Ohio Business Roundtable

Business Leadership to Build a Better Ohio

September 9, 2022

NASAA Corporation Finance Section
Andrea Seidt, Section Chair
Mark Heuerman, Project Group Chair

North American Securities Administrators Association, Inc.
750 First Street, N.E., Suite 1140
Washington, D.C. 20002

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

Dear Section Members, Commissioner Seidt and Mr. Heuerman:

On behalf of the members of the Ohio Business Roundtable (OBRT), we respectfully submit the following comments regarding the proposed revisions by the North American Securities Administrators Association (NASAA) to its statement of policy regarding real estate investment trusts (REITs).

By way of background, OBRT is comprised of over 100 president and CEOs of Ohio's top companies, 70 of which are headquartered in the state and one third of which are Fortune 1000 companies. Collectively, our members employ over 500,000 Ohioans and generate a revenue totally over $1.2 trillion. OBRT was established in 1992 for one sole purpose: to improve Ohio's business climate.

First and foremost, we support NASAA's efforts to protect investors and ensure an orderly and stable marketplace for securities, and we recognize the important role that your organization plays on a national policy level. Nevertheless, we are concerned about the Proposal's possible impact on the Ohio economy and investors.

More than 31,000 Ohioans have invested in 195 federally-registered non-listed REITs. The total value of these investments exceeds $1.9 billion and the average Ohioan's investment is $60,000. Non-listed REITs provide Ohioans access to geographically diverse opportunities across a range of property types – office, industrial, multifamily, retail, self-storage, medical, and real estate debt. They provide income generation (as non-listed REITs must return at least 90% of taxable income to shareholders), offer long-term appreciation, inflation protection potential, portfolio diversification, and access to highly regarded and institutional quality real estate managers. They also support the acquisition and development of affordable housing, commercial properties for small businesses, and other types of real estate that supports economic growth and employment – some of it in Ohio. Continued investment in infrastructure such as warehouses that are an essential link to the nation's supply chain increases the capital directed toward this national priority.

The proposed concentration limits, in particular, may prevent many Ohio investors from attaining adequate portfolio diversification and other benefits from investing in non-listed REITs. We appreciate NASAA's concern for small retail investors who are exposed during market drawdowns. An allocation of a portfolio to NAV REITs can reduce this exposure by providing portfolio diversification. Moreover, current regulation by the states, Securities and Exchange Commission and FINRA already protects these customers from abusive sales practices.

NAV REITs are distributed through federally-registered broker-dealers and investment advisers who are required to recommend products that are in their clients' best interest. Many of these financial professionals have developed concentration limits for a variety of products, including NAV REITs, that reflect a customer's investor's age, risk tolerance, investment time horizon, income, and net worth. This risk-based approach allows for flexibility to permit higher concentration for customers with a high net worth and adequate liquidity. They are subject to the sales conduct standards imposed at the federal level.

As you know, the proposal would substitute these carefully tailored concentration limits with a default limitation of 10% of liquid net worth. Moreover, the proposal would subject the sponsor's affiliated funds --- including index funds and mutual funds -- and any direct participation program to the 10% limitation for any investor.

The concentration limits do not provide an exemption for accredited investors. They would impede even wealthy investors, advised by their federally regulated broker or investment adviser, from following portfolio diversification strategies like those employed by big institutions. For example, an investment adviser might recommend that a client with enough cash to meet reasonably foreseeable needs, diversify her portfolio by investing more than 10% of her net worth in an NAV REIT. The REIT might be one in which she has a long history of successful investing. The Proposal would preclude the investment adviser's recommendation. It even would limit the investor's ability to buy index funds or mutual funds managed by the NAV REIT sponsor.

The concentration limits would provide little additional protection to Ohio investors, but it would impede their ability to invest in NAV REITs. Pension plans and other institutional investors allocate a portion of their portfolio to real estate. Even the Ohio Public Employees Retirement System Defined Benefit Plan targets over 23% of its assets to alternative investments, with 10% to real estate. The concentration limits would deny many retail investors of the same diversification opportunity.

The proposal thus would limit investor choice without improving investor protection. It would supplant the evaluation by a financial advisor of what is in the client's best interest, with an inflexible standard established by a state administrator. It would discourage investment in federally regulated NAV REITs that are offered by some of the largest and most well-established asset management companies in the world. And by thwarting real estate investment in Ohio as in other states, it could deprive the Ohio economy of needed capital.

For these reasons, we respectfully request that NASAA withdraw the proposed concentration limits. Please let us know if we can answer any questions on this very important issue to Ohio's economy. We look forward to a continued discussion.

Respectfully,

Pat Tiberi

Patrick J. Tiberi
President & CEO
Ohio Business Roundtable