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VIA ELECTRONIC MAIL (NASAAComments@nasaa.org)

North American Securities Administrators Association, Inc. (NASAA)
Attn: Andrea Seidt, Section Chair (**Andrea.Seidt@com.ohio.gov)**
Attn: Mark Heuerman, Project Group Chair (**Mark.Heuerman@com.ohio.gov)**

RE: Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Ms. Seidt and Mr. Heuerman:

The Cornell Securities Law Clinic (the "Clinic") welcomes the opportunity to comment on the Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts (The "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 in the largely rural "Southern Tier" region of upstate New York. For more information, please visit http://securities.lawschool.cornell.edu.

The Clinic supports NASAA's intention to enhance retail investor protections surrounding the offering and sale of non-traded REITs to retail investors. Non-traded REITs pose a variety of risks to retail investors such as risk of diminution in value as interest rates rise, liquidity risk, and income and capital risk.

The suitability of non-traded REITs for senior investors is particularly concerning due to a limited investment time horizon combined with liquidity risks inherent in non-traded REITs. Except as specifically noted, the Clinic supports NASAA's proposals to limit concentration and prohibit use of investor proceeds for distributions.

A. The Defined Term, "Conduct Standards" Will Provide Additional Protections For Investors But May Also Create Ambiguity And Confusion Arising Under Various Applicable Laws, Rules And Regulations.

The first proposal is to insert in the REIT Guidelines a definition titled, "Conduct Standards" that includes, without limitation, the Regulation Best Interest, suitability obligations, ERISA, the Internal Revenue Code, and/or federal or state fiduciary duties. This definition significantly broadens the existing standard of conduct with respect to the sale or giving of investment advice regarding non-traded REITs.

The Clinic does not object to the inclusion of Regulation Best Interest within the proposed "Conduct Standards." The Clinic, however, is concerned that the overly expansive coverage of "Conduct Standards" may be unclear, and suggests that a more definite scope would provide more clear guidance.

B. The Longstanding Income And Net Worth Thresholds Are Outdated And Should Be Significantly Increased.

The second proposal is an update to the net income and net worth figures in the suitability section. An investor would need the combination of a $95,000 net income and a $95,000 net worth or simply the net worth of $340,000 in order to purchase a non-traded REIT under the revised standard. The Clinic supports the change to the net income and net worth thresholds for investors, in order to adjust for inflation. These figures have not been adjusted since May 2007.

Although this change may exclude investors between the net income range of $70,000-95,000, it may also protect investors who are unaware of the risks of investing in non-traded REITs. In order to calculate these figures, NASAA used the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers.[1] Using the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, $1 in January 2007 is equal in purchasing power to around $1.46 today. And $1 in December 2007 is equal in purchasing power to $1.41 today. Adjusting these figures for 2022, minimum net income should be at least $98,700 and at most $102,200. If considering only net worth, net worth should be at least $352,500 and at most $365,000 to invest in REITs. The Clinic is unsure as to why NASAA has not fully adjusted these figures for inflation; we believe that these figures should be fully adjusted for in order to remain consistent with the U.S. Bureau of Labor Statistics Consumer Price Index.

C. The Concentration Limit Should Be Lowered For Senior Investors.

The third proposal is an addition of a new standardized concentration limit to the Suitability Section. NASAA is proposing a 10% concentration limit to establish a uniform concentration limit to the REIT Guidelines. This concentration limit would also cover sales based on other non-traded direct participation programs.

[1] U.S. Bureau of Labor Statistics Consumer Price Index, https://www.bls.gov/data/inflation_calculator.htm

The Clinic suggests that a lower concentration limit be applied solely to seniors at or over the age of 65 at the time of the transaction to support NASAA's goal of the protection of senior investors. The Clinic does not support applying a single concentration limit to all investors. In addition, the proposed language requiring a sponsor to establish a minimum concentration limit on purchasers of shares in a non-traded REIT is likely to be impractical, time-consuming, burdensome, and speculative, especially when evaluating review items noted as "potential." This adverse result is demonstrated by the requirement that the Administrator, in reviewing the Sponsor's proposed minimum concentration limit, must consider twelve specific factors and one general factor in determining whether the minimum concentration is appropriate (plus any other relevant factors).

D. The Request For Public Comment Does Not Provide A Sufficient Basis For Imposing A Blanket Ban On Non-Traded REITs From Using Gross Offering Proceeds To Pay Regular Or Declared Distributions.

The fourth proposal is a prohibition against using gross offering proceeds as an investment strategy in order to make distributions. If eventually adopted, it will increase transparency for the terms "income" and "yield" for REITs. Investors may be initially attracted to non-traded REITs because of their high dividend yields. This practice reduces the value of shares and reduces the cash available to purchase other assets.[2] The Clinic agrees that this is a misleading practice and may confuse investors who may believe their distributions are stemming from a profitable investment.

As an alternative to the prohibition of the use of gross offering proceeds, the Clinic's position is that gross offering proceeds should be included in the "Risk Factors" section of the offering documents. This inclusion will resolve the deceptive and confusing nature of this practice by notifying an investor of how they are making their profits and ensure that they are aware of this practice, while not prohibiting it outright.

[2] Investor Bulletin: Real Estate Investment Trusts (REITs), https://www.sec.gov/files/reits.pdf

Conclusion

The Clinic greatly appreciates the opportunity to comment on NASAA's proposed changes and respectfully requests that NASAA take the Clinic's comments into consideration.

Respectfully submitted,

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