

September 12, 2022

Via Email to nasaacomment@nasaa.org

NASAA

Attn: Andrea Seidt, Section Chair and Mark Heuerman, Project Group Chair

750 First Street, NE, Suite 1140

Washington, DC 20002

Re: Proposed Revisions to the NASAA Statement of Policy regarding Real Estate Investment Trusts

Dear Ms. Seidt and Mr. Heuerman:

The undersigned write on behalf of the Securities Arbitration Clinic at St. John's University School of Law and the Fairbridge Investor Rights Clinic at Elisabeth Haub School of Law at Pace University (collectively, the "Clinics"). We are grateful for the opportunity to comment on NASAA's proposed revisions to the Statement of Policy Regarding Real Estate Investment Trusts ("REIT Guidelines"). The Clinics support the proposed revisions, which aim to update the conduct standards to incorporate Regulation Best Interest; adjust the suitability standards to match inflation; add a standardized concentration limit to the suitability standards; and prohibit the use of gross offering proceeds as an investment objective or strategy to make distributions. The proposed revisions are crucial to protecting small investors, further regulating and prohibiting conduct that often targets unsophisticated investors.

The Clinics provide free legal representation to public investors. Our clients are otherwise unable to obtain legal representation in their securities disputes primarily due to the small dollar amount of the claim. If the Clinics did not represent them, our clients would likely be forced to proceed pro se or not pursue their claims at all. Our clients are generally of modest means and do not have the financial capacity to withstand even small losses of their net worth. In addition to representing aggrieved investors, the Clinics are committed to investor protection. Accordingly, we have a strong interest in rules that affect investors.

Although non-traded REITs are registered securities, they are not publicly listed on national exchanges. Due to their nature, non-traded REITs are generally unsuitable for unsophisticated investors who are investing their retirement savings. There are a number of risks associated with REITs, including liquidity risk, income risk, and principal risk.

The Clinics have each represented a number of investors who were recommended non-traded REITs. The investors were seeking low-risk, consistent income from their retirement savings as they relied on the income to meet their day to day living expenses. In every case, the investor was misled to believe that the non-traded REITs would pay consistent income at a guaranteed level, and that their principal would be protected. The investors soon learned that they could not liquidate their shares, that the income was subject to the discretion of the REIT's management and that the income could be reduced or suspended all together, and that they had lost principal. Our clients were stuck with illiquid investments with no way to replace the lost income that they were so dependent upon.

The first of the proposed changes would make it clear that a broker must comply with applicable conduct standards, including Regulation Best Interest when recommending investment in a non-traded REIT. The proposed language would also make it clear that otherwise complying with the policy requirements does not excuse a broker from complying with the conduct standards. We often see cases where the broker looks to be relieved of their suitability or best interest obligations because they had the client sign a statement that they qualified for the investment. However, qualification does not equate to suitability or satisfy the best interest standard. Accordingly, we support the inclusion of this new language in the proposal.

The second proposed revision contemplates the suitability standards be adjusted for inflation. While the Clinics support further suitability restrictions, such as excluding retirement savings from the calculation of net worth, adjusting the net worth thresholds for inflation is a good first step. The Clinics further suggest that these standards be renamed qualification standards rather than suitability standards to make it clear that meeting these thresholds do not reflect on the overall suitability of a recommendation to invest in non-traded REITs.

The third proposal would likely have the largest impact on clients like ours. By including a concentration limit, investors will not be left with their retirement savings locked up in investments that suddenly have stopped paying income. Additionally, the Clinics support the inclusion of other direct participation programs when calculating the limitations. We have often had clients who were sold both non-traded REITs as well as Business Development Companies. The Clinics ask that NASAA also consider including other potentially illiquid products, such as structured products, limited partnerships, and annuities, when calculating the concentration limitations, reduce the overall permissible concentration limit, and/or exclude retirement savings from the definition of liquid net worth.

The fourth proposed change will also benefit investors by increasing the transparency of what "income" and "yield" mean for REITs, as well as restricting deceptive tactics that do not adequately inform investors. Again, our clients do not understand that the non-traded REITs are often either paying income by borrowing money, or selling additional shares. To the extent they understand anything about the

investment, they often believe their income is coming from the profits of the underlying investments.

In our experience, non-traded REITs are complex products that are very often mis-sold to investors. Investors do not understand the risks they are accepting by investing in these types of products. The revisions to the REIT Guidelines are a step in the right direction of ensuring these products are only sold to those investors who understand and can accept the risk associated with them. We do request that NASAA consider further changes to protect investors.

We appreciate the opportunity to comment on such an important proposal. Thank you for your consideration.

Respectfully Submitted,

/s/
Mackenzie Connick
*Legal Intern
Securities Arbitration Clinic
St. John's University School of Law*

/s/
Christine Lazaro
*Professor of Clinical Legal Education
and Director of the Securities Arbitration Clinic
St. John's University School of Law*

/s/
Elissa Germaine
*Executive Director of John Jay Legal Services and
Director of the Fairbridge Investor Rights Clinic
Elisabeth Haub School of Law at Pace University*

cc: Andrea Seidt, Section Chair (via email to andrea.seidt@com.ohio.gov and Mark Heuerman, Project Group Chair (via email to mark.heuerman@com.ohio.gov)