

REVISED COMMENT LETTER

August 19, 2022

VIA ELECTRONIC MAIL - NASAAComments@nasaa.org

Section Chair, Andrea Seidt
Project Group Chair, Mark Heurman
North American Securities Administrators Association, Inc.
750 First Street, NE, Suite 1140
Washington, DC 20002

**RE: PROPOSED REVISIONS TO NASAA STATEMENT OF POLICY REGARDING
REAL ESTATE INVESTMENT TRUSTS**

Dear Chairs Seidt and Heurman:

My name is Jan Lynn Owen, and from 2013 to 2019, I served as an appointee of Governor Edmund G. Brown Jr. as the Commissioner of the Department of Business Oversight, the predecessor to the Department of Financial Protection and Innovation, the financial services regulator for the state of California, including State Securities Law. I am currently a Senior Advisor to the law firm Manatt, Phelps & Phillips, LLP.

I am representing the California Business Roundtable, a non-partisan organization comprised of the senior executive leadership of major employers in my state.

On both counts, I have an interest in proposed revisions by the Northern American Securities Administrators Association (NASAA) to its statement of policy regarding real estate investment trusts (REITs).

As Commissioner, I was a strong supporter of NASAA's efforts to protect investors and ensure an orderly and stable marketplace for securities, and I commend the work that you have done, and continue to do. I also look forward to supporting your efforts in the future.

My comments on the current REIT proposal are narrow, and relate to the proposed concentration limits NASAA proposed in 2016, when I was still the California financial regulator. The current proposal for concentration limits addresses the interest of small retail investors who are the most exposed during market drawdowns.

However, not allowing an exemption for those who qualify as accredited investors under Securities and Exchange Commission rules is a significant step in the wrong direction that could curtail what

have been extraordinary improvements in market practices in the half-dozen years since NASAA's concentration-limit proposal was put forward.

As you know, NASAA's earlier proposal contained an accredited investor exemption, and your declination to include one now indicates that NASAA is seeking a significantly higher level of regulatory restrictions than six years ago — even though the industry has improved by such a remarkable degree that it is unrecognizable from what it was in 2016, when concerns about fees, liquidity and other past market practices appropriately led to calls for concentration limits.

Today, nearly every dollar invested in non-trade REITs flows to NAV REITs that in many ways are the opposite of the lifecycle REITs that used to dominate the industry. With perpetual NAV REITs, fees have declined and investors have regular opportunities to buy and sell shares at transparent, credible prices.

The return of the NAV REIT industry have also been exceeding those of listed REITs. Part of the reason for the superior performance of the NAV REIT industry, in my view, is the improvement in the management and quality of non-traded REITs.

But another reason is that the industry's program for regular — but not limited — liquidity allows these funds to make longer-term, better-yielding investments with less fear of having to rapidly sell high-performing assets to raise cash for redemptions every time there is a period of market downturn or distress.

While NASAA favors the unlimited liquidity of listed REITs to protect shareholders who wish to sell their shares at a moment's notice, I want NASAA to safeguard both the interest of investors who are selling, as well as the interests of those who are not.

The NAV REIT industry's redemption program protects both types of share owners, providing regular opportunities for investors to sell while protecting the interest of ongoing shareholders who do not want a market panic to lead to an unnecessarily large devaluation of their holdings.

In addition to the vast improvements in market practices that have occurred in recent years, the marketing and sale of non-traded REITs is also subject to investor protections that have been strengthened by the SEC's implementation in 2020 of Regulation Best Interest — another reason it is unnecessary to now exclude an accredited investor exemption that was central to NASAA's earlier proposal.

I am also concerned that by taking such a hard line, and declining to have an accredited investor exemption, NASAA may risk losing some of the credibility and influence it has enjoyed with state securities regulators.

There is awareness among many regulators that NAV REITs have enjoyed strong risk-adjusted returns; that the industry has seen significant improvements in fees and liquidity; and that

expanding institutional real estate markets to a broader cohort of retail investors has given these investors valuable new options for optimizing their portfolios with professionally-managed private real estate platforms.

If NASAA's revisions fail to fully account for the benefits available in NAV REITs by including an accredited investor exemption, I would anticipate that many securities regulators may decline to adopt the revisions, which would be an unwelcome precedent for state securities.

I appreciate the opportunity to respond to the proposed new regulations and look forward to continuing the dialogue. I am available at your convenience.

Very truly yours,



Jan L. Owen
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