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REITs:
BUILDING
DIVIDENDS
AND
DIVERSIFICATION®

October 18, 2016

NASAA Legal Department
Mark Stewart, Counsel
NASAA
750 First Street, NE, Suite 1140
Washington, DC 20002

Re: Request for Comments regarding the Proposed Amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Mr. Stewart:

Thank you for the opportunity to review the North American Securities Administrators Association (NASAA) proposed amendments to the Statement of Policy Regarding Real Estate Investment Trusts.

NAREIT's Public Non-Listed REIT (PNLR) Council shares the NASAA's goal of ensuring that the best interests of investors are paramount to broker-dealers and financial advisors when recommending investment in PNLRs and that PNLRs are recommended only to the extent that they are suitable investments that provide value consistent with the investor's goals. However, NAREIT's PNLR Council believes that this goal is best achieved without a one-size-fits-all concentration limit on investors' ability to access to the full range of investment products available.

<u>About REITs:</u>

REITs were established by Congress in 1960 to enable all Americans to enjoy the benefits of investment in real estate. There are two main types of REITs, generally referred to as equity REITs and mortgage REITs. Equity REITs invest in "bricks and mortar" real estate by acquiring leasable space in properties, such as apartments, shopping malls, office buildings, and other properties, and collecting rents from their tenants. Mortgage REITs primarily invest in mortgages and mortgage-backed securities, providing financing for residential and commercial properties. More than 2 million single-family homes are estimated to be currently financed by mortgages owned by mortgage REITs.

REITs in the United States may be public companies whose securities are registered with the Securities and Exchange Commission (SEC) and listed on an established stock exchange (so-called Listed REITs); public companies whose securities are registered with the SEC, but which are not listed on an established

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stock exchange (so-called, “Public Non-Listed REITS” or PNLRs); or private companies. At the end of September 2016, 321 REITs were registered with the SEC, and 223 of these REITs were Listed REITs on established U.S. stock exchanges, primarily the New York Stock Exchange (NYSE).

Like Listed REITs, PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors. PNLRs are subject to the same IRS requirements that a Listed REIT must meet, including distributing all of their taxable income to shareholders annually to be subject to a single level of taxation. In addition, PNLRs are required to make regular SEC disclosures, including quarterly and yearly financial reports. All of these PNLR filings are publicly available through the SEC’s EDGAR database. PNLRs are primarily sold by broker-dealers registered with, and regulated by, the SEC, the Financial Industry Regulatory Association (FINRA) and the relevant state securities regulatory authorities.

Private REITs are not traded on stock exchanges or registered with the SEC. They are regulated by the SEC, and are sold to accredited investors under Regulation D and to qualified institutional buyers (QIBs) under Rule 144A.

About NAREIT:

The National Association of Real Estate Investment Trusts (“NAREIT”) is the worldwide voice for REITs and real estate companies with interests in U.S. real estate and capital markets. NAREIT’s members are REITs and other real estate businesses throughout the world that own, operate and finance commercial and residential real estate.

PNLRs participate at NAREIT primarily through the Public Non-Listed REIT Council (the PNLR Council), which consists of 41 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.

NAREIT’s PNLR Council has carefully reviewed the NASAA proposed amendments to the Statement of Policy Regarding Real Estate Investment Trusts and has developed the attached comment letter for submission and consideration by NASAA. The NAREIT PNLR Council looks forward to working with NASAA as it continues its work on this project, and would be pleased to answer any questions NASAA may have.

Please feel free to contact me if you would like to discuss the Council's positions in greater detail.

Respectfully submitted,

Steven A. Wechsler
President & CEO

cc: Mr. Michael Pieciak , Chair of the Corporation Finance Section
Mr. Mark Heuerman, Chair of Direct Participation Programs Policy Project Group
Ms. Anya Coverman, NASAA Deputy Director of Policy and Associate General Counsel
Mr. Mark Stewart, NASAA Counsel

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Re: Request for Comments regarding the Proposed Amendments to the NASAA Statement of Policy Regarding Real Estate Investment Trusts

Dear Mr. Stewart:

The Public Non-Listed REIT Council (PNLR Council) of the National Association of Real Estate Investment Trusts (NAREIT) submits the following comments with respect to the North American Securities Administrators Association (NASAA) proposed amendments to the Statement of Policy Regarding Real Estate Investment Trusts (the proposed PNLR Guidelines). The PNLR Council appreciates the opportunity to comment on this proposed amendment to the PNLR Guidelines.

The PNLR Council supports the NASAA's goal of ensuring that the best interests of an investor are paramount to broker-dealers and financial advisors when recommending investment in PNLRs and that PNLRs are recommended only to the extent that they are suitable investments that provide value consistent with the investor's goals.

However, we have a number of specific concerns about the negative effect the one-size-fits-all approach of the 10% concentration limit would have on the availability of investments, not limited to PNLRs, used by investors to diversify portfolios. In addition to our specific comments below, we want to associate ourselves with, and formally endorse, the comment letters filed by the Investment Program Association and the U.S. Chamber of Commerce. These letters raise important concerns on this issue that NASAA should consider before finalizing the proposed PNLR Guidelines.

About PNLRs

PNLRs are public companies the securities of which are registered with the SEC, though not listed on a stock exchange. PNLRs own, manage and lease investment-grade, income-producing commercial real estate in nearly all property sectors. PNLRs are subject to IRS requirements that include distributing all of their taxable income to shareholders annually in order to be subject to a single level of taxation, and must make regular SEC disclosures, including quarterly and yearly financial reports, which are publicly available through the SEC's EDGAR database. Interests in a PNLR are public offerings, distributed primarily through broker-dealers registered with and regulated by the SEC, the Financial Industry Regulatory Association ("FINRA"), and the relevant state securities regulatory authorities.

PNLRs help build diversified portfolios for investors. Typically paying meaningful dividends due to the IRS REIT distribution requirements, PNLRs also provide the potential for moderate, long-term capital appreciation. As the leases, rents, properties and other underlying investments have tended to be responsive to inflation, PNLRs generally offer the potential for some protection from inflation risks. Further, PNLRs potentially provide an additional source of portfolio diversification because their investment returns reflect the performance of income-producing real estate, which typically has been only moderately correlated with the returns of other assets over long investment horizons.

As with mutual funds or any other pooled investment, there are a variety of fees charged in connection with PNLRs that are reflected in net returns and clearly disclosed in the prospectus, which is publicly available from the SEC. These fees have recently become even more transparent to PNLR shareholders since April 2016 when FINRA Rule 2310 and NASD Rule 2340 became effective. Industry practice has also evolved so that some in the industry are offering daily net asset value (NAV) PNLRs that offer the shareholder increased liquidity and new share classes that have markedly lowered initial distribution fees than the products that were generally offered by PNLRs in the past.

Moreover, the DOL Fiduciary Rule, which will begin to take effect in April 2017 and become fully effective on January 1, 2018, imposes a fiduciary standard on investment advice related to retirement savings. The rule will apply to all advisors providing advice to investors in qualified retirement plans, including IRAs and will impose signification additional measures to ensure that the best interests of the investor are paramount to an advisor recommending an investment, including PNLRs.

Specific Concerns with the Proposed PNLR Guidelines

The PNLR Council is concerned that the PNLR Guidelines would prevent many investors from having the ability to gain the sufficient exposure to the real estate industry that can play an important role in diversifying investment portfolios. The PNLR Guidelines would impose a concentration limit of 10 percent of an investor's liquid net worth to the investor's aggregate investment in PNLRs and their affiliates. The PNLR Guidelines also include new record keeping requirements and obligations for the PNLR sponsors and investment advisors. The new concentration limit could be adjusted by an Administrator to be either higher or lower than 10 percent and is imposed in addition to existing suitability requirements.

We are particularly concerned with the concentration limit which does not recognize the investor level assessment that can best be accomplished by the investor's broker-dealer or financial advisor. We recognize that NASAA published the proposed amendments to the PNLR Guidelines before the DOL rule was finalized. We respectfully request that NASAA consider the impact of the new DOL Fiduciary rule is likely to have with respect to the level of analysis and care that will be taken by a financial advisor in assessing whether to recommend an investment in a PNLR. The investor's situation and goals will be assessed by the financial advisor at a level that is more finely tuned and appropriate than a broad brush set percentage limitation on concentration. A mandated concentration limit of 10 percent may even confuse investors and drive some to increase their exposure to PNLRs to the concentration limit when a lower exposure is more appropriate. In addition, there has been no regulatory finding that a 10 percent concentration limit on PNLR investing would be in the best interest of investors. We urge NASAA to eliminate the concentration limit.

If, however, NASAA, chooses to retain the concentration limit, at a minimum, it should be calculated with respect to a broader base of investor assets and exclude products of PNLR affiliates from the equation. The other financial assets of the investor should be taken into account in addition to the investor's liquid assets so that the concentration limit does not unnecessarily impair the diversification of the investor's portfolio. Also, including PNLR affiliates in the basket of investments covered by the concentration percentage arbitrarily imposes limits on additional investment opportunities for which there has been no showing that concentration limits are beneficial or necessary for the investor.

The PNLR Guidelines also include a requirement that both the sponsor and the person selling shares make every reasonable effort that the purchase of shares meets the concentration limit of the investor. As a practical matter, this is best performed by the broker-dealers selling the shares to the investor as the broker-dealer is in the most direct relationship with the investor. As the concentration limit calculation necessarily includes the evaluation of the investor's other assets, requiring the sponsor to assure that the limit is satisfied would require the sponsor to collect information on the investor's other assets, information that the investor would likely justifiably be hesitant to share with the sponsor. The timing of the calculation should also be limited to the time of the initial investment so that continuous evaluation of the market valuation of the investor's total assets, a burdensome requirement for the investor, not be required.

PNLRs are already subject to significant, and increasing, regulatory regimes. PNLRs are transparent public companies registered with the SEC that provide annual and quarterly reporting. In public offerings, PNLRs provide a prospectus describing the fees, risks, investment strategies and other material information for advisors and investors to make informed decisions. While they are not traded on an exchange, and thus do not have a daily market price, PNLR shares can trade on a secondary market and many of the newer offerings contain redemption choices. Further, the terms and conditions under which distributions are made are clearly disclosed, as are any redemption fees or other charges.

In closing, we believe that the proposed NASAA concentration limitation would impair investor's ability to diversify their portfolios and have sufficient access to this important investment option.

The PNLR Council looks forward to working with the NASAA as it continues its efforts on this project. We would be pleased to answer any questions NASAA may have regarding PNLRs or the new regulatory requirements relevant to the industry today. We appreciate your consideration of our comments, and please feel free to contact us if you would like to discuss our positions in greater detail.

Respectfully submitted,

Executive Committee
NAREIT PNLR Council

CHAIR: Daniel L. Goodwin
Chairman and CEO, The Inland Real Estate Group, Inc.

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CEO, Behringer

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cc: Mr. Michael Pieciak , Chair of the Corporation Finance Section
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Ms. Anya Coverman, NASAA Deputy Director of Policy and Associate General Counsel
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