CAMBRIDGE

May 28, 2025

Via Electronic Mail (NASAAComments@nasaa.org)

North American Securities Administrators Association ("NASAA")
750 First Street, NE Suite 1140
Washington, DC 20002

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

To Whom It May Concern:

Cambridge Investment Research, Inc. ("Cambridge") submits this letter in response to the Request for Public Comment in connection with the Proposed Amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts ("REIT Guidelines") dated March 25, 2025 (the "Proposal"). This letter supplements Cambridge's comment submitted in connection with proposed revisions to the REIT Guidelines issued by NASAA in 2022[1] (the "Prior Comment").

Cambridge is grateful for the opportunity to provide additional input regarding the Proposal and asks that NASAA consider the points set forth herein, along with Cambridge's Prior Comment, when considering any revisions to NASAA's REIT Guidelines.

I. Concerns Regarding Concentration Limit

As before, Cambridge continues to believe that the proposed concentration guidelines should not be adopted. Specifically, NASAA recommends an aggregate 10% concentration cap across all non-traded REITs and direct participation program ("DPP") investments. Further, the Proposal contemplates minimum product-specific concentration limits to be set by the sponsors, subject to review by each state administrator.

While Cambridge appreciates NASAA's intentions, the unilateral imposition of such limits unnecessarily limits investor options, imposes unnecessary burdens on firms, and creates uncertainty among industry participants. For example, the Proposal affords state regulators

[1] The 2022 proposed revisions to the REIT Guidelines (not subsequently adopted) are available at https://www.nasaa.org/wp-content/uploads/2022/07/Request-for-Public-Comment-on-Amendments-to-NASAAREIT-Guidelines-2022.pdf.

significant discretion to determine whether the product sponsor's proposed, product-specific concentration limit is "reasonable" given the type of product and its associated risks. This approach suggests that there could be variations from state to state, resulting in confusion and inconsistency.

Additionally, the Proposal contemplates that product sponsors will propose a "minimum concentration limit" that is "reasonable given the type of REIT and its associated risks." However, "minimum concentration limit" is undefined, leaving it to industry participants to speculate as to the intent. Moreover, any such "minimum concentration limit" is subject to further refinement by each state administrator. Such a construct that could vary by investor, type of REIT, or other criteria, would be impossible to create consistency.

Under the guise of an accommodation, the Proposal contemplates permitting administrators to depart from the default, 10% aggregate concentration limit and to exempt accredited investors. The resulting lack of uniformity among products, sponsors, investors, and firms renders this aspect of the proposal unworkable. At a minimum, all accredited investors should automatically be exempt from the concentration limits. Those investors have the financial sophistication and resources to make their own portfolio allocation decisions and should not be subject to arbitrary concentration limits.

Similarly, the extension of aggregate concentration limits to encompass DPPs limits investor options and ignores critical differences among investors and related to their financial status, sophistication, risk tolerance, etc. Aggregating all DPPs for concentration testing purposes creates an overly broad and operationally challenging framework.

The Proposal ignores the fact that non-traded REITs and DPPs offer investors certain advantages and benefits not found in other investment classes, such as tax advantages, cash flow benefits, asset stability and non-correlation to the equity and bond markets. There is a place for non-traded REITs and DPPs within a well-diversified investor portfolio. By limiting access to products, investors may be harmed rather than protected.

In lieu of adopting standardized concentration guidelines, Cambridge encourages NASAA to consider establishing criteria for firms to consider when determining whether an investor's concentration in a certain asset class, with a particular issue, or in a particular issuer is too high. These criteria for consideration might include net worth, tax circumstances, investment objective, investment time horizon, risk tolerance, and investor sophistication. Such a framework promotes the interests of a broader spectrum of investors and ensures that the non-traded REIT and direct participation program space survives within the oversight states have today.

II. The Proposed Inflation Adjustments to the Net Income and Net Worth Thresholds Create Complexity and Inconsistencies

As drafted, the Proposal contemplates adjusting the net income and net worth thresholds every five (5) years.

> In addition, this proposal would further amend the REIT Guidelines to include periodic inflation updates every five years by NASAA. The proposed amendments would base further inflation adjustments on changes in the Personal Consumption Expenditures Chain Type Price Index (PCE) published by the U.S. Department of Commerce. The use of this index is consistent with the SEC's use thereof for making inflation adjustments to the "qualified client" definition in Rule 205-3 under the Investment Advisers Act of 1940. Under the proposed amendments, NASAA would publish an addendum to the REIT Guidelines every five years. However, state securities administrators would retain their authority at any time to require higher or lower thresholds than set forth in the REIT Guidelines.

The imposition of automatic adjustments would distinguish state regulators from federal regulators. Specifically, Securities and Exchange Commission ("SEC") regulations lack a comparable adjustment regime. The unnecessary creation of varied regulatory regimes needlessly complicates compliance efforts and drives differences not only between state and federal regulators but also among state regulators.

As an example, the Proposal could lead to certain investors being eligible to participate in certain offerings at a federal level but not at a state level. Moreover, the actual thresholds remain at the whim of each state's administrator. The resulting complexity and inevitable confusion seem difficult to justify.

In contrast to the Proposal, the accredited investor standard constitutes a well-established and well-recognized criterion. If the Proposal were adopted as drafted, significant difference could arise between the two measures merely by the passage of time. Moreover, this complexity and confusion is exacerbated by further permitting state administrators the authority to "at any time" require higher or lower thresholds.

III. Extension of Regulation Best Interest to Non-Retail Customers Is Unwarranted

The Proposal in relevant part would require broker-dealers or associated persons recommending non-traded REITs to a "non-retail customer," which is not defined, to have a reasonable basis to believe that investment in a non-traded REIT is suitable and appropriate for that non-retail customer. Such an extension of this federal suitability standard to an investor that the federal standard does not contemplate creates a fertile territory for state administrators to interpret the standard differently.

Furthermore, it is not clear under the Proposal when the obligation to assess the "best interests" of the non-retail customer is triggered. This uncertainty may even preclude simply marketing a non-traded REIT. Contrary to the current language, the Proposal should clearly reflect that the best interest concept applies only in the retail investor context.

IV. Conclusion

Cambridge shares NASAA's desire to protect investors and to reduce the undue risks an investor may experience. Cambridge believes, however, that a standardized concentration limit applied uniformly across all investor classes will not actually address the concerns that NASAA expresses but rather will result in a frustrating limitation on many investors and a curtailment of participation by issuers within an entire classification of investment programs.

Similarly, the automatic modification of objective investor data points and thereby differentiating them from federal law needlessly complicated the regulatory regime, while also creating investor confusion and uncertainty.

Finally, the modification and application of a federal suitability standard intended for retail investors to "non-retail investors, is unwarranted and likely to result in limited investor options, as well as inconsistent enforcement efforts.

Respectfully submitted,

// *Seth A. Miller*

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