volatile than the stock market as illustrated by the performance data of both BREIT and the NAV REIT industry noted in this letter.

Both listed and NAV REITs offer investors the benefits of investing in real estate. NAV REITs primarily invest in stabilized real estate and are diversified across property sectors and geographies while each listed REIT typically focuses on a specific asset class and not necessarily stabilized real estate. Both types of REITs are registered with the SEC and are subject to ongoing disclosure obligations. NAV REITs publically disclose their valuation assumptions (exit capitalization rates and discount rates), which are the key variables investors use to analyze real estate values, while listed REITs do not. NAV REITs are also registered with the states where they are sold.

Prior to 2017, lifecycle REITs dominated the non-listed REIT industry. Lifecycle REITs were generally property sector focused and were designed to raise capital and invest in real estate for a limited period before seeking a liquidity event (*e.g.*, a sale, merger or listing on an exchange). Lifecycle REITs typically only offered redemptions up to 5% of average outstanding shares per year or a liquidity event and were not managed with frequent liquidity in mind. By comparison, NAV REITs are designed to operate in perpetuity, so they are designed to provide greater liquidity, including typical redemptions of 2% of the REIT's NAV per month, 5% of the REIT's NAV per quarter, and up to 20% of the REIT's NAV per year, through systematic share repurchase programs. These amounts may be exceeded with approval from the REIT's independent directors.[8] NAV REITs also allow investors to transact on a recent NAV based on the value of the underlying properties, unlike lifecycle REITs that used a fixed price that was not reflective of underlying values.

NAV REITs also have lower and simpler fee structures than legacy lifecycle REITs and are similar to institutional core real estate funds, charging a NAV-based management fee and a performance-based fee. Broad categories of fees such as acquisition, financing and disposition fees have also been generally eliminated. Moreover, NAV REITs have reduced or eliminated front-end sales fees, depending upon the share class,[9] and fees retained by the dealer manager have been eliminated. This has resulted in NAV REITs operating in-line with institutional investor focused core real estate funds which have existed since the 1970s.

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[8] In most circumstances, the NAV REIT's board of directors may make exceptions to, modify or suspend share repurchase plans if in its reasonable judgment it deems such action to be in the best interest of the REIT and its stockholders.

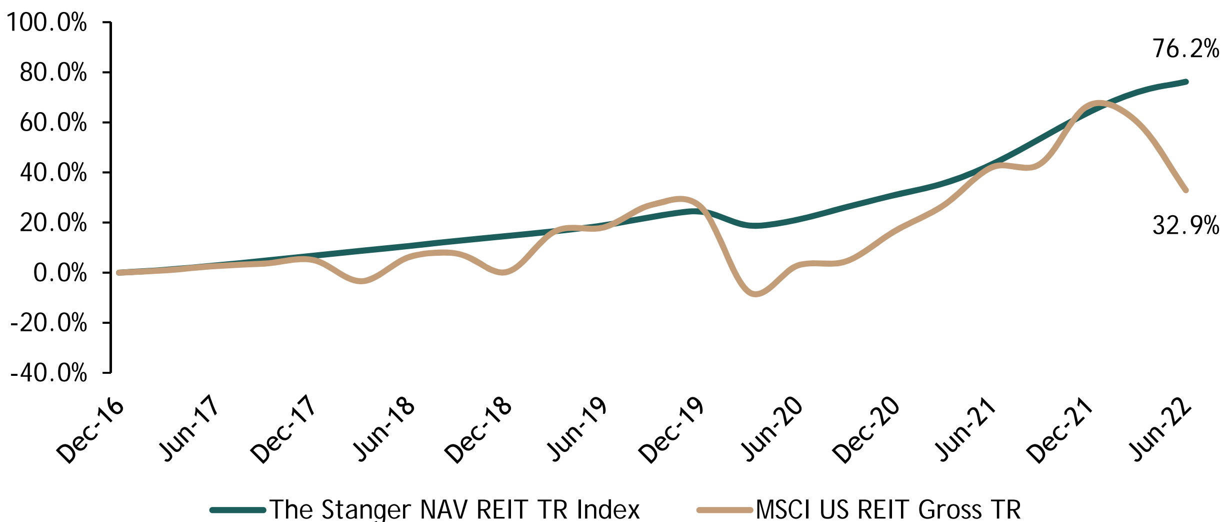
[9] For example, there are no up-front or ongoing fees for I class shares, and the S share class may pay up to a 3.5% up-front sales fee (actual average up-front fees are much lower than the cap) and an ongoing servicing fee with a maximum cap.

Historically, non-listed REITs were offered exclusively through independent broker-dealer channels. But with the entry of Blackstone in 2017 and the other large institutional real estate managers that followed, NAV REITs are now being distributed through the largest broker-dealers, subject to state, FINRA and SEC oversight, including the SEC's Regulation Best Interest. Additionally, NAV REITs are now distributed through registered investment advisers, who are subject to an even higher, fiduciary duty standard.

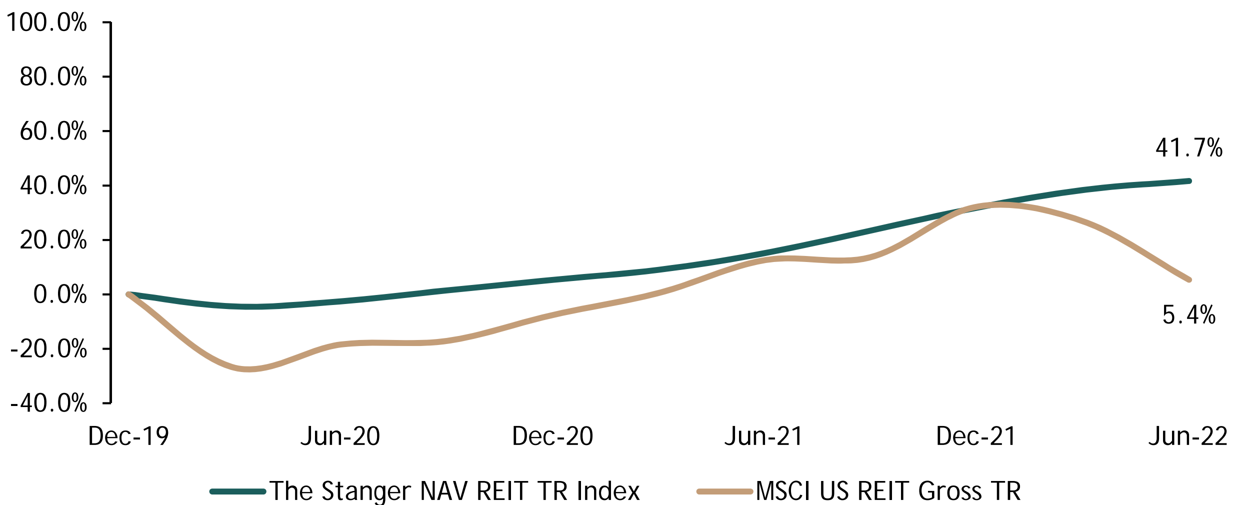
3. Not all Non-Listed REITs are the Same

BREIT is concerned that the proposed concentration limitations are heavily influenced by the negative history, sponsorship and product features of early lifecycle REITs, which have been eliminated. NASAA's justification for the proposed Guidelines fails to address the fact that – unlike lifecycle REITs of the past – NAV REITs have significantly outperformed listed REITs since the inception of the industry in 2017 with far less volatility, including during the COVID-19 pandemic, as illustrated below.

NAV REITs & MSCI US REIT Index Total Return Comparison
(January 1, 2017 to June 30, 2022)



NAV REITs & MSCI US REIT Index Total Return Comparison
(January 1, 2020 to June 30, 2022)



NASAA's justification also cites numerous inflammatory examples of non-listed lifecycle REITs being used by unscrupulous actors to abuse investors.[10] However, the incentives and players that were at the root of these abuses have been addressed by the evolution of REIT product features through NAV REITs. As discussed above, the NAV REITs that have been launched in recent years pay a lower up-front sales commission with lower ongoing servicing fees to distributors with a maximum cap. This newer fee structure reduces the historic incentives that financial professionals had to over-concentrate investors to realize a large, one-time up-front sales commission.

BREIT and other NAV REITs also offer multiple share classes so investors and their financial professionals can choose the class that is in the customer's best interest. These classes offer different fee schedules depending on an investor's preference of arrangement with their financial professional. The reduced fees are paid by or in connection with a specific issuer to the financial professional in lieu of account-based or wrap fees the financial professional would charge the customer. As a result, the investor is given options of how to pay for their professional investment advice. This is similar to the structure of many mutual fund fees.

NASAA's justification also notes the high level of customer complaints and FINRA arbitrations filed in 2020 and 2021 for non-listed REITs. As NASAA is aware, customer complaints and FINRA arbitrations are a lagging indicator, and there is no publically available evidence that these complaints and FINRA arbitrations relate to NAV REITs. Investors do not typically invest in a product and then immediately turn around and file a complaint or a FINRA arbitration – especially if a product were performing well. Furthermore, the number of FINRA

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[10] *See* page 4 of the proposed Guidelines, specifically footnotes 10 and 11; Robert Stepelman, The Rational Investor: Don't Let Current Volatility Scare You into Non-Traded REITs (June 13, 2022) (referencing only non-listed lifecycle REITs "tend to have a defined end-date, perhaps 10 years . . . [i]f that occurs, it may be the first time an investor discovers their actual value.").

arbitrations related to REITs filed in 2020 and 2021 was more likely caused by a small universe of specific legacy lifecycle REITs – not an entire industry, let alone the NAV REIT industry – much the same way municipal bonds, municipal bond funds and mutual funds had the most arbitrations filed in 2018 and 2019.[11] Furthermore, a review of FINRA arbitration awards – which is a far more relevant metric than arbitrations filed, as these cases have reached a conclusion and the type of product and conduct can be identified based on public information – reveals that there has not been a single FINRA arbitration award related to NAV REITs.

4. Concerns Related to the Proposed Concentration Limit

BREIT has serious reservations regarding the concentration limits in the proposed Guidelines. The proposed Guidelines specifically permit the concentration limits to be established by the sponsor subject to the state Administrator's approval based on the identifiable criteria. However, the default provision would be a limit of 10% of an investor's liquid net worth in "the REIT, its affiliates, and other non-traded direct participation programs." Based on our experience, most state Administrators would require the limit be incorporated verbatim like a statute, consistent with the approach taken for the Guidelines generally. In other states, the proposed Guidelines would be automatically incorporated into the state's regulations by reference.

NASAA states that the purpose of this section is to accomplish "the goal of diversification to reduce the risk of loss from a single investment type" and it would help "ensure that some liquid funds are available for emergency purposes without penalty to the investor." Unfortunately, as drafted, the proposal does not accomplish either of the stated goals of portfolio diversification or liquidity – but instead, rigidly limits investors' ability to diversify their portfolio based on their individual facts and circumstances.

A. "Affiliates" Should be Excluded

The definition of "affiliate" in the concentration limits of the proposed Guidelines expands the limitation on other "non-traded direct participation programs" to include publicly listed securities and other "covered securities," which are subject to federal preemption.[12] In BREIT's case, it would have extreme unintended consequences and could be interpreted to capture all of Blackstone's other product offerings regardless of whether they are liquid or illiquid and whether or not their investment strategies are related. This could include all of Blackstone's open and closed-end private funds, Investment Company Act registered funds (mutual funds, business development companies, listed closed end funds) and UCITS funds, among others. It would also include situations where Blackstone (not one of its affiliates) is the issuer, including its publicly traded common stock and bonds. From the investors' perspective, this could have the unintended

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[11] https://www.finra.org/arbitration-mediation/dispute-resolution-statistics#top15securitycustomers.

[12] Publicly listed securities and securities offered under Rule 506 of Regulation D qualify as "covered securities" under Section 18(b)(4)(D) of the Securities Act of 1933. As a result, under Section 18(a)(3) of the Securities Act, no state may "directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale" of such securities.

consequence of preventing their access to the best performing strategies and investment managers and may force them into inferior investment products.

Presumably, "other non-traded direct participation programs" (addressed below) would capture the "affiliates" that NASAA intended on capturing – those that are illiquid – not liquid securities (*e.g*., mutual funds, common stock, bonds, etc.), and not subject to federal preemption. This could be the reason that of the eighteen jurisdictions that currently apply concentration limitations none are as restrictive as the proposal, and only four jurisdictions include "affiliates" and only three jurisdictions have a limit that includes "direct participation programs." For this reason, BREIT requests that "affiliate" be removed from the proposed concentration limitation.

B. Other "Non-Traded Direct Participation Programs" is Over-inclusive

There are many types of "non-traded direct participation programs" that have little or no correlation to NAV REITs (*e.g.,* strategies investing in private equity, credit, infrastructure, life science, etc.). Assuming NASAA's definition of "non-traded direct participation programs," if provided, would not exclude these products, this section of the proposal does not address NASAA's intended goal of portfolio diversification and actually results in a lack of options for investors to diversify. The only feature that they these products have in common is that they may not be immediately liquid.

Unfortunately, the proposed concentration limitations will not ensure liquidity either. BREIT agrees with NASAA that a properly diversified portfolio will ensure enough immediate liquidity for the investor's needs based on the investor's facts and circumstances. But the proposed concentration limit will not stop unscrupulous actors from over-concentrating their customers in illiquid products. Overconcentration of any investment product – liquid or illiquid – is a violation of SEC's Regulation Best Interest, FINRA rules and state broker-dealer rules. In that connect, distributors have internal limits and policies designed to address these standards and rules. But if a nefarious actor were willing to violate SEC, FINRA and state rules, and the internal policies of his or her firm, a product specific concentration limit will not stop them from exploiting their customers and ensuring liquidity. Such a concentration limitation would, however, prevent legitimate financial professionals from helping customers diversify their portfolios through a highly regulated and transparent investment option.

C. The Concentration Limitation Will Encourage Regulation D Offerings

Unlike lifecycle REITs of the past that were purchased primarily by retail investors, NAV REITs are also purchased by high and ultra-high net worth investors and institutional investors. In fact, BREIT has many institutional investors, including insurance companies, pension plans, family offices, investment funds, charities, foundations, among others. However, the concentration limitations in the proposed Guidelines do not offer any exemptions for high net worth individuals or even institutional investors. Without such an exemption, some sponsors will choose to move to Regulation D securities offerings solely for the purpose of avoiding the issues with the concentration limitations – other sponsors may be forced to move in order to continue to service the needs of their customer base. If this occurs, state Administrators will lose the ability

to review those registrations and investors will lose the other protections provided by the Guidelines and state Administrator oversight.

NASAA states that it does not recommend an exemption for accredited investors because it "has repeatedly urged the SEC to make inflationary adjustments to that definition, without success…."[13] However, the arguments that NASAA has made relate to private Regulation D securities offerings, not NAV REITs. NAV REITs bear no resemblance to typical Regulation D securities. Unlike NAV REITs, Regulation D securities are not registered with the SEC or state Administrators, do not have ongoing public reporting requirements and related public disclosures and typically do not offer repurchase programs.

From an investor risk perspective, NAV REITs present far fewer risks than Regulation D securities offerings for the aforementioned reasons. However, under the proposed Guidelines' concentration limitations, NAV REITs are being penalized for registering their products with the SEC and states because the proposed Guidelines are seeking to apply a higher, more stringent concentration limitation to a registered product than an unregistered, unregulated investment product. This would be a perverse result.

5. An Accredited Investor Exemption Strikes the Right Balance

While we believe that the arguments against new concentration limits are compelling, if NASAA were intent on requiring them, BREIT would propose the alternative – limiting them to those retail investors who are not accredited investors, as defined by the SEC.[14] An accredited investor exemption would strike a fair and reasonable balance between NASAA and its members' mission to protect retail investors, while still allowing financially sophisticated investors, as well as institutional investors, to make their own investment decisions on how to build a well-diversified investment portfolio. Importantly, Regulation Best Interest, FINRA rules and state broker-dealer rules addressing overconcentration and holistic suitability would still be applicable.

BREIT's proposed accredited investor exemption would not be unprecedented. In fact, NASAA's 2016 proposed REIT Guidelines, which included a substantially similar, albeit narrower, concentration limitation, included an accredited investor exemption.[15] Furthermore, as stated above, of the small minority of jurisdictions (18) that currently apply some form of concentration limitation to BREIT, four jurisdictions already apply an accredited investor exemption from the limitation – Iowa, Nebraska, Tennessee, and Vermont.

6. Conclusion

As outlined above, the non-listed REIT industry has evolved considerably since 2017 to the benefit of investors. NAV REITs have lower fees, more liquidity, greater transparency and have outperformed listed REITs with much greater stability. No longer are the products being

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[13] *See* page 8 of the proposed Guidelines.

[14] *See* 17 C.F.R. §230.501.

[15] https://www.nasaa.org/wp-content/uploads/2016/07/Notice-for-Public-Comment-REIT-Concentration-Limit-07272016.pdf

offered exclusively through independent broker-dealer channels, but are now being offered by the largest broker-dealers and registered investment advisers, who are subject to Regulation Best Interest or a fiduciary standard. The non-listed REIT industry operates at a much higher standard than was the case historically and BREIT would like to work with regulators, specifically NASAA members, to ensure that the problems that may have historically existed have been appropriately addressed and eliminated. We believe that industry practices have simply superseded the need for the concentration limits that have been proposed. Nonetheless, if NASAA were intent on requiring concentration limitations, BREIT would urge NASAA to adopt the accredited investor exemption and make the other modifications proposed.

Thank you again for this opportunity to comment on the proposal. We hope that NASAA will consider these comments and will work with us to achieve its goals.

Very truly yours,

Christopher W. Gerold