



# OHIO CHAMBER *of* COMMERCE

*Via electronic submission to [NASAAComments@nasaa.org](mailto:NASAAComments@nasaa.org), [Andrea.Seidt@com.ohio.gov](mailto:Andrea.Seidt@com.ohio.gov), and [Mark.Heuerman@com.ohio.gov](mailto: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:

We are writing to express our concerns with the Proposal, particularly its impact on the Ohio economy and Ohio investors. More than 31,000 Ohioans have invested in 195 federally-registered non-listed real estate investment trusts (REITs). The total value of these investments exceeds \$1.9 billion and the average Ohioan's investment is \$60,000.

These investments provide Ohioans access to geographically diverse opportunities across a range of property types – office, industrial, multifamily, retail, self-storage, medical, and real estate debt. They provide income generation (as non-listed REITs must return at least 90% of taxable income to shareholders), offer long-term appreciation, inflation protection potential, portfolio diversification, and access to highly regarded and institutional quality real estate managers. They also support the acquisition and development of affordable housing, commercial properties for small businesses, and other types of real estate that supports economic growth and employment – some of it in Ohio. Continued investment in infrastructure such as warehouses that are an essential link to the nation's supply chain increases the capital directed toward this national priority.

The proposed concentration, net worth, and gross income limits may prevent many Ohio investors from attaining adequate portfolio diversification and other benefits from investing in non-listed REITs. The Proposal thus could thwart investment in this burgeoning

industry. In 2021, non-listed REITs raised over \$36.5 billion and in the first half of 2022 raised another \$21.3 billion. Recent surveys of non-listed REITs indicated that approximately 63% of their investments in multifamily housing support workforce housing, defined as multifamily housing with rent less than 25% of mean family income in the surrounding area. Expanding the availability of this type of affordable housing is crucial to the Buckeye State as we seek to address workforce challenges faced by employers across Ohio and prepare for the influx of workers that will be needed for the growing semiconductor microchip industry.

Pension plans and other institutional investors allocate a portion of their portfolio to real estate. Even the Ohio Public Employees Retirement System Defined Benefit Plan, for example, targets over 23% of its assets to alternative investments, with 10% to real estate. The Proposal would deny the same opportunities to retail investors.

The Proposal would subject this national product to varying broker-dealer and investment adviser conduct standards and limitations that each state could interpret as it sees fit. Already, broker-dealers and investment advisers are subject to robust conduct standards under federal law. The Proposal would create confusing standards under state law. It would impose unnecessary costs on the industry, confuse compliance by industry participants, and undermine the protection of investors that state administrators are supposed to serve.

Moreover, the Proposal appears to be preempted by federal statute. For example, because the Proposal would apply to federally registered investment advisers, the Investment Advisers Act of 1940 would preempt it. ERISA also would preempt the Proposal since it would apply to investment advisers and broker-dealers who recommend REIT shares to employee benefit plans. We are concerned about possible litigation in Ohio should the Securities Commissioner attempt to incorporate the Proposal into Ohio policy, administrative rules or law. Putting the Ohio taxpayer through the costs of a lengthy legal process would not be worth the insignificant benefit.

NASAA has offered no economic analysis to justify the Proposal or the arbitrary 10% concentration limits on investments in non-listed REITs, such as Ohio-specific examination or enforcement data to demonstrate that the limits on choice for Ohio investors are warranted. NASAA and the Securities Commissioner in past statements have relied upon FINRA's national statistics about arbitration complaints, data that does not justify the Proposal. FINRA arbitration complaints typically concern sales practice issues, not the operation and structure of non-listed REITs, and they often involve multiple products. We understand that no arbitration award since 2011 concerned a "net asset value" REIT – virtually the only type of non-listed REIT offered today.

The Proposal reflects a lack of understanding about how the non-traded REIT industry has evolved since 2011. It does not recognize the differences between NAV REITs offered today -- managed by the largest asset management companies in the world and recommended by the most reputable financial advisory firms under a federal best interest standard – and legacy

“lifecycle” REITs that are rarely offered today. The Proposal does not reflect the improvements in the transparency, fee structure and liquidity of non-listed REITs over the past 20 years.

We are also troubled by Commissioner Seidt’s history of incorporating and enforcing NASAA statements of policy and other interpretations in Ohio without providing Ohioans with the opportunity to comment, and without complying with the statutorily mandated JCARR process. Administrative procedures are important as they give Ohioans an opportunity to comment on proposed rules and provide state regulators an opportunity to consider different points of view concerning their rule proposals.

We are concerned that NASAA’s approval of the Proposal could be used by the Ohio Division of Securities as another opportunity to incorporate and enforce the Statement of Policy in Ohio without providing Ohioans with an opportunity to comment and without complying with JCARR. As an example, the Ohio Securities Commissioner last year withdrew her objection to the use of gross offering proceeds to fund non-listed REIT distributions provided there is sufficient disclosure (which is already required by the SEC). The NASAA Proposal would, if adopted by other states, prohibit this practice both in Ohio and nationally. Thus, it would appear that the Securities Commissioner intends to adopt the gross offering proceeds prohibition “through the back door,” by incorporating it into state law without following JCARR.

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Thank you for an opportunity to express our concerns. We are available to discuss them at any time.

Sincerely,



Steve Stivers, President/CEO  
Ohio Chamber of Commerce

cc: Governor Mike DeWine  
Lt. Governor Jon Husted  
Melanie Senter Lubin  
President, NASAA