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NASAA Corporate Finance Section
Faith Anderson, Chair, Direct Participation Programs Project Group
Bill Beatty, Co-Chair, Corporation Finance Section
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North American Securities Administrators Association, Inc. ("NASAA")
750 First Street, NW, Suite 1140
Washington, DC 20002

Via electronic submission to NASAAcomments@nasaa.org, faith.anderson@dfi.wa.gov, bill.beatty@dfi.wa.gov, ehouston@sos.nv.gov.

Re: NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Mmes. Anderson and Houston and Mr. Beatty:

On behalf of The Alternative & Direct Investment Securities Association ("ADISA"),[1] we are submitting this comment letter regarding the request for public comment on the Proposed Amendments (the "**Proposed Amendments**") to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (the "**REIT Guidelines**"). ADISA members play an important role in bringing non-correlating, diversifying investments to a significant part of the investing population. ADISA appreciates the opportunity to provide comments on behalf of its members below.

Proposed Incorporation of Regulation Best Interest.

The Proposed Amendments include a revision to incorporate the conduct standards found in the Securities and Exchange Commission's ("**SEC**") Regulation Best Interest ("**Reg BI**"), as well as other conduct standards adopted by the NASAA jurisdictions, to make them applicable to sponsors and those selling on behalf of sponsors. The SEC adopted Reg BI in 2019, and it became effective June 30, 2020.

1. ***ADISA believes that the addition of the conduct standards to incorporate Reg BI into the REIT Guidelines is (a) unnecessary in light of the SEC's and FINRA's focus on firms' behaviors in selling these products and that, by and large, firms have adopted and are implementing policies and procedures required by Reg BI, (b) already contained in***

[1] ADISA is the nation's largest trade association for the non-traded alternative investment space (i.e., retail vs. institutional). Through its 5,000 financial industry members (over 1,000 firms), ADISA reaches over 220,000 finance professionals, with sponsor members raising in excess of $200 billion annually, serving more than 1 million investors. ADISA is a non-profit organization (501(c)(6)), registered to lobby, and also has a related 501(c)(3) charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

NASAA's "Dishonest or Unethical Business Practices of Broker-Dealers and Agents" ("NASAA Model BD Rule"), and (c) inapplicable to those to whom it is targeted.

ADISA and its members are fully supportive of legal and regulatory efforts to prevent fraud and to prosecute those who commit fraud, falsify facts or other similar acts that inflict harm upon investors. Such individuals should rightfully be held accountable. ADISA believes that, close to five years following its effectiveness, Reg BI is performing as intended to raise the standard of conduct at financial advisory firms organized as broker-dealers and serving as a protection to investors in the REIT space that work with a broker-dealer in acquiring their investments. The fiduciary standard applicable to investment advisers ensures that investment advisers work in the best interests of their clients, thereby adding protection for investors who invest in REITs through them. ADISA does not believe that adding the conduct standards of Reg BI to the REIT Guidelines is necessary in light of (1) the existing regulatory requirements from both FINRA and the SEC placed on those who sell these products to investors and (2) the incorporation of Reg BI into the NASAA Model BD Rule.

In addition, the sponsors of these products are not the ones meeting with the investors to sell their products nor are they the ones recommending their products be sold. The financial advisors (whether broker-dealers or investment advisers) are, and have been, subject to the regulatory requirements of Reg BI (since 2020) or the fiduciary standard, respectively, and the ability to regulate those persons does not rest with the sponsors of DPPs. The addition of the Reg BI language to the REIT Guidelines neither enhances nor detracts from those existing obligations since those persons selling the investments are already subject to those standards as noted in the commentary in the Proposed Amendments by deleting the provision that the conduct standards would also apply to persons providing investment advice to shareholders with regards to shares of the REIT as originally set forth in the amendments proposed in 2022 (the **"Original Proposal**").

ADISA believes that adding the conduct standards to the REIT Guidelines is unnecessary because Reg BI is (1) already applicable to those to whom it applies as administered through the SEC and FINRA, (2) already incorporated into the NASAA Model BD Rule, and (3) inapplicable to those to whom the REIT Guidelines are directed.

Proposed Adjustments to Income and Net Worth Thresholds

2. ***ADISA recommends that the proposed adjustments to the income and net worth thresholds be rejected and remain as is. Alternatively, if adopted, ADISA recommends that the income and net worth thresholds not be required to be adjusted every five (5) years as proposed.***

The proposed adjustments to the income and net worth thresholds will continue to restrict access to alternative investments by (a) younger generations of investors and steer them towards advisers that employ model-driven and/or web-based solutions that may not take into account the entirety of an investor's risk tolerance, age and level of wealth in making what are essentially generic portfolio recommendations and (b) small balance and otherwise less wealthy and/or non-traditional investors who might otherwise acquire alternative assets for their savings and retirement portfolios. In addition, together with the concentration limits discussed below, raising the income and net worth thresholds for eligibility to invest in DPPs would serve to significantly decrease access for investors to non-correlative assets, including DPPs, and restrict those investors from achieving a diversified investment portfolio with alternative investments that are protected from the volatility of the traded securities markets.

In addition, requiring an adjustment to the income and net worth thresholds every five (5) years will likely put these DPP investments even further out of the reach of these younger and small balance investors with each adjustment. Even the SEC is not required to make an adjustment to the accredited investor thresholds every four years but is required only to conduct a review to determine whether the definition should be modified or adjusted.[2] If language regarding periodic adjustment of the income and net worth thresholds every five (5) years remains, ADISA believes that it should mirror the language of the Dodd-Frank Act and establish only a review requirement and not a mandatory adjustment.

Proposed Addition of Concentration Limits

DPPs that are subject to the REIT Guidelines are designed to hold primarily illiquid assets and therefore provide limited liquidity as a matter of investment profile. The current investment universe of DPPs have moved away from the historical "lifecycle REITs" where investors were locked in for significant periods of time with extremely limited liquidity (historically up to five percent (5%) per year). As a result of the shifting regulatory environment beginning with FINRA's 2015 amendments to Rules 2310 and 2340 and the entry of some of the largest asset managers in the country sponsoring DPPs, the non-traded industry has undergone a significant evolution to include alternatives such as NAV REITs, BDCs, interval funds and tender offer funds, with their attendant liquidity features (generally 20% of NAV per year). The liquidity options offered by these products, among other alternatives, allow managers to assemble generally illiquid portfolios and attempt to deliver the advantages that this approach can bring to investors while allowing for some (admittedly not unlimited) liquidity for those investors who need or desire liquidity.

While ADISA appreciates the change from the Original Proposal to delete the affiliates of the issuer from the concentration limits, we believe the concentration limits are still too limited and could have adverse effects on investors' choices with respect to these alternative products. We suggest an alternative approach below.

ADISA also appreciates the change from the Original Proposal to exclude accredited investors from the concentration limits of the REIT Guidelines and believes that such exclusion is appropriate.

3. ***If the concentration limits remain in the REIT Guidelines, ADISA recommends that the concentration limit not include all DPPs, but allow investors the option to invest up to 10% in each investment, up to an upper limit of 25% for all DPPs.***

A diverse, well-balanced portfolio can include multiple types of DPP investments, such as REITs, BDCs, oil and gas programs, equipment leasing programs and commodity pools. ADISA notes the admonition that "[c]ompliance with a concentration limit standard where the purchaser has other investments with similar risks or businesses of the issuer does not ensure compliance with Conduct Standards." At the same time, any concentration limit that effectively forces investors to hold multiple DPPs of a given type (e.g., REITs), seems unlikely to provide significant investor protection while forcing advisers to find multiple products to fill an allocation where one product might be the best solution. ADISA believes that the 10% limit for each DPP program subject to an overall 25% DPP "cap" would allow investors to have a diverse alternative investment portfolio while at the same time limiting overexposure to any one DPP.

4. ***If the concentration limits remain in the REIT Guidelines, ADISA recommends that the concentration limit be revised to be calculated on net worth (not liquid net worth).***

ADISA believes that liquid net worth is a confusing standard by which an investor's ability to invest should be measured. An investor's "net worth" is already determined exclusive of home, home

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[2] Section 413(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**"), Pub. L. No. 111-203, 123 Stat. 1376 (2010).

furnishings and automobiles. Similar to the SEC's revised definition of net worth to exclude the value of an investor's primary residence, the REIT Guidelines already use "net worth" as a measurement to determine suitability. Using the more narrow calculation of net worth to only liquid net worth ("that portion of net worth consisting of cash, cash equivalents, and readily marketable securities") to determine the concentration limit of an investor's overall investment in DPPs would not only be confusing, it would also be significantly more restrictive than any of the other financial measurements used in the REIT Guidelines or the SEC's rules.

ADISA appreciates the work of the Section and the Project Group, and their desire to enable investors to prosper. In our view, this means ensuring access to a wide variety of appropriate alternative investment products using procedures designed to ensure that investors' interests are placed ahead of those of their advisers. We appreciate the opportunity to provide this additional input. We would be happy to discuss our concerns further and to continue to assist NASAA in creating appropriate protections for investors.

Sincerely,

John H. Grady
President

cc: Drafting Committee: Deborah S. Froling and Catherine Bowman, Co-Chairs ADISA Legislative & Regulatory Committee; John Grady.