LPL Financial

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VIA Email (NASAAComments@nasaa.org)

Andrea Seidt
Chair, Corporation Finance Section
North American Securities Administrators Association
750 First Street NE, Suite 1140
Washington, DC 20002

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

Dear Commissioner Seidt:

LPL Financial ("LPL" or the "Firm") appreciates the opportunity to provide feedback to the North American Securities Administrators Association's ("NASAA") solicitation of public comments regarding the proposed revisions to its Statement of Policy Regarding Real Estate Investment Trusts (the "Proposal").

I. Overview of LPL

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment adviser custodian. We serve as a trusted partner to approximately 21,000 financial professionals across the country, including financial professionals at over 1,100 banks and credit unions (collectively "Financial Institutions") and approximately 500 registered investment advisers. LPL provides them with the technology, research, clearing and compliance services and practice management programs they need to create and grow thriving practices. LPL enables affiliated financial professionals to provide personalized financial guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions. Our affiliated financial professionals operate in all 50 states.

II. Comments in Response to the Proposal

LPL recognizes the crucial role that state securities regulators play in protecting investors, and we appreciate NASAA's commitment to update statements of policy and model rules to reflect changes in the economy and industry. However, we are concerned that the

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Proposal would significantly limit investor choice and set an untenable precedent for future updates to other statements of policy.

Reg. BI Conduct Standard

LPL recognizes that Regulation Best Interest is the preeminent conduct standard applicable to investment adviser and broker-dealer relationships with retail investors. We commend NASAA for including Regulation Best Interest in its definition of "Conduct Standard" within the Proposal. LPL believes that this best interest standard provides retail investors with necessary protections, while still maintaining the flexibility necessary to allow investors to tailor their investment portfolios to their individual needs.

Income and Net Worth Adjustments

If adopted, the Proposal would update the non-traded REIT investor income and net worth requirements for inflation. LPL supports this adjustment and the use of the U.S. Bureau of Labor Statistics Consumer Price Index for All Urban Consumers as the standard for inflationary adjustment because reliance on a widely subscribed to and published statistic will provide clarity and uniformity for the industry.

Accredited Investors

LPL encourages NASAA to consider an accredited investor exemption in the Proposal. This is not a new exemption—currently two NASAA members' non-traded REIT guidelines allow for an exemption for accredited investors[1]. The definition of an accredited investor, as enacted by Regulation D, includes more than just the individual investors referenced in the Proposal. Licensed financial professionals, executives, and entities, including trusts, corporations, pension plans, and the like, can also be considered accredited investors.[2] These accredited investors are sophisticated, have an appropriate understanding of the risks associated with direct participation programs, while also having the liquid net worth to manage the volatility in the investment.

While LPL understands the issues raised by the Proposal with the term "accredited investor," particularly around the necessity to protect vulnerable senior investors who qualify because of their life savings, LPL does not believe that these issues support the elimination of the accredited investor carve-out generally present in past regulations concerning REITs and other similar products. Eligibility carve-outs are necessary to allow sophisticated, wealthy

[1] Iowa and Vermont.
[2] 17 C.F.R. § 230.501.

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customers to manage their investments and portfolios in their desired fashion. Furthermore, the Care Obligation of Regulation Best Interest requires an assessment of the recommended security regardless of whether the retail investor is an accredited investor. Therefore, the risk to vulnerable senior investors, even if meeting the definition of accredited investor, is substantially mitigated.

Concentration Limits

LPL supports uniformity in state securities laws and regulations. We recognize that the current patchwork of state-specific concentration limits can be confusing and can make supervision unnecessarily complex. However, LPL also supports making individualized recommendations to customers based on the individual customer's financial needs, investment goals and investment time horizon. In particular, we are concerned that the proposed ten percent aggregate limit on all non-traded direct participation programs may preclude investors from being able to properly diversify their portfolios, something that is crucial to hedge against any market volatility. This provision will effectively make investment decisions for investors by restricting their ability to tailor a portfolio to meet investment goals in their individual best interest, and we do not believe that is appropriate. Further, many states have previously declined to adopt a fixed concentration limit, indicating that this Proposal may not achieve the uniformity that LPL supports. Accordingly, LPL recommends that NASAA remove this provision from the Proposal.

The Firm's supervision team conducts detailed reviews of all non-traded direct participation programs on a pre-trade basis to determine if the transaction is in the customer's best interest. This includes, but is not limited to, a review of a client's age, investment experience, net worth, liquid net worth, current portfolio, investment goals, and investment rationale for the purchase of the product. LPL's review is also designed to ensure compliance with individual state concentration limits, in addition to LPL policies. In view of LPL's existing supervisory process, LPL believes that a rigid concentration limit, as set forth in the Proposal, is unnecessary. Reg. BI provides retail investors with adequate protections without utilizing a one-size-fits-all approach which, may not work for every investor.

LPL further believes that the use of the term "affiliates" in the Proposal's concentration limits is overly broad and vague. As currently drafted, the Proposal's concentration limits would appear to apply to a large number of products not generally included in the definition of direct participation programs, but which are offered by affiliates of non-traded REIT issuers, including funds regulated under the Investment Company Act of 1940. Compliance with such a broad definition would require significant undertakings by firms and further limit investor choice. Accordingly, if NASAA continues with a proposed concentration limit, we believe that it should narrow the definition of "affiliates" in the Proposal.

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Implementation

LPL encourages NASAA to add a specific, future effective date for the Proposal of no less than one full calendar year, should it be adopted by NASAA membership. In light of the changes proposed, firms will need to update their supervisory systems and educate their employees and financial professionals on the changes to ensure compliance. Likewise, the sponsors of non-traded REITs which are currently being offered to investors will need to update the specific prospectus language to reflect these changes. Therefore, we believe that this effective date should be at least one year from the adoption of the Proposal.

This step is particularly crucial, as many firms employ automated systems to pull concentration, income and net worth requirements from the text of prospectuses as part of the supervisory review of non-traded REIT transactions. If the changes in the Proposal were to become effective too soon following a vote by the NASAA membership, it is likely that many financial professionals, firms, and product sponsors would instantly be out of compliance through no fault of their own. A delayed implementation of one year, on the other hand, would permit financial professionals, firms, and product sponsors to implement the necessary changes to comply with the revised Statement of Policy. Compliance with this proposal will require changes to our existing technology and technology changes are time-intensive, particularly because of the choreographed planning, development and testing necessary to implement changes.

Further, LPL believes that the Proposal should be amended to clarify that the new standards apply to future investments, rather than applying also to investments currently held. If the standard were to be applied retroactively, it would cause significant investor confusion and unnecessary concern. Financial professionals may be forced to liquidate assets in order to meet the new aggregate concentration limit, and in many instances this could be premature, resulting in a loss for the investor. Therefore, we urge NASAA to clarify that the Proposal's changes apply only to future investments.

Comment Period

LPL appreciates the extension that NASAA previously granted to allow for a 60-day comment period. The changes outlined in the Proposal are wide reaching and impactful, as they represent the first update to the Statement of Policy in more than fifteen years. By extending the comment period, NASAA is ensuring that it hears from as many impacted market participants as possible, commentary that will be necessary as the final proposal is crafted. We further ask that NASAA consider 60- or 90-day comment periods for all model rule or guideline revision proposals in the future in order to allow for a robust response.

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III. Support for Comments from Trade Associations

LPL works closely with the Institute for Portfolio Alternatives (IPA) and we support the comments IPA submitted on behalf of their membership. LPL further supports the financial services joint trade association letter as members of ASA, SIFMA and IRI.

IV. Conclusion

Thank you for the opportunity to comment on this Proposal. LPL appreciates our partnership with NASAA. Please contact John Cronin at John.Cronin@lplfinancial.com with any questions.

Sincerely,

Ian J. Frimet