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Re: Proposed Amendment to the NASAA Statement of Policy Regarding Real Estate Investment Trusts

Ladies and Gentlemen:

CNL Financial Group, LLC (“CNL”) appreciates the opportunity to submit these comments in response to the Notice of Request for Public Comment Regarding a Proposed Amendment to the NASAA Statement of Policy Regarding Real Estate Investment Trusts dated July 27, 2016 (the “Notice”).

Background on CNL

CNL is a private investment management firm providing alternative investments to retail investors. Since inception in 1973, CNL and/or its affiliates have formed and sponsored or acquired private and public companies with more than \$34 billion in assets. Currently, CNL sponsors four (4) non-listed real estate investment trusts (“REITs”) and two (2) business development companies (“BDCs”), as well as certain private placement offerings. Since January

1, 2005, twenty two (22) CNL-sponsored programs¹ have closed and provided liquidity to shareholders, including four (4) REITs. As a long-standing sponsor in the alternative investment industry, CNL strives to put the investor first at all times.

Discussion re Concentration Limit Proposal

CNL understands NASAA's pro-investor policy position, particularly the identified need for a uniform concentration limit standard. CNL is a member of the Investment Program Association and agrees with its response to the Notice. While CNL believes considerable regulatory and industry protections already exist for shareholders² and the proposed concentration limits set forth in the Notice (the "Concentration Limits") are unnecessary and overly restrictive, the purpose of this letter is to comment on specific elements of the Concentration Limits rather than the proposal generally. Specifically, CNL is concerned with the liquid net worth restriction and the consequences of the inclusion of all programs of "its Affiliates" (as such term is defined in the Statement of Policy Regarding Real Estate Investment Trusts, as revised and adopted by the NASAA membership on May 7, 2007) in the Concentration Limits, and the overly burdensome compliance implications to sponsors.

Liquid Net Worth

Limiting an individual's ability to invest in REITs and other direct participation programs to ten percent (10%) of its liquid net worth is overly burdensome and eliminates an individual's right to manage their own liquidity needs and balance those needs with their personal investment objectives. Additionally, the Notice imposes a heavy regulatory burden on sponsors for initial and ongoing verification of an investor's compliance with the Concentration Limits without any corresponding obligation on the investor to provide the information needed for such verification, especially on a continuing basis. It would be impossible for a sponsor to monitor fluctuations in an investor's liquidity on an ongoing basis, and therefore we request that NASAA clarify that the concentration limit determination is to be made at the time of investment. Liquid net worth is not a substitute for determination of an investor's suitability which should take into account each specific investor's cash and investment needs, which could vary significantly among investors depending on stage of life, investment experience and investment objectives. Applying concentration limits beyond an investor's purchase to investments made through a program's distribution reinvestment plan is overly burdensome to monitor and track administratively. Further, the uniform application of such a small percentage to any net worth requirement, liquid or otherwise, deprives an investor the right to make personal and informed investment decisions. A concentration limit calculation based on net worth, rather than liquid net worth, affords an

¹ CNL Income Fund, Ltd., CNL Income Fund II, Ltd., CNL Income Fund III, Ltd., CNL Income Fund IV, Ltd., CNL Income Fund V, Ltd., CNL Income Fund VI, Ltd., CNL Income Fund VII, Ltd., CNL Income Fund VIII, Ltd., CNL Income Fund IX, Ltd., CNL Income Fund X, Ltd., CNL Income Fund XI, Ltd., CNL Income Fund XII, Ltd., CNL Income Fund XIII, Ltd., CNL Income Fund XIV, Ltd., CNL Income Fund XV, Ltd., CNL Income Fund XVI, Ltd., CNL Income Fund XVII, Ltd., CNL Income Fund XVIII, Ltd., CNL Restaurant Properties, Inc., CNL Retirement Properties, Inc., CNL Hotels & Resorts, Inc., and Global Income Trust, Inc.

² Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, Internal Revenue Code, Sarbanes-Oxley Act of 2002, Statement of Policy Regarding Real Estate Investment Trusts, as revised and adopted by the NASAA membership on May 7, 2007, Financial Industry Regulatory Authority rules and regulations including, without limitation, FINRA Regulatory Notice 15-02, U.S. Department of Labor "Fiduciary Rule", etc.

investor portfolio diversification opportunities that otherwise might be constrained depending on the investor's existing illiquid investments. The concentration limit calculation should be increased beyond 10%, determined by total net worth (excluding home, furnishings and automobiles) as opposed to liquid net worth only, and should exclude investments made through a program's distribution reinvestment plan.

Affiliates

The defined term Affiliates should be reconsidered in light of its intended use in determining whether concentration limits have been met. We believe the defined term Affiliates should carve out (i) "covered securities" as defined by the National Securities Markets Improvement Act of 1996, which refers to securities listed on the NYSE, AMEX, Midwest or NASDAQ Global Market or any security senior to or equal to ("Covered Securities"), (ii) Affiliates that do not have similar real estate investment objectives or asset base, (iii) investments held by investors who are managed by fiduciaries, and (iv) funds which provide investors with meaningful liquidity opportunities on a regular basis.

Covered Securities

CNL believes Covered Securities are not intended to be included in the definition of Affiliates, even if externally managed or advised, and seeks NASAA's confirmation regarding the same.

Diversified Affiliates and other Direct Participation Programs

CNL and some other sponsors offer direct participation programs that promote diversification through other types of alternative investment products with dissimilar investment objectives or asset bases. CNL's examples include products with best-in-class subadvisors with deep experience and strong history of return of capital, including business development companies and closed-end funds as well as programs with credit-focused investment objectives. The current definition of Affiliates would restrict an investor's ability to invest in these types of Affiliated products intended to promote diversification among a sponsor's offerings and an investor's portfolio. This will result in the unintended consequence of driving investors to smaller, less experienced sponsors and possibly exposing investors to greater risk. The defined term Affiliates should not include products offered by the same sponsor if such products have diverse investment objectives or asset bases.

Managed by Fiduciaries

The U.S. Department of Labor ("DOL") announced the "Fiduciary Rule" earlier this year which provides significant safeguards for investors, in addition to those already in existence at the state and federal level. Once the Fiduciary Rule is in full effect³, anyone who engages in certain investment activities for pension plans or IRAs will be deemed an ERISA fiduciary. By definition, a fiduciary is obligated to act in the customer's best interest. As such, CNL believes Concentration Limits should exclude fee-based accounts and REIT investments held in qualified accounts, similar to the exclusion of accredited investors. According to the DOL, a fiduciary

³ April 2017

acts solely in the interest of the investor and requires expertise in a variety of areas including investments. Surely, NASAA is not intending for the Concentration Limits to interfere with a fiduciary's ability to provide financial advisory services in the best interests of its clients. Without specifically carving out fiduciary-managed accounts from the Concentration Limits, or at a minimum from the definition of Affiliates for the purpose of the Concentration Limits, such unintended consequence will result.

Products that Provide Liquidity

As currently proposed, the definition of Affiliates will constrain investments in direct participation programs that offer some liquidity on a regular basis to investors. By way of example, products of this nature include interval funds and daily NAV REITs. According to the U.S. Securities and Exchange Commission, an interval fund is an investment company that periodically offers to repurchase its shares from shareholders, generally every three, six or twelve months. The price that shareholders will receive on a repurchase will be based on the then current per share net asset value. Daily NAV REITs are perpetual and offer redemption of up to 20% of the REITs net asset value aggregated on an annual basis. Repurchases are set at a price based on the then current per share net asset value. Interval funds and daily NAV REITs are just two examples of products that provide transparency and liquidity to their shareholders and are not "highly complex, illiquid" direct participation programs. Investors will be unnecessarily penalized and precluded from exploring these types of products as an alternative investment if included in the definition of Affiliates in the context of the Concentration Limits.

Sponsor Compliance

As currently written, the proposal requires sponsors, in addition to broker-dealers, to make reasonable efforts to establish an investor's compliance with the Concentration Limits and maintain such records for six (6) years. As previously mentioned, this would result in greatly increased administrative costs if concentration limits expand beyond an investor's initial purchase to investments made through a program's distribution reinvestment plan, which would be overly burdensome to monitor and track administratively. Further, this is unduly burdensome on sponsors which neither have the direct relationship with investors nor direction over investors' investment portfolio decisions. As previously mentioned, the DOL Fiduciary Rule requires broker-dealers to have compliance policies and procedures to protect investors from conflicts of interest. The DOL recognizes the direct relationship broker-dealers have with the investors, unlike sponsors' indirect relationship. Similarly, FINRA and states already impose suitability determinations on the broker-dealers, not the sponsors. Sponsors should not be subject to compliance constraints that require them to insert themselves into direct relationships with investors. It can't be NASAA's intent for sponsors to interfere with the direct relationships between broker-dealers and investors.

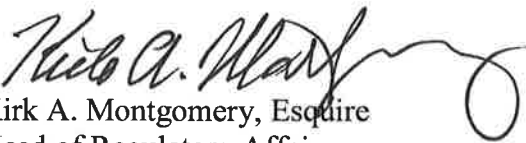
Conclusion

In sum, CNL is investor-focused and, as such, generally supportive of NASAA's mission to protect investors. CNL respectfully urges NASAA to consider the foregoing modifications to the Concentration Limits. Particularly, changes to the net worth determination, carve-outs to the Affiliates definition as applied to the Concentration Limits and changes to the sponsor

compliance language are appropriate and will not diminish the protections NASAA affords to investors.

Thank you in advance for your consideration of CNL's comment submission. Should you have any questions or need additional information, please feel free to contact me any time at kirk.montgomery@cnl.com or (407) 540-7670.

Sincerely,


Kirk A. Montgomery, Esquire
Head of Regulatory Affairs

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