

**MEMO# 34251**

August 12, 2022

# **ICI Files Comment Letter on Proposed Amendments to NASAA's REIT Guidelines**

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TO: ICI Members SUBJECTS: RE: ICI Files Comment Letter on Proposed Amendments to NASAA's REIT Guidelines

Last week, ICI filed the attached comment letter on the North American Securities Administrators Association's request for comment on proposed amendments to its Statement of Policy Regarding Real Estate Investment Trusts.[\[1\]](#) Although the proposed amendments would apply most directly to REITs, certain proposed amendments potentially could restrict an investor's ability to invest in registered investment companies and otherwise impact registered investment advisers.[\[2\]](#)

ICI's comment letter strongly recommends that NASAA amend its proposal to exclude any Federally-registered investment companies and investment advisers from its scope. It notes that any state-imposed restrictions on these federally-regulated entities would violate the National Securities Markets Improvement Act of 1996, which expressly preempts the states' authority to regulate such persons.[\[3\]](#)

A copy of our comment letter is attached. Shortly after our comment letter was filed, NASAA extended the comment period on the proposed amendments from August 11 to September 12.[\[4\]](#)

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Associate General Counsel

#### endnotes

[1] See NASAA, Proposed Revisions to NASAA Statement of Policy Regarding Real Estate Investment Trusts (July 12, 2022), available at [https://www.nasaa.org/wp-content/uploads/2022/07/Request\\_for\\_Public\\_Comment\\_on\\_Amendments\\_to\\_NASAA\\_REIT\\_Guidelines\\_Extended-1.pdf](https://www.nasaa.org/wp-content/uploads/2022/07/Request_for_Public_Comment_on_Amendments_to_NASAA_REIT_Guidelines_Extended-1.pdf). NASAA is the association of state securities agencies whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

[2] In particular, the proposed amendments would:

- Update conduct standards for brokers selling non-traded REITs;
- Update suitability requirements for these products;
- Add a concentration limit to the suitability section; and
- Prohibit using gross offering proceeds to make distributions.

The concentration limit would impose a 10 percent limit on a person's aggregate investment in a REIT, its affiliates, and other non-traded direct participation programs. The term "affiliate" of another person is defined broadly to include persons that: (a) directly or indirectly own, control, or hold, with power to vote 10 percent or more of the outstanding voting securities of another person; or (b) that directly or indirectly control, are controlled by, or under common control with another person. The term "non-traded direct participation programs" is undefined. The broad definition of affiliate and the lack of a definition for non-traded direct participation programs could result in states misapplying the concentration limit to Federally-registered investment companies.

[3] See Section 18 of the Securities Act of 1933 and Section 203A of the Investment Advisers Act of 1940 as amended by NSMIA. In addition, our comment letter notes that, while the Institute does not represent the interests of broker-dealers, many of the proposed amendments would violate Section 15(i) of the Securities Exchange Act of 1934 as enacted by NSMIA. That section prohibits states from requiring Federally-registered broker-dealers to make and keep records that are not required by the Securities Exchange Act or FINRA's rules under such Act.

[4] See NASAA, NASAA Extends Comment Period on Proposed Revisions to Statement of Policy Regarding Real Estate Investment Trusts (Aug. 4, 2022), available at <https://www.nasaa.org/65006/nasaa-extendss-comment-period-on-proposed-revisions-to-statement-of-policy-regarding-real-estate-investment-trusts-of-policy-regarding-real-estate-investment-trusts-2/>.