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September 12, 2022

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
Submitted Electronically

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

Dear Ms. Seidt and Mr. Heuerman:

Teachers Insurance and Annuity Association of America ("TIAA") and its wholly-owned subsidiary Nuveen, LLC ("Nuveen") are pleased to respond to the request for public comment (the "Request for Comment") issued by the North American Securities Administrators Association, Inc. ("NASAA") regarding proposed revisions to NASAA's *Statement of Policy Regarding Real Estate Investment Trusts* (the "REIT Guidelines").[1] We understand that NASAA has proposed four primary revisions to the REIT Guidelines in an effort to "keep NASAA Statements of Policy current and to enhance retail investor protections surrounding the offer and sale of non-traded REITs to retail investors."[2] We also recognize, as NASAA notes in the Request for Comment, that if the proposed revisions are ultimately adopted, they "have the potential to influence updates to other sets of Guidelines that are under development, including those for the Omnibus Guidelines, Asset-Backed Securities, Commodity Pools, Equipment Leasing, Mortgage Programs and Real Estate Programs (other than REITs)."[3] Thus, the changes to the REIT Guidelines that NASAA has proposed have widespread implications, not just for REITs, but for a host of other financial products.

TIAA realizes the significance of NASAA's proposal, and we support NASAA's goal of keeping the REIT Guidelines current and strengthening retail investor protections where appropriate. However, there are certain aspects of the proposed revisions that we believe are not as

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1 *Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts*, NASAA Corporation Finance Section and Direct Participation Programs Project Group (July 12, 2022), *available at*: https://www.nasaa.org/wp-content/uploads/2022/07/Request-for-Public-Comment-on-Amendments-to-NASAA-REIT-Guidelines-2022.pdf.

2 Request for Comment, p. 1.

3 *Id*. at 2.

effective as they could be. First, we feel that NASAA's proposed changes to the REIT Guidelines are more appropriate for lifecycle REITs than they are for REITs that regularly calculate and disclose their net asset value ("NAV REITs"), which are overwhelmingly the most common non-listed REITs offered today. Second, we are concerned that the proposed uniform concentration limit is not well designed, particularly as it does not include a carve-out for accredited investors. Without such a carve-out, we believe accredited investors may divert investments away from publicly-traded REITS in favor of less regulated private markets. We would also note that we have reviewed the comment letters prepared by the Institute for Portfolio Alternatives ("IPA") and the Securities Industry and Financial Markets Association ("SIFMA") in response to the Request for Comment, and we are in general agreement with the points made in those letters. We discuss our particular views in more detail below.

I. **About TIAA and Nuveen.**

Founded in 1918, TIAA is the leading provider of retirement services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA's mission has always been to aid and strengthen the institutions, retirement plan participants, and retail customers we serve and to provide financial products that meet their needs. Our investment model and long-term approach aim to benefit the approximately five million individual customers we serve across more than 15,000 institutions. To carry out this mission, we have evolved to include a range of financial services, including retail services and the asset management services offered by Nuveen and its subsidiaries.

Nuveen is comprised of investment advisers that collectively manage over $1 trillion in assets, including in the Nuveen and TIAA-CREF registered fund complexes as well as in private funds and structured vehicles. Included among Nuveen's product offerings is the Nuveen Global Cities REIT ("GCREIT"), a non-listed NAV REIT offered by the Nuveen Real Estate business with a diversified portfolio invested across North America, Asia-Pacific, and Europe. Given Nuveen's experience as the sponsor of a NAV REIT, our organization has a vested interest in participating in the public discussion around NASAA's proposed changes to its REIT Guidelines. It is with this experience in mind that we offer the following comments in an effort to help NASAA meet its goal of updating the REIT Guidelines appropriately, while enhancing retail investor protections in a thoughtful and meaningful way.

II. **The proposed changes are more appropriate for lifecycle REITs than for non-listed NAV REITs.**

As SIFMA notes in its comment letter, NASAA's proposed changes to the REIT Guidelines seem to be designed with legacy lifecycle REITs in mind, rather than NAV REITs, which are overwhelmingly the most common type of non-listed REIT offered today. The differences between these two types of REITs are significant. While lifecycle REITs are designed to terminate upon the occurrence of a particular liquidity event (*e.g.*, an acquisition or liquidation), NAV REITs offer their shares at NAV continuously over an undefined period of time. NAV REIT shares are usually sold on a fee-based platform, rather than on commission, and their fees are generally lower than those of lifecycle REITs. Importantly for investors, NAV REITs offer better liquidity than lifecycle REITs. SIFMA notes that NAV REITs typically offer redemptions at a rate that is four times the amount of liquidity offered by lifecycle REITs, and additionally allow shareholders to redeem at NAV after the first year. The changes NASAA has proposed to the REIT Guidelines are, we believe, designed to address certain concerns raised by lifecycle REITs. However, given the differences between those products and NAV REITs, which are by far the most commonly distributed type of non-listed REIT today, we do not believe NASAA's proposed changes are appropriate or necessary. We respectfully urge NASAA to review its proposal in light of our arguments and consider how it can be amended to more effectively and appropriate apply to NAV REITs.

III. **The proposed uniform concentration limit is not well designed and does not include essential carve-outs for accredited investors.**

One of the most significant additions NASAA is proposing is a limitation prohibiting an aggregate investment in the issuer of a non-traded REIT, its affiliates, and other non-traded direct participation programs that exceeds 10% of the purchaser's liquid net worth. The new provision would give each state securities agency's administrator discretion to set a lower or higher standard in response to certain risks and other factors. As support for this proposed uniform concentration limit, NASAA notes that "at least 20 different jurisdictions have imposed a concentration limit of some form on this product," with many states adopting the same 10% threshold using language similar to that used in the Request for Comment.[4] NASAA is clear in the Request for Comment that its goal in proposing this provision is to reduce investor risk and encourage greater diversification to reduce the risk of loss from a single investment or single investment type.

We appreciate NASAA's objective in proposing a uniform concentration limit; however, we believe the 10% threshold is not well designed to achieve that goal. The fact that NASAA's proposed 10% limit would apply not only to investments in non-traded REITs, but also to securities offered by an affiliate of that REIT and in "other non-traded direct participation programs" is, in our view, a significant overreach that goes far beyond the intended purview of the REIT Guidelines. Investors holding relatively small positions in non-listed REITs could be prevented from purchasing any investment companies managed by an affiliate of such REITs in excess of 10% of their liquid net worth. This could discourage larger asset management companies with broad investment platforms and established reputations and performance from participating in this market. In addition, while NASAA intends its proposed concentration limit to increase uniformity among the states, state securities agency administrators will have the ability to increase or decrease the 10% limit for individual REITs based on perceived risks or other factors that may be difficult or impossible for REITs to anticipate. Therefore, instead of ensuring that all non-traded REITs are subject to the same 10% concentration limit, NASAA's proposed provision would subject them to a potentially opaque and unpredictable process by which individual administrators can apply different limits to different REITs with little to no transparency

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[4] *Id*. at 3.

or potential for recourse. State administrators could also choose to adopt a limit other than the proposed 10% threshold for all non-traded REITs that apply for registration in the state, which would undermine NASAA's effort to institute a nationwide uniform 10% limit. In attempting to introduce greater uniformity across states, NASAA has proposed a system under which it may be more difficult than ever for REITs and the investment professionals who offer them to know what concentration limit may apply.

Additionally, we have strong concerns about the fact that the proposed 10% concentration limit does not include a carve-out for accredited investors. We note that when NASAA advanced a similar proposal in 2016[5] (which was later withdrawn), accredited investors were carved out from the proposed concentration limit. It is unclear to us why NASAA has changed course in this latest iteration of the proposal. The investor protection concerns that NASAA has cited as its primary motivation for proposing a 10% concentration limit should be significantly reduced in the context of accredited investors, who by definition are more experienced, wealthy investors and/or industry professionals. Restricting the ability of sophisticated investors to invest in REITs on the same level that retail investors are restricted and limiting accredited investors' ability to diversify their portfolios seems to us unduly burdensome and unjustified by any compelling policy goal. In addition, we are concerned that such restrictions will push accredited investors from investing in highly regulated REITs into private, less regulated markets where they can operate with fewer restrictions. Thus, by not carving out accredited investors from the proposed concentration limit, NASAA may ultimately be encouraging investment activity that diminishes, rather than enhances, investor protections. For these reasons, we suggest NASAA eliminate the proposed 10% concentration limit from its proposal.

IV. **Conclusion.**

TIAA appreciates NASAA's efforts to update the REIT Guidelines in a thoughtful way that takes into account recent regulatory and market developments. However, as expressed above, we have significant concerns about some of the changes proposed in NASAA's Request for Comment, particularly with respect to the proposed 10% uniform concentration limit. We hope

[5] *Notice of Request for Public Comment Regarding a Proposed Amendment to the NASAA Statement of Policy Regarding Real Estate Investment Trusts,* NASAA (July 27, 2016), *available at*: https://www.reit.com/sites/default/files/meetings/REITWise17/PNLRs/Proposed%20NASAA%20Concentration%20Limits%2007-27-16.pdf.

the comments we have provided in the time allotted have been helpful, and we welcome further discussion with NASAA on these important issues.

Sincerely,

Keith A. Jones
Senior Managing Director
Nuveen