The Real Estate Roundtable

September 8, 2022

NASAA Corporation Finance Section
Ms. Andrea Seidt, Section Chair
Mr. Mark Heuerman, Project Group Chair
North American Securities Administrators Association, Inc. (NASAA)
750 First Street, N.E., Suite 1140
Washington, DC 20002

Via electronic submission to NASAAComments@nasaa.org, Andrea.Seidt@com.ohio.gov, and Mark.Heuerman@com.ohio.gov

Dear Commissioner Seidt and Mr. Heuerman:

The Real Estate Roundtable[1] is writing to express concern about NASAA's proposed revisions to its Statement of Policy Regarding Real Estate Investment Trusts (the "Proposal"). If adopted, the Proposal could have a profound impact on the $20.7 trillion[2] U.S. commercial and multifamily real estate market. It could also have the unintended and unnecessary consequence of impeding real estate capital formation, undercutting economic growth, and weakening the strength and stability of U.S. real estate capital markets.

The Roundtable shares NASAA's goal of ensuring that the best interests of retail investors are served by their broker-dealers and investment advisers, and by the investment products that are made available to them. But the Roundtable has serious concerns regarding the widespread economic impact of the Proposal, the constraints that will be placed on investors to diversify their investment portfolios in highly regulated securities, and the outdated understanding of the REIT industry that the Proposal attempts to address. Accordingly, and for the reasons explained below, we urge NASAA to withdraw the Proposal and to engage industry participants to craft regulations that will help ensure NASAA's goals without stifling investment in commercial real estate and limiting investors' ability to diversify their portfolios.

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1 The Roundtable's mission is to bring together leaders of the nation's top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of major nation real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy. The Roundtable's membership represents over 3 million people working in real estate; some 12 billion square feet of office, retail, and industrial space; over 4 million apartments; and more than 5 million hotel rooms. It also includes the owners, managers, developers, and financiers of senior, student, and manufactured housing as well as medical offices, life science campuses, data centers, cell towers, and self-storage properties. The collective value of assets held by Roundtable members exceeds $4 trillion.

2 According to Nareit research, the estimated total dollar value of commercial real estate was $20.7 trillion as of 2021:Q2.

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REITS and PNLRs

REITs are an important part of the economy, investors' portfolios and local communities. Investing in real estate supports economic growth; helps to grow the much needed supply of housing, particularly in the multi-family, workforce, and affordable housing sector; enhances the infrastructure of industrial space; and supports state and local communities across the country. For many retail investors, REITs are the only investment products that are available to them that will allow them to diversify their investment portfolio and to participate in the commercial real estate market.

REITs own or finance income-producing real estate across a range of property sectors. REITs are subject to the statutory operating framework set forth in Section 856 of the Internal Revenue Code (the Code), which is intended to ensure that REITs confine their activities to the business of real estate as a landlord or lender. Pursuant to the Code, REITs must distribute 90% of its taxable income each year to its shareholders and satisfy rigorous asset and income tests that effectively require that REITs primarily invest in qualifying real estate assets and primarily derive their income from such assets.

Some public REITs trade on major stock exchanges (so-called listed REITs), while others are public, but not listed on an exchange (public non-listed REITs (PNLRs)). Both listed REITs and PNLRs own, manage and lease investment-grade, income producing commercial real estate in nearly all property sectors. As registered public companies, both listed REITs and PNLRs must also make regular Securities and Exchange Commission (SEC) filings, including quarterly and yearly financial reports, which are publicly available through the SEC's EDGAR database. Since the Proposal only impacts PNLRs, this comment letter is primarily focused on PNLRs, whose securities are registered with the SEC and NASAA members.

Concerns Related to the Proposal

Federally-regulated PNLRs, and in particular net asset value (NAV) PNLRs[3] that are active today, are a growing source of capital to the acquisition and development of affordable housing, commercial properties for small businesses, and other types of real estate that supports economic growth and employment. In 2021, the NAV REIT industry raised over $36.5 billion and in the first half of 2022 raised another $21.3 billion. Recent surveys of PNLRs indicated that approximately 63% of their investments in multifamily housing support workforce housing, defined as multifamily housing with rent less than 25% of mean family income in the surrounding area. The Proposal does not provide any economic impact analysis on how its adoption may effect the affordable housing market, or the wider commercial real estate market. The Roundtable encourages NASAA to conduct or at a minimum to address the economic impact of the Proposal in its justification before considering adoption.

The Roundtable is also concerned that the Proposal appears to be substantially based on a flawed and outdated impression of the PNLR sector and PNLR products. Many of the issues that NASAA highlights to justify the Proposal – such as liquidity concerns, fee transparency, sources of

[3] A NAV PNLR (or NAV REIT) is a type of REIT that is not publicly traded on a stock exchange, regularly calculates and discloses the net asset value or "NAV" of its shares, conducts offerings of its stock at prices based on the NAV per share, and repurchases its shares of stock at prices based on the NAV per share. Typically, an NAV REIT will offer multiple classes of its shares with different fees, which vary for different investor types and share distribution channels.

distributions – were largely, if not completely, ameliorated by the introduction of NAV PNLRs in 2017, which now represents 100% of the new capital being invested in PNLRs. NAV PNLRs are products that differ in material respects from prior lifecycle PNLRs, which are no longer being offered to new investors. The evolution of the PNLR sector – driven by market pressures and regulatory changes – has resulted in a product that has historically only been available to institutional investors. NAV PNLRs are far better positioned than before to offer retail investors a solid, diversified investment strategy – while remaining highly regulated with a transparent fee-structure.

Commercial real estate historically has provided investors with portfolio diversification, inflation protection, a source of income, and long-term growth. Importantly, NAV PNLRs incorporate many features that make them a suitable investment for a variety of investors, including retail investors. NAV PNLRs help investors build diversified portfolios because their investment returns reflect the performance of income-producing real estate, which typically has been only moderately correlated with the returns of other assets over long investment horizons. NAV PNLRs also typically pay meaningful dividends, due to the IRS REIT distribution requirements described above, and provide investors with an investment option that has the potential to provide long-term capital appreciation. Because rents and leases have, over time, tended to be responsive to inflation, NAV PNLRs also offer investors some protection from inflation risks.

The Proposal would impose arbitrary restrictions that would limit investor choice during a time of stock market volatility and high inflation. The concentration, net worth, and gross income limits in the Proposal would prevent many investors from attaining the benefits of investing in commercial real estate that is reflected in the performance of NAV PNLRs, as well as the portfolio diversification that is imperative during times of economic uncertainty such as today.

The Proposal would also not only impact PNLRs but would indirectly limit the availability of other highly regulated investment vehicles offered by leading asset management companies that support real estate and the broader economy, including the sponsors of mutual funds, exchange-traded funds, interval funds, tender offer funds and business development companies. These investment vehicles direct long-term capital to geographically diverse opportunities across a range of property types – office, industrial, multifamily, retail, self-storage, medical, and real estate debt. Again, the Roundtable is concerned because no economic impact analysis is provided on how its adoption may effect the commercial real estate market. Furthermore, NASAA does not provide a justification of how limiting an uncorrelated investment products is beneficial to investors.

Conclusion

Because of the potential widespread economic impact of the Proposal, the constraints that will be placed on investors to diversify their investment portfolios in highly regulated securities, and the outdated understanding of the REIT industry that the Proposal attempts to address, the Roundtable urges NASAA to withdraw the Proposal and to engage industry participants to craft regulations that will help ensure NASAA’s goals without stifling investment in commercial real estate.

The Roundtable also wishes to recognize and endorse the comment letters filed by Nareit, the Institute for Portfolio Alternatives and the U.S. Chamber of Commerce. These letters also raise important concerns related to the Proposal that we believe NASAA should consider before taking further action.

We appreciate the opportunity to comment on the Proposal and would be happy to discuss these comments with NASAA. If you would like to discuss this submission further, please contact Clifton Rodgers, Senior Vice President, by email at crodgers@rer.org or by telephone at (202) 639-8400.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer