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May 28, 2025

VIA ELECTRONIC MAIL

Faith Anderson, Project Group Chair
Bill Beatty and Erin Houston, Project Group Co-Chairs
North American Securities Administrators Association
750 First Street NE, Suite 1140
Washington, DC 20002

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

Dear Ms. Anderson, Mr. Beatty, and Ms. Houston,

The National Association of Real Estate Investment Trusts (Nareit®) serves as the worldwide representative voice for real estate investment trusts (REITs)[1] and real estate companies with an interest in U.S. income-producing real estate. Nareit members are REITs and other real estate companies throughout the world that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study, and service those businesses.

Nareit's member REITs include both listed REITs, which are registered with the Securities and Exchange Commission (SEC) and listed on an established stock exchange, and Public Non-listed REITs, or PNLRs, which are public, SEC-registered real estate companies whose securities are not listed on an established stock exchange and are the subject of this submission. PNLRs participate in Nareit through the PNLR Council, which consists of 14 Nareit PNLR corporate members. The mission of the PNLR Council is to advise Nareit's Executive Board on matters of interest and importance to PNLRs.

On behalf of Nareit's PNLR Council, Nareit appreciates the opportunity to submit the attached comments responding to the North American Securities Administrators Association (NASAA) proposed amendments to the Statement of Policy Regarding Real Estate Investment Trusts (the Proposal).[2] In submitting these comments, we emphasize that Nareit and the PNLR Council share NASAA's commitment to ensuring that investors are served by broker-dealers and advisers that act in their best

[1] REITs are real estate working for you. Approximately 170 million Americans live in households that benefit from ownership of REITs through stocks, 401(k) plans, and other investment funds. Through the property they own, finance, and operate, REITs help provide essential real estate we need to live, work and play. REITs of all types collectively own more than $4 trillion in gross assets across the U.S., with public REITs owning roughly $2.6 trillion in assets. U.S. listed REITs have an equity market capitalization around $1.4 trillion.
[2] NASAA Request for Public Comment Proposed Amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (March 25, 2025) available at https://www.nasaa.org/wp-content/uploads/2025/03/NASAA-Request-for-Public-Comment-REIT-Guidelines-Amendments-3-25-2025.pdf

interests, and supported the proposal that became SEC's Regulation Best Interest Reg BI). Nareit's PNLR Council previously commented[3] on NASAA's 2022 proposed REIT Guideline amendments.[4]

In its comment on NASAA's 2022 proposal, the Council expressed strong concern that the proposal was premised on an outdated understanding of the PNLR sector, which failed to take into account the ascendance of Net Asset Value (NAV) PNLRs in the marketplace over the last decade. Nareit and the Council appreciate that the current Proposal includes some constructive changes that reflect suggestions from the Council and others who commented. However, as set forth in the following comment, the Council remains concerned that the current Proposal retains features of the 2022 proposal, such as the proposed concentration limits, conduct standards, and the net worth and gross income requirements, which appear aimed at addressing issues posed by the so-called Life Cycle PNLRs that are no longer offered to retail investors.

Nareit and its PNLR Council would welcome an opportunity to discuss these matters with NASAA, and would be happy to provide NASAA with additional data and information regarding REITs and PNLRs generally.

Respectfully submitted,

Steven A. Wechsler
President & CEO
Nareit

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[3] Nareit Public Non-Traded REIT Council, Comment on NASAA Proposed REIT Guidelines (Sept. 9, 2022) available at https://www.nasaa.org/wp-content/uploads/2022/08/NareitPNLRNASAASubmission9-9-22.pdf
[4] NASAA Request for Comment on Amendments to REIT Guidelines available at https://www.nasaa.org/wp-content/uploads/2022/07/Request-for-Public-Comment-on-Amendments-to-NASAA-REIT-Guidelines-2022.pdf

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

Dear Ms. Anderson, Mr. Beatty, and Ms. Houston,

The Public Non-Listed REIT Council (PNLR Council or Council) of the National Association of Real Estate Investment Trusts (Nareit®) submits the following comment responding to the North American Securities Administrators Association's (NASAA) Proposed Amendments to the Statement of Policy Regarding Real Estate Investment Trusts (the Proposal),[1] outlined in its March 25, 2025 release (Release). The PNLR Council appreciates the opportunity to comment on this Proposal.

Nareit® is the worldwide representative voice for REITs and listed real estate companies with an interest in U.S. real estate and capital markets. Nareit advocates for REIT-based real estate investment with policymakers and the global investment community. Public Non-Listed REITs (PNLRs) participate in Nareit through the PNLR Council, which advises Nareit's Executive Board on matters of interest and importance to PNLRs.

The PNLR Council shares NASAA's goal of ensuring that investors' best interests are served by their broker-dealers. The Council strongly supported the Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI) during its consideration,[2] and submitted comments[3] on NASAA's 2022 proposed revisions to the REIT Guidelines.[4] The Council acknowledges and appreciates that this Proposal includes some constructive changes that reflect suggestions set forth in comments from the Council and others. However, the Council continues to have concerns about aspects of the Proposal that we believe, if adopted, would not serve the best interests of most investors.

[1] NASAA Request for Public Comment Proposed Amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (March 25, 2025) available at https://www.nasaa.org/wp-content/uploads/2025/03/NASAA-Request-for-Public-Comment-REIT-Guidelines-Amendments-3-25-2025.pdf
[2] Nareit Public Non-Traded REIT Council, Comment on proposed new Regulation Best Interest (Aug. 6, 2018) available at (www.reit.com/sites/default/files/SEC-REG-BI-(8_6_18).pdf
[3] Nareit Public Non-Traded REIT Council, Comment on NASAA Proposed REIT Guidelines (Sept. 9, 2022) available at https://www.nasaa.org/wp-content/uploads/2022/08/NareitPNLRNASAASubmission9-9-22.pdf
[4] NASAA Request for Comment on Amendments to REIT Guidelines available at https://www.nasaa.org/wp-content/uploads/2022/07/Request-for-Public-Comment-on-Amendments-to-NASAA-REIT-Guidelines-2022.pdf

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As we elaborated in our previous comment, the rise of NAV PNLRs, which offer investors exposure to real estate with greater liquidity, transparency, enhanced governance, and lower and more transparent fee structures, has been transformative for the non-listed REIT sector. NAV PNLRs are commonly sponsored by global institutional asset managers with proven track records, such as JLL, Blackstone, Starwood, and others who have designed these NAV PNLRs to provide a responsible investment option for investors, with lower fees and meaningful liquidity provided through daily, monthly, or quarterly repurchase programs. NAV PNLRs are largely distributed through the nation's largest broker-dealers and global investment advisers, who are subject to a comprehensive array of federal conduct regulations designed to serve the best interests of investors.

The Council's 2022 comment noted that NASAA's 2022 proposed revisions appeared to be premised on an outdated perspective of the PNLR sector that failed to consider the ascendance of NAV PNLRs over the last 15 years. The Council remains concerned that the Proposal does not fully account for this transformative change in the PNLR sector. For example, in the Release, NASAA asserts that "REITs are a disproportionate source of investor complaints," citing to a database maintained by the Financial Industry Regulatory Authority (FINRA), about which it states that "[i]n each of the past three years, REITs accounted for the third most popular security type for which investors filed arbitration complaints."[5] However, many of the arbitrations reflected in the data for this three-year period arose from disputes arising from so-called Lifecycle PNLRs, products no longer being offered to investors. Consistent with this development, this FINRA database also demonstrates that the number of filed arbitration complaints related to REITs has been steadily and dramatically *declining* since 2021, from 429 to 164 cases in 2024.[6]

The Council's detailed comments on the Proposal follow and are summarized in the bullets below.

Summary of PNLR Council Comments

- The Proposal's Concentration Limits are Unnecessary
- If Retained, the Proposal's Concentration Limits Should Exempt All Accredited Investors
- The Proposal's Additional Conduct Standards are Unwarranted
- The Gross Income and Net Worth Requirements are Unnecessary

[5] Release at p. 5 footnote 12
[6] Dispute Resolution Services Statistics - "Top 15 Security Types in Customer Arbitrations," FINRA, available at https://www.finra.org/arbitration-mediation/dispute-resolution-services-statistics#top15securitycustomers

The Proposal's Concentration Limits Are Unnecessary

Like the 2022 proposed revisions, the Proposal would add a new concentration limit applicable to PNLR and similar investments, limiting investors to 10% or less of their liquid net worth. However, responding to objections raised by the Council and others, the Proposal's concentration limit would no longer apply to affiliates of the issuer and now appears to include an optional exemption for accredited investors as defined under Rule 501(a) of Regulation D (Accredited Investors). The Council appreciates these modifications from NASAA's prior proposal. However, the Council continues to believe that this concentration limit is unnecessary, and if retained, that the Accredited Investor exemption should be fully and formally incorporated into the NASAA REIT Guidelines.

The Council's 2022 comment questioned NASAA's rationale for imposing a concentration limit applicable to PNLR investments, noting then that NASAA presented "no data, or other analysis, to establish a link between an investor concentration limit of this nature and any measurable reductions in investor risk, or enhancements to investor liquidity." This does not appear to be remedied in the Proposal, which similarly fails to justify the need for this concentration limit in this context. As noted above, NAV PNLRs are primarily distributed through the nation's largest broker-dealers and investment advisers, subject to the federal securities laws, including Regulation Best Interest ("Reg BI") and related guidance applicable to broker-dealers and registered investment advisers. These federal rules require that broker-dealers and investment advisers consider each investor's portfolio concentration and liquidity needs and are enforced by both the SEC and FINRA. As SEC-registered securities, PNLRs are also subject to Exchange Act rules, including the liability provisions under Section 11 of the Securities Act.

The Council is also concerned that, as described, the Proposal would not even establish a uniform concentration limit. The Proposal requires that PNLR sponsors propose a concentration limit particular to each PNLR issuance, which each state administrator would have discretion to accept or alter based upon a list of 11 factors. The Council is concerned that this process, which would provide state regulators with discretion to modify the limit, would create an uncertain regulatory environment for both investors and issuers.

As with the 2022 proposed revisions, the Council believes that NASAA has not demonstrated but instead has assumed that a 10% concentration limit would benefit the investor community and has failed to assess and weigh the costs of complying with this limit. Absent convincing data or analysis measuring the risk reduction benefits to investors and any acknowledgement of the costs, the PNLR Council continues to oppose NASAA's proposed concentration limits for PNLRs.

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If Retained, Concentration Limits Should Exempt All Accredited Investors

The Proposal states that a state ""administrator **may** determine to exclude from the concentration limit any person that is an accredited investor under Rule 501(a) of Regulation D" (emphasis added). The Council, which advocated for an Accredited Investor exemption in its 2022 comment, regards this as a constructive change, but does not believe it went far enough. Accordingly, the Council strongly suggests that this exemption for Accredited Investors be fully integrated into the Guidelines.

Should NASAA retain a concentration limit in its REIT Guidelines, the Council strongly recommends that NASAA formalize the exemption for Accredited Investors, as defined in Regulation D under the Securities Act, by incorporating it into the Guidelines.

The Proposal's Additional Conduct Standards are Unwarranted

The Proposal, like the 2022 proposed revisions, would amend the conduct standards applicable to *persons sponsoring or selling shares* of PNLRs by imposing additional requirements identified as follows:

…suitability obligations, compliance with Regulation Best Interest, 17 C.F.R. § 240.15l-1, requirements under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461, or the Internal Revenue Code of 1986 and/or federal or state fiduciary duties.[7]

As with the 2022 proposed revisions, the Council is concerned that these additional conduct standards fail to take account of the features of NAV PNLRs and appear to be premised on an outdated understanding of how NAV PNLRs are currently offered to investors. As noted above, NAV PNLRs are distributed through the nation's largest broker-dealers and global investment advisers, professionals who are already subject to the full range of conduct standards set forth in federal securities laws, related rules, and guidance. These include Regulation Best Interest (Reg. BI), which requires broker-dealers and others recommending securities to investors to act in their best interests and prohibits them from recommending any financial product, transaction, or investment strategy that places the financial or other interests of the broker-dealer ahead of their retail customers. Broker-dealers must also comply with sales practice rules under the Securities Exchange Act of 1934 and with FINRA rules. Federally registered investment advisers are subject to a fiduciary duty to their customers and must comply with the Investment Advisers Act of 1940 and other SEC rules.

The Proposal does not offer compelling data to justify layering additional standards on top of these current federal standards and requirements, nor does it explain how these new rules would operate together with existing federal regulations, how conflicts between the various standards would be

[7] Proposal at subsections I.B.8 and III.C.1.

resolved, or why multiple standards would benefit investors. The potential confusion for financial professionals and retail investors is also evident.

The Council questions the need for these additional conduct standards. If retained, the Council hopes that NASAA will provide further data and analysis to support their benefit and additional guidance on how they will operate with Reg BI and other existing rules.

The Gross Income/Net Worth Limits are Unnecessary

The Proposal would index existing gross income and net worth limits and add an inflation adjustment mechanism, providing that these limits will be adjusted at five-year intervals "to the nearest multiple of $5,000 according to the Personal Consumption Expenditures Chain-Type Price Index published by the U.S. Department of Commerce."

As noted in our 2022 Comment, the Council has long questioned the utility of these state income/net worth requirements applicable to PNLRs, which are SEC-registered securities subject to all attendant regulations and liabilities, and their value in enhancing protection for PNLR investors. Raising the limits and incorporating a cumbersome indexing mechanism into the Guidelines would perpetuate restrictions that are of unproven value to retail investors, at best.

Once again, NASAA appears to offer no justification for maintaining these restrictions. Absent any data or analysis demonstrating any benefit of raising and indexing these limits, the Council questions the value of doing so.

Conclusion

The Nareit PNLR Council appreciates the opportunity to participate in NASAA's policy process by submitting these comments and would be happy to discuss these comments with NASAA. To arrange this, please contact Victoria Rostow, Nareit's Senior Vice President, Regulatory Affairs & Deputy General Counsel (vrostow@nareit.com or (202) 739-9431.

Respectfully submitted,

C. Allan Swaringen
Chair, Nareit Public Non-Listed REIT Council
President & CEO, JLL Income Property Trust, Inc.