DCALTA
Defined Contribution
Alternatives Association

September 10th, 2022

Section Chair, Andrea Seidt
Project Group Chair, Mark Heuerman
North American Securities Administrators Association
750 First Street NW, Suite 1140
Washington, DC 20002

Re: Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts (the "Proposal")

Dear Section Chair Seidt,

We write to respectfully request that the Proposal be withdrawn. We are concerned that the Proposal would dramatically expand state regulation of non-listed REITs in a manner that could disrupt the ability of retirement savers to access real estate, diversify their retirement savings, and receive the protections afforded by federal regulation of non-listed REITs. In a time of high inflation and market volatility, and when other regulators have recently imposed strong care standards, now is not the time for these impediments to portfolio diversification.

We note that the Proposal appeared to focus on lifecycle REITs. As a result of the actions of federal regulators over seven years ago, the marketplace for REITs has evolved away from lifecycle REITs to NAV REITs, which are virtually the only non-listed REIT offered today. NAV REITs provide diversified access to real estate in an investor friendly structure. Unlike REITs that had been offered historically, NAV REITs typically provide investors with a share repurchase plan where the asset manager is committed to offering to repurchase 2% of NAV each month and 5% of NAV each quarter. They are managed by an external advisor, are subject to oversight by an independent board, and have net asset value calculated monthly using an independent valuation advisor. Additionally, NAV REITs are largely sold without any load.

We write to focus on four specific concerns that have led to our opposition to the Proposal.

First, the Proposal seeks to raise the thresholds for eligibility to invest in REITs. By doing so, the Proposal would limit the tools available to Americans who are saving for retirement. Real estate can help retirement savers with a means to diversify away from stock market volatility and obtain an inflation hedge. NAV REITs provide a federally-regulated investment vehicle in which retirement savers can gain this real estate exposure.

Second, the Proposal's concentration limits are unworkable. It would limit the percent of an individual's overall investment in vehicles managed by an affiliate of the REIT sponsor to no more than 10% of the investor's overall liquid net worth. This could

extend not only to non-listed REITs, but to listed REITs, mutual funds, exchange-traded funds, interval funds, tender offer funds, business development companies, private offerings, and direct participation programs, the latter which are not defined in the proposal or under state law. Issuers are not in a position to ensure that an investor does not exceed the concentration limits, and there is no mechanism where an issuer could even monitor investment company purchases by an investor and track liquid net worth over time.

Third, the sale of products in the retirement space is already sufficiently regulated. For products purchased in an employer sponsored plan, the Employee Retirement Income Security Act ("ERISA") requires that a fiduciary be involved in the decision to make the product available. In the individual retirement account marketplace, the Securities and Exchange Commission ("SEC") Regulation Best Interest imposes a "best interest" standard that the SEC has described as fiduciary-like. For individual retirement accounts, the Department of Labor ("DOL") has issued a prohibited exemption to facilitate the sale of products like NAV REITs. Under PTE 2020-02, an entity recommending a purchase is required to comply with DOL's "impartial conduct standards" which also contain a "best interest" care standard. Finally, the Financial Industry Regulatory Authority ("FINRA") also imposes care standards. In the last five years, all three regulatory agencies – the DOL, the SEC, and FINRA – have updated their care standards.[1] NASAA should hold off on adding a fourth new care standard as these other standards begin to take effect. Adding a fourth care standard now is only going to drive up compliance costs, which will be passed along to investors and add to investor confusion.

Fourth, the Proposal is fatally flawed because it is based on the premise that lifecycle REITs are the primary type of REIT being distributed today. In fact, almost no lifecycle REITs are distributed. Many of the concerns raised by NASAA are not present with NAV REITs, making NASAA's anticipated benefits of its Proposal illusory. Finally, NASAA states its intention to use the Proposal as a template for guidelines on BDCs, asset-backed securities, commodity pools, and other products. Without a proper cost benefit analysis, any consideration of an extension to additional products would be premature.

We appreciate the opportunity to comment and ask that the Proposal be withdrawn.

Respectfully,

Jonathan Epstein
President, DCALTA

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[1] We note that the Proposal conflicts with aspects of each of these new care standards in a manner that raises clear preemption issues.