

August 6<sup>th</sup>, 2022

Dear Chair Seidt and Project Group Chair Heuerman,

Thank you for the opportunity to comment on the proposed revisions to the *NASAA REIT Guidelines* dated July 12, 2022. SUBSCRIBE ([www.subscribeplatform.com](http://www.subscribeplatform.com)) operates the leading order management system for alternative product transactions, delivered as an enterprise software solution to the global alternative investments industry, which includes in the United States, many of the key industry participants governed by these Guidelines.

Please find below our feedback regarding the proposed revisions.

**Revision 1: to update the REIT Guidelines by formally incorporating into the guidelines the new Regulation Best Interest (“Reg BI”) conduct standard, as well as any other updated conduct standards that are adopted by the NASAA jurisdictions as applied to brokers recommending the securities.**

We agree with this revision.

Whereas there is a significant positive general investor protection in this revision, adopting Reg BI more widely will also allow the industry to clearly rely on a single standard of care. However, this revision is inadequate in that it leaves the door open to added complexity of differing State-by-State additions and qualifications to the standard (e.g., *“as well as any other updated conduct standards that are adopted by the NASAA jurisdictions...”*) and thereby poses a menacing effect in actual practice. Reg BI sufficiently protects investors in any State and rightly puts the onus on both the issuer and the broker-dealer to maintain that standard.

Allowing each State to then neuter any hope that a single standard could be used to monitor compliance seems like a recipe for unintentional non-compliance for the well-intentioned. The issue of compliance and monitoring is magnified for those operating large issuer or broker-dealer organizations across States. Our feedback, therefore, is that Reg BI become the sole standard of care for these products and each NASAA jurisdiction adopt it as their own standard specifically for these and all other non-traded direct participation programs.

**Revision 2: an update to the net income and net worth figures in the suitability section of the prospectus in that purchasers of these securities must have either (a) the combination of a minimum annual gross income of \$95,000 and a minimum net worth of \$95,000 or (b) a minimum net worth of \$340,000.**

We agree with this revision.

It cannot be argued that inflation has not occurred since 2007. We further agree that the SEC adjust the Accredited Investor definition to account for inflation. Our feedback, however, with respect to this proposed revision is again focused on the difficulty to monitor and implement compliance when there is a complex web of “actual” Net Worth and Liquid Net Worth standards in practice when dealing across States. For example, this revised \$340,000 Net Worth requirement coupled with a particular State’s \$300,000 or \$250,000 Liquid Net Worth requirement to determine concentration limits.

The actual level of income and net worth are important to allow adequate access to these products in the industry - but clearly defining a single standard Net Worth benchmark or Liquid Net Worth benchmark across the industry is more important. And it may not be lost on the NASAA Board of Directors that these complexities of differing definitions in NASAA "Net Worth" and State level "Liquid Net Worth" are an added layer of rules that in their union create difficulties in compliance for all. This problem becomes widespread when taking into consideration your proposed 10% universal limit revision. Having the NASAA definition of Net Worth as a clearly defined standard is helpful. And thus, it should be clear and singular what Liquid Net Worth means across States for these products. Each NASAA jurisdiction definition being equal would make for a more compliant environment.

There is also a gray-area issue of how-to in practice determine Net Worth and Liquid Net Worth adequately. Should it involve credit checks to arrive at net amounts in the face of income and asset balances by supplied by investors? Practice across the industry is likely a best-efforts model on readily obtainable information coupled with investor self-representations.

Lastly, we believe that this revision is inadequate in that it ignores recent revisions to the SEC Accredited Investor definitions for certain types of investors – specifically – natural persons that qualify as Accredited Investors define by either a) those that hold professional certifications and designations and other credentials (e.g., Series 7, 65, and 82); or those that are b) "knowledgeable employees" of the issuer. If these natural persons can invest in private funds under Reg D without any income, net worth, or concentration limit applied to them - then we must ask why they must explicitly meet income, net worth, and liquid net worth requirements for products that are offer more regulation and liquidity?

**Revision 3: a limitation prohibiting an aggregate investment in the issuer, its affiliates, and other non-traded direct participation programs that exceeds 10% of the purchaser's liquid net worth.**

We agree with this revision.

Our feedback on this revision is consistent with our theme that presenting standards in rule are not allowing them to be easily used in practice due to the lack of *"greater uniformity amongst the (NASAA) membership"*. Your revision defines Liquid Net Worth *"as that component of an investor's net worth that consists of cash, cash equivalents, and marketable securities,"* and goes on to explain that many States use *"very similar language."* We agree many states use *different* language; similarity is a gateway to non-compliance. Our feedback is that leaving the issue of these varying State level definitions as not addressed in these revisions is irresponsible, especially, in the light of your intentions to create greater standardization with at least three of these four revisions. Is the language the same or different? If the intent is the same – then the same language can be easily adopted by the membership.

We find a secondary issue that is not clear with the proposed revision.

As with all products in a portfolio, REITs do not stand alone to yield the desired investment outcomes. They are often used as alternative investments for those investors that do not meet the Accredited Investor, Qualified Client, and/or Qualified Purchaser definitions to be eligible to purchase many private alternative funds.

Other products that are also used in portfolios alongside REITs are other registered funds (structured in varying ways from 40ACT, 33ACT, RICs, Interval Funds, Perpetually Offered Non-Traded or Non-Listed Funds, Closed-End Funds, etc.) that offer exposure for example to private equity, private credit, hedge fund, and oil & gas partnerships. Many issuers may offer products across these product types and structures -- and any one investor may have exposure to these products along with REITs and collectively all may be deemed "*other non-traded direct participation programs*." These products should be defined more explicitly to include or not include certain well-known product types in the industry and there should be a uniform definition across jurisdictions. This poses another one of areas where the NASAA jurisdictions offer a menacing array of "*similar*" definitions to establish rule standards yet results in a chaos standard in practice.

Lastly, we are curious as to the best-practice model suggested by regulators to issuers and broker-dealers, on how to monitor and enforce the 10% rule within any one issuer and their affiliates and moreover, across multiple issuers and for accounts held at multiple broker-dealers. How is this rule to be adequately monitored and audited? Seems to us that there is a rule standard in place, yet very little empathy or appreciation for how in practice the industry is to operationally comply with it.

**Revision 4: gross offering proceeds prohibited as distribution source.**

We agree with this revision and have no comments.

Respectfully yours,

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Founder & CEO  
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