Via electronic submission to NASAAComments@nasaa.org, Andrea.Seidt@com.ohio.gov, and Mark.Heuerman@com.ohio.gov

September 9, 2022

NASAA Corporation Finance Section
Andrea Seidt, Section Chair
Mark Heuerman, Project Group Chair

c/o North American Securities Administrators Association, Inc.
750 First Street, N.E., Suite 1140
Washington, D.C. 20002

Re: Proposed Revisions to the NASAA Statement of Policy Regarding Real Estate Investment Trusts (the "Proposal")

Dear Section Members, Commissioner Seidt and Mr. Heuerman:

Ares Wealth Management Solutions LLC ("AWMS") respectfully submits the following comments on the Proposal. AWMS is part of Ares Management Corporation (NYSE: ARES), a leading global alternative investment manager offering clients complementary primary and secondary investment solutions across the credit, private equity, real estate, and infrastructure asset classes. We seek to provide flexible capital to support businesses and create value for our stakeholders and within our communities. By collaborating across our investment groups, we aim to generate consistent and attractive investment returns throughout market cycles. As of June 30, 2022, Ares Management Corporation's global platform had approximately $334 billion of assets under management, with over 2,300 employees operating across North America, Europe, Asia Pacific, and the Middle East. For more information, please visit www.aresmgmt.com.

Ares is a member of The Institute for Portfolio Alternatives which is contemporaneously submitting a comment letter and the substance of that letter is incorporated herein.

We would like to emphasize the following concerns with the Proposal from the perspective of a sponsor who employs hundreds of employees in an industry that has undergone a fundamental transformation in the last decade and now is represented by the largest alternative asset managers raising and deploying meaningful capital into the U.S. economy.

- ***Government Override of Individual Investment Decisions.*** The concentration limits[1] and the increase in the income and net worth requirements[2] would restrict investment choice regardless of investor sophistication. Individual investors should be free to work with their financial advisors to allocate part of their investment portfolio to real estate in order to achieve diversification, lower portfolio risk, and obtain inflation protection and a source of income in the same way institutional investors access these opportunities. Instead, the Proposal would overlay a mandated, artificial limitation on this free choice. Moreover, SEC and FINRA rules already require that broker-dealers and investment advisers consider the portfolio concentration and liquidity needs of each investor, and the SEC and FINRA have emphasized the responsibilities of their regulated firms to supervise recommendations to senior investors.[3]

- ***Confusing Overlay of Additional Requirements on Financial Advisors.*** The Proposal would impose a myriad of conduct standards on federally regulated investment advisers and broker-dealers and would do so through issuer disclosure. It would confuse the compliance programs of investment advisers and broker-dealers and could impose unworkable expectations on sponsors.

- ***Stifling of Private Investment.*** Capital formation in the NAV REIT sector has been a significant source of economic activity and employment, supporting thousands of jobs in health care facilities, apartment buildings, shopping centers, office buildings and industrial warehouses. Real estate development is fundamental to economic growth and employment. The Proposal would constrain growth in the real estate sector at an unpropitious time of high inflation and possible recession.

- ***Infringement on Board Fiduciary Decisions.*** By prohibiting distributions from gross offering proceeds the Proposal overlays its own edict in lieu of proper corporate governance and the

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[1] The concentration limits would impose an impractical requirement on the corporate governance of NAV REITs. In particular, the Proposal would require that the concentration limits be added to the charter of an NAV REIT. Without a grandfathering provision, a NAV REIT would be forced to conduct a proxy solicitation for this change to its charter. This process would be costly and time consuming, and the costs would be passed along to the stockholders.

[2] The Proposal would index existing gross income and net worth limits to inflation, backwards to 2007. The existing gross income limits themselves are incompatible with the federal scheme of securities regulation. Publicly-offered securities registered under the Securities Act of 1933 must provide full disclosure to investors and issuers take strict liability under Section 11 of the Act. Because of this disclosure regime, retail investors may invest in these securities regardless of their income or net worth. Issuers of privately placed securities need not provide similar disclosure and for that reason the ability of investors to purchase these securities is limited. For example, the SEC's accredited investor standard applies only to some private placements under Regulation D.

[3] The Proposal would require sponsors or each person "selling shares on behalf of the sponsor or REIT" to maintain records of the information used to determine that an investment is suitable and appropriate. As a practical matter no sponsor is able to determine whether a purchase complied with the conduct standards of a broker-dealer, investment adviser or its representatives. The sponsor cannot be presumed to have expertise about Reg BI, ERISA or the investment adviser fiduciary duty.

exercise by boards of their authority[4]. This provision would conflict with federal regulation and state corporate law with little justification[5]. Also, under federal law, a REIT must make distributions to stockholders equal to at least 90% of its net taxable income each year (determined without regard to the dividends-paid deduction and excluding net capital gain). The Proposal could jeopardize a REIT's federal tax status.

- ***Federal Preemption and State Law.*** States would be expressly preempted from adopting the Proposal by ERISA, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. Moreover, routine incorporation of the Proposal into state rules would violate the laws of many jurisdictions that require state regulators to follow administrative rulemaking procedures.

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[4] Most NAV REITs are Maryland corporations and Maryland law permits the use of proceeds for distribution if it is approved by the board of directors, which has a fiduciary obligation to both the REIT and its stockholders. The ability to make determinations on how to fund distributions, through offering proceeds or otherwise, is an essential function of the board. Maryland law has solvency tests that address concerns about the overpayment of distributions; the REIT's board must determine that the REIT will be able to pay its debts as they become due and that after any distribution the REIT's assets will exceed its liabilities.

[5] The SEC does not prohibit the payment of distributions from offering proceeds, having explicitly addressed this question, provided that the REITs include appropriate disclosure in the prospectus. Moreover, the SEC has published disclosure guidance that requires non-listed REITs to present, on a quarterly basis, the source or sources used to fund distributions.

Sincerely,

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