Institute for Portfolio Alternatives

September 11, 2026

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
rule-comments@sec.gov

Re: Supplementary Comments to Registered Offering Reform (File Number S7–2026–17)[1] *(the "Proposed Rule").*

Dear Ms. Countryman:

The Institute for Portfolio Alternatives ("IPA") appreciates the opportunity to supplement the comments on the Proposed Rule that we submitted on July 27, 2026 (the "the Letter")[2] and to respond to the comment letter submitted by the North American Securities Administrators Association ("NASAA") and the letters of several of its members.

We do not repeat the record developed in the IPA Letter. We write to address matters that the letters from NASAA and several of its members raise for the first time: its claim that state registration is coordinated and consistent, its reliance on its coordinated review program as an alternative to preemption, and its assertion that state merit review prevents fraud.

I. NASAA Cannot Ensure Consistency Among Its Members.

We agree with the Securities and Exchange Commission's (the "Commission") description of state securities regulation in the Proposing Release:

> State securities laws have varying frameworks that often are based on one or more model acts. Further, issuers seeking to sell securities in merit-review states must satisfy potentially different substantive standards for each state or risk being unable to sell in that state, which could impact issuers' ability to raise capital and investors' ability to access the capital markets. Consequently, attempting to comply with State securities law registration and qualification requirements may involve interacting with multiple states, retaining 'blue sky' counsel, and addressing varying complex provisions and potentially duplicative requirements, all of which may lead to transactional delays.[3]

[1] Registered Offering Reform, SEC Release Nos. 33-11418, 34-105513, IC-36160 (May 19, 2026), 91 Fed. Reg. 31022 (May 26, 2026) ("Proposing Release").

[2] IPA Letter, available at https://www.sec.gov/comments/S7-2026-17/s7202617-977839-3055248.pdf.

[3] Proposing Release at 31077-78 (footnotes omitted).

NASAA disputes this characterization:

> While the Proposal vaguely describes state registration as a matter of varying frameworks based on multiple model acts combined with potentially different substantive standards, the reality is more coordinated and consistent.[4]

NASAA offers no evidence for that claim, and its own description of state practice refutes it:

> It is correct that some states scrutinize offering terms to protect their citizens by requiring independent governance and adequate shareholder rights, minimizing conflicts of interest, evaluating sponsor and advisor qualifications, and establishing concentration limits, suitability standards, and fair marketing practices. States also review offering documents closely to make sure fees, compensation, expenses, and redemption terms are disclosed clearly and accurately.[5]

NASAA's own description defeats its claim of uniformity. It says states scrutinize offering terms by "requiring independent governance and adequate shareholder rights, minimizing conflicts of interest, evaluating sponsor and advisor qualifications, and establishing concentration limits, suitability standards, and fair marketing practices." Each administrator applies its own view of what governance is adequate, which conflicts must be minimized, what qualifications a sponsor must demonstrate, and where a concentration limit should be set — to a single offering, sold nationwide under one prospectus, and none is bound by another's conclusion.[6] That is not coordination. It is what the Commission described in the Proposing Release.

Attachment A[7] illustrates the point. For each jurisdiction, it identifies whether the jurisdiction conducts merit review or disclosure review; whether it imposes a concentration limit on an investor's purchase, and at what level; whether it exempts accredited investors from that limit; whether it imposes minimum investor income and net worth requirements exceeding those in the NASAA Statement of Policy Regarding Real Estate Investment Trusts (the "REIT Guidelines"); and whether it adopts amendments to the REIT Guidelines automatically. No two

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[4] Letter from Marni Rock Gibson, NASAA President, to Vanessa A. Countryman 2 (July 27, 2026) (footnote omitted) ("NASAA Letter"). *See also* Letter from Andrea L. Seidt, Commissioner, Ohio Department of Commerce, to Vanessa Countryman 4 (July 27, 2026) ("Seidt Letter") ("[S]tates work together to ensure a consistent review of filing material.").

[5] NASAA Letter at 2-3 (footnotes omitted).

[6] Approximately 34 jurisdictions conduct formal merit review, and the practical reach of these standards is broader still, because other states apply similar substantive requirements by incorporating NASAA statements of policy or through related regulatory practice. See IPA Letter at 4 and n.6.

[7] Attachment A is based on our reasonable understanding of each jurisdiction's requirements, drawing on state statutes, rules, published administrative notices, and informal guidance. Those sources vary widely in form and content from state to state, and they do not always answer the question. A jurisdiction's published materials may not disclose the standards its examiners actually apply, and a jurisdiction may take a position in practice that differs from what its published materials indicate. That an issuer cannot always determine from public sources what a jurisdiction will require is itself among the burdens described in this letter and in the IPA Letter at 15.

of those determinations track one another across the country, and the resulting pattern bears no resemblance to a uniform framework. The map also understates the problem. It records only what can be reduced to a category (i.e., the standard each jurisdiction applies on its face) and cannot show how those standards are applied in practice: the comments an individual examiner issues on a particular filing, the interpretations that appear in no published rule, and the registration decisions that follow. The standards vary not only from state-to-state but from year-to-year, from issuer-to-issuer, and among examiners within the same state.[8] The inconsistency the map depicts is the surface of the problem, not its full extent.

Attachment B provides a representative sample of accounts from IPA members and their counsel describing how state review operates in practice. They report

- demands that reach past the terms of the offering to the issuer's corporate charter, arriving five and in some cases more than ten years after initial registration;
- registrations held for months after the Commission declared the registration statement effective, on applications filed a year or more in advance;
- examiners who leave counsel's emails and calls unanswered for months at a time;
- requirements that appear in no federal rule, including a tax opinion neither the Commission nor any other state requires; and
- renewal obligations that force an issuer to maintain two live registration statements in order to remain registered everywhere.

The charter demands illustrate the problem most clearly, because they reach the issuer's governing document years after the offering was registered and can be satisfied only by a stockholder vote.

JLL Income Property Trust illustrates the pattern in its public filings. The issuer first registered a public offering on Form S-11 in 2011. In connection with its fifth public offering, which commenced on June 6, 2025, "the securities administrator of the State of Washington conditioned its agreement to approve the registration of our current offering upon the agreement of our management to propose certain amendments to our Charter."[9] The amendments went before stockholders at the issuer's 2026 annual meeting as Proposals No. 2A through 2C, each requiring the affirmative vote of a majority of all votes entitled to be cast. A single state's registration condition thus became a nationwide proxy solicitation fifteen years after the issuer first registered its shares with the Commission.

Attachment B also documents delay that no map can capture. One member reports that a state held two registrations for nearly three months after the Commission declared the

[8] IPA Letter at 11.

[9] JLL Income Property Trust, Inc., Definitive Proxy Statement (Schedule 14A), Proposals No. 2A–2C (2026 annual meeting held June 11, 2026), https://www.sec.gov/Archives/edgar/data/1314152/000131415226000039/jlliptproxystatement2026-d.htm.

registration statements effective, although the state applications had been filed seven months in advance in one case, and more than a year in the other.

A. NASAA Has No Authority to Make Its REIT Guidelines Uniform.

NASAA rests its uniformity claim on the assertion that state registration is "generally derived from a framework of uniform guidelines adopted by a majority of states" — a reference to its REIT Guidelines. Both qualifiers concede the point. REIT Guidelines that apply "generally," and that "a majority" of jurisdictions have adopted, are not uniform.

Nor could NASAA make them so. NASAA is a trade association of state securities administrators. It is not a governmental body and holds no rulemaking authority of its own. It cannot compel any jurisdiction to adopt the REIT Guidelines, and a substantial number have declined to do so (at least as adopted by NASAA). Among those that have incorporated the REIT Guidelines into their rules or practices — often without public comment or the administrative process state law would require of a rule — administrators interpret, supplement, and depart from them, producing inconsistent and sometimes conflicting requirements for the same nationally distributed offering. Those departures run in both directions. Several jurisdictions impose minimum investor income and net worth requirements that exceed those in the REIT Guidelines, while a number of others adopt amendments to the Guidelines automatically, without public input or any state regulatory review process.[10]

The REIT Guidelines also do not cover the products at issue. NASAA has never adopted a statement of policy for BDCs, so states apply the REIT Guidelines and their catch-all "omnibus" guidelines to unlisted BDCs, which differ from REITs in structure, operations, and investment strategy. And the Guidelines have never been amended to reflect the perpetual-life net-asset-value REIT that is the predominant unlisted REIT offered today; they still describe a legacy "life-cycle" REIT.[11] The IPA Letter describes these deficiencies and the resulting uncertainty in detail.[12]

Provisions of the REIT Guidelines conflict with federal law and have little basis. For example, the REIT Guidelines condition the purchase of a registered, prospectus-delivered, continuously reporting security on a minimum annual gross income of $100,000 together with a minimum net worth of $100,000, or a minimum net worth of $350,000, and cap an investor's aggregate investment in these products at 10% of liquid net worth. Federal law imposes no comparable cap—not on an investor's purchase of a registered security, nor an accredited investor's purchase of unregistered securities in a Regulation D private placement, where the amount invested is unlimited.[13]

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[10] *See* Attachment A.

[11] Year to date through June 2026, public lifecycle REITs raised no capital, while public NAV REITs raised $3.46 billion — the entirety of public non-traded REIT fundraising. For full-year 2025, public lifecycle REITs raised $14.6 million against $5.71 billion for public NAV REITs, or 99.7% of the public total. NAV REIT figures exclude fundraising in private share classes. Source: Robert A. Stanger & Company, Inc.

[12] IPA Letter at 7 and nn.12–13.

[13] The NASAA Letter asserts:

The state regime therefore restricts participation in a public offering more tightly than federal law restricts participation in the private one. That inversion is difficult to justify, given that disclosure, ongoing Securities Exchange Act of 1934 reporting, and the Securities Act of 1933 liability regime attach only to a registered offering. NASAA has published no economic analysis or supporting data for the income and net worth thresholds, for the 10% concentration limit, or for the other substantive conditions the REIT Guidelines impose—not in the original statement of policy in 1996, and not in any amendment since, including the amendments approved in 2025.

The REIT Guidelines have not produced consistency among the states, and NASAA does not have the legal authority or enforcement mechanism to force consistency.

B. NASAA's Coordinated Review Program is Ineffective.

In a footnote, the NASAA Letter claims that "states have devoted substantial time to mitigating burdens by developing models, engaging in common training, operating coordinated review programs, and building a public filing infrastructure that operates similar to the Commission's EDGAR system."[14] NASAA cites to its "coordinated review" program for direct participation program offerings, including offerings for unlisted REITs and BDCs.[15]

For all practical purposes, the coordinated review program is defunct. We are aware of a few IPA members that tried to file through the program a decade ago, but after their negative experience of delays and confusion from the program, they never used it again. Today the program is rarely, if ever, employed by the industry due to its many deficiencies. It never provided meaningful coordination of the merit review of its 54 members nor did it promote consistency in the diverse mandates issued by those jurisdictions.

The NASAA Letter offers nothing to the contrary. It does not say that any issuer uses the program. It offers no figure for how many coordinated review applications have been filed, in what years, or with what result, and it does not claim that the program has reduced the cost or duration of any registration. NASAA is in a position to supply that information: it administers the program and designated the Maryland Securities Commission as its Program Administrator.

> In fact, even the Commission's only action to define a "qualified purchaser" under Section 18(b)(3) involves a registration exemption that contains a concentration limit; i.e., a merit provision. This approach makes the Commission a merit regulator in the public markets.

NASAA Letter at 8 (footnote omitted). It is well known that the Commission is not a merit regulator. Indeed, as recently as September 10, 2026, Chairman Atkins put it simply: "we are not a merit regulator." *See* Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, Remarks at the Investor Advisory Committee Meeting (Sept. 10, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-iac-091026. Responding directly to NASAA's assertion, the requirements in Tier 2 of Regulation A (for example, the offering limit, the requirements for audited financial statements and continuous reporting, and the concentration limit) are conditions to an exemption from registration under Section 3(b) of the Securities Act. They have nothing to do with the registration of a public securities offering.

[14] NASAA Letter at note 6.

[15] *See generally,* "Coordinated Review - DPP," https://www.coordinatedreview.org/cr-dpp/.

If coordinated review were a working alternative to preemption, the filing data would show it. NASAA did not provide it.

The same footnote points to NASAA's Advisory Committee to its Direct Participation Programs Policy Project group, which NASAA says it has created to consult with industry, self-regulatory, and professional experts. The Committee is new. NASAA announced it in February 2026 and accepted applications through April 3, 2026.[16] It notified appointees on May 1, 2026, and the Committee held its first meeting on June 17, 2026, five weeks before NASAA submitted its comment letter.[17] Its initial appointments run only through December 31, 2026. We do not question the Committee's purpose. But a committee seated in May that has met once cannot show that states "have devoted substantial time to mitigating burdens."

1. The Coordinated Review Program Applies only to IPOs.

The coordinated review program is only available for the initial public offering of unlisted REIT and BDC securities.[18] The program does not apply to follow-on offerings that constitute a substantial portion of the registered offering activity subject to multi-state blue sky requirements given the perpetual nature of these products. Should an issuer complete an initial registration through coordinated review and subsequently conduct a follow-on offering, it will receive no benefit from the program and must revert to the traditional state-by-state process for that subsequent offering.

Coordinated review also does not apply to annual renewal requirements. Issuers that have completed their initial registration must satisfy each state's individual renewal demands, which require voluminous state specific documentation and resources to confirm approval by each jurisdiction through ongoing correspondence with individual state offices. Nor does the program address the burden of sales literature filing requirements imposed by several states. These ongoing compliance obligations, which represent a significant portion of the costs and burdens the Proposed Rule would eliminate, lie beyond the scope of the coordinated review program. The suggestion that coordinated review is a meaningful alternative to preemption ignores the fact that it fails to alleviate these compliance burdens.

Moreover, the program does not reach every jurisdiction. Thirty-four of the fifty-one United States jurisdictions participate.[19] Eight others state that they provide for automatic

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[16] NASAA, "NASAA Direct Participation Programs (DPP) Advisory Committee Applications," https://www.nasaa.org/newsroom/publications/announcements/nasaa-direct-participation-programs-dpp-advisory-committee-applications/ (stating that "[a]pplications must now be received no later than April 3, 2026" and that the DPP Project Group "anticipates making appointments . . . in April, with the committee to begin work and hold an inaugural meeting this Spring").

[17] Jeff Evans, the IPA's Director of Government Affairs and Policy, serves on the Committee. NASAA notified appointees of their selection by electronic mail on May 1, 2026, and notified Committee participants of the June 17, 2026 inaugural meeting by electronic mail.

[18] "Candidates for CR-DPP, Coordinated Review- DPP," https://www.coordinatedreview.org/cr-dpp/.

[19] Participation does not track whether a jurisdiction conducts merit review. NASAA's own Regulation A materials designate particular jurisdictions as merit jurisdictions, and that set does not correspond to the set of participating jurisdictions for the DPP coordinated review program. The result is a further layer of complexity for issuers

effectiveness upon SEC clearance. The remaining nine, including California and Ohio, among the most active merit review jurisdictions, simply do not participate.[20] An issuer seeking to register in those nine must navigate the traditional registration process in each of them. Coverage is not the only difficulty. As set out below, the program's structure does not support NASAA's account of it either.

2. The Coordinated Review Program Complicates the Process.

The very structure of the coordinated review program is unworkable. The program only consolidates comments from the various states into a single comment letter. This minor administrative device does nothing to alleviate the burden of filing in every merit review state. Issuers still must submit all required documentation to those states, including the registration statement, Form U-1 (Uniform Application to Register Securities), Form U-2 (Consent to Service of Process), Form U-2A (Corporate Resolution), marked copies of any amendments, and the applicable fees, directly to each jurisdiction in which it seeks to register. The coordinated review application (Form CR-DPP-1) is filed as an attachment to these state-level submissions. It does not replace them.

The program thus does not reduce the administrative burden of filing across multiple jurisdictions. Rather, the program attempts to coordinate state merit review by consolidating voluminous state comments into a single letter. The program fails to achieve even this limited objective.

NASAA designated the Maryland Securities Commission as the Program Administrator, to designate two "lead" states, one for merit review and one for disclosure. Moreover, "[t]here may be no correlation between the lead jurisdictions and the issuer's home jurisdiction."[21] The two lead states are supposed to generate a single comment letter on behalf of all participating jurisdictions, divided into merit comments, disclosure comments, and state-specific comments.[22] Issuer's counsel can try to resolve merit and disclosure comments with the lead states, but must attempt to resolve state-specific comments directly with the states that raised them.

Issuer's counsel is thus faced with two inefficient processes in a program meant to encourage "coordinated review." First, issuer's counsel must respond to "state-specific comments" with each state, as it does today. Second, issuer's counsel must respond to "merit and disclosure" comments with the lead states, confronting a new bureaucratic layer of review. The lead states are not expected to resolve the disparate "merit and disclosure" comments that they receive, nor must the lead states make those comments more consistent or clarify

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attempting to comply what each jurisdiction will require, as the map at Attachment A illustrates.

[20] "Coordinated Review – DPP," https://www.coordinatedreview.org/cr-dpp/ (listing participating jurisdictions and stating that Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, New York and Wyoming "provide for automatic effectiveness upon clearance by the Securities and Exchange Commission" and "are not included in CR-DPP").

[21] "Selection of the Lead Jurisdictions, Coordinated Review- DPP," https://www.coordinatedreview.org/cr-dpp/.

[22] The coordinated review program does not explain the difference between "merit," "disclosure," and "state-specific" comments.

the demands of any state. Instead, the lead states simply issue all of the "merit and disclosure" comments that they receive in a single letter to the issuer.

This reduction of the comments to one letter does not meaningfully improve administrative efficiency because the issuer still must respond to every comment. Nor is the lead states' authority settled, as NASAA's description suggests. The program protocol allows each participating jurisdiction seven business days to respond to the issuer's submissions to the lead examiner, so an individual state may press the lead examiner not to clear. And whatever authority the lead states hold reaches only merit and disclosure comments. State-specific comments fall outside it entirely, and a single unresolved state-specific comment can hold up clearance in every participating jurisdiction, because the program does not permit partial clearance.

The extra bureaucratic layer is cumbersome: (1) issuer's counsel must await and then review the comment letter from the lead states, (2) respond to the comment letter back to the lead states, (3) who forward the issuer's responses to the participating states, (4) who send their views on the issuer's responses back to the lead states, (5) who must negotiate with the participating states and issuer's counsel, (6) forward their recommendation whether to accept or deny registration to all of the participating states, and (7) decide whether to accept or deny the registration.[23]

It is thus not surprising that issuers do not use the coordinated review program. The program offers aggregation, not simplification. The issuer faces the same volume of regulatory scrutiny in a different package. In one firm's last experience with the coordinated review program (about ten years ago), the process generated 116 comments, including 53 state-specific comments from 14 different states that had to be resolved directly with the jurisdictions that raised them, not through the lead states.

3. The Coordinated Review Program Can Add to the Delay.

Coordinated review requires unanimity. The lead states may not approve an offering until every participating jurisdiction has confirmed that its comments have been addressed, so an issuer may not sell in any participating state until the last of them is satisfied. Moreover, the whole offering can be delayed because distribution partners generally will not place a new product on their platforms until it is registered across the jurisdictions where their advisers do business.

NASAA also states that there are "no additional fees to utilize coordinated review."[24] That is accurate and beside the point. The costs of state registration are not the program's fees. Rather, they come from the delay before an issuer may sell, the legal expense of answering an enlarged set of comments, and the offerings that are not launched because the timing cannot be predicted. Coordinated review reduces none of them.

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[23] *See generally,* "Coordinated Review - DPP– Overview of the Lead State Responsibilities," https://www.coordinatedreview.org/cr-dpp/.

[24] "Coordinated Review – DPP," https://www.coordinatedreview.org/cr-dpp/.

For these reasons, NASAA's coordinated review program is rarely, if ever, used today. Like its REIT Guidelines, NASAA's coordinated review program reveals more than it resolves. It exposes the unavoidable inefficiency of multistate blue sky review, its persistent costs and burdens, and the impossibility of ensuring uniformity or even consistency among the states. The only solution to this problem is federal preemption.

II. State Merit Review Cannot Prevent Fraud.

In their comment letters NASAA and its members assert that state merit review is necessary to detect and prevent fraud and other abuse.[25] The Proposed Rule, however, would preserve the states' jurisdiction to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by broker-dealers.[26] The states' enforcement authority will continue to complement the Commission's vigorous enforcement of the federal antifraud provisions.

A. There is No Pattern of Investor Harm.

NASAA and its members provide no evidence that unlisted REITs and BDCs present a pattern of investor harm. The most active merit-review states provide the best-documented evidence. The Ohio Division of Securities has reported that, across the 45 years in which it applied merit-review standards to these securities, it had never suspended an unlisted REIT or BDC offering and has brought no enforcement action involving these products since 2018. Ohio's complaint data are consistent: only 21 customer complaints between 2019 and 2023

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[25] *See, e.g.,* NASAA Letter at 11 (footnote omitted):

> The importance of state registration is evident from the fact that some states have been able to stop abusive and unfair offerings, which later turned out to be frauds, that the Commission missed.

See also Seidt Letter at 1:

> To start, states plug the sizable review gap left open by the Commission, assuring American investors that someone in the government is paying attention and will substantively review offering material for fraud, misleading terms, and abusive practices before billions of dollars might get lost (or locked up indefinitely). That is not hyperbole.

See also Letter from Claire McHenry, Deputy Director – Securities Bureau, Nebraska Department of Banking and Finance, to Vanessa A. Countryman 2 (July 27, 2026) ("preemption would fundamentally limit the ability of states to prevent investor harm before securities are sold"); Letter from KC Mohseni, Commissioner California Department of Financial Protection and Innovation, to Vanessa Countryman 3 (July 27, 2026) ("California's merit review of securities offerings has been a longstanding mechanism in preventing fraud and protecting investors."); Letter from William Francis Galvin, Secretary of the Commonwealth of Massachusetts, to Vanessa A. Countryman 2 (July 27, 2026) ("Galvin Letter") ("State review roots out sharp industry practices that otherwise may 'tend to work a fraud' upon investors."); Letter from Faith L. Anderson, Securities Administrator, Washington Securities Division, to Vanessa A. Countryman 3 (July 22, 2026) ("Anderson Letter") ("In our experience, state registration of these illiquid, alternative investments has protected Washingtonians from both unfair and outright fraudulent offerings."); Letter from Melanie Senter Lubin, Securities Commissioner, Maryland Securities Division, to Vanessa A. Countryman 4 (July 24, 2026); Letter from TK Keen, Administrator, Oregon Division of Financial Regulation, to Vanessa A. Countryman 5 (July 27, 2026).

[26] Proposing Release at 31077.

involving an unlisted REIT, BDC or "alternative product."[27] Even that limited figure encompasses products beyond unlisted REITs and BDCs, and the record does not indicate that the complaints concerned the structure or terms of an offering rather than the conduct of the intermediary that recommended the investment.

National enforcement data are consistent with these experiences: NASAA's annual enforcement reports since 2016 have not identified REITs or BDCs among their enforcement categories.[28]

B. The Offerings Cited By States Do Not Support Merit Review.

NASAA and the state commentators discussed only two offerings as examples of how state merit review prevents fraud and abuse.[29] Contrary to NASAA's claim, state merit review did not prevent fraud with respect to either offering.

- *The iCap Offering*

The Securities Administrator for the State of Washington asserted that in conducting merit review "our examiners have prevented offerings from being sold in our state that did not disclose all material information, that contained unfair or abusive terms, or that were outright frauds."[30] The letter discusses one offering, concerning iCap Enterprises ("iCap"). The Securities Administrator claims that this offering exemplifies how merit review helps to "prevent frauds from being perpetrated in our state."[31] In fact, iCap and its subsidiaries defrauded at least 58

[27] Ohio Common Sense Initiative Business Impact Analysis 10 (March 13, 2025); Ohio Common Sense Initiative Business Impact Analysis 7, 19 (August 22, 2023).

[28] *See* NASAA Enforcement Reports (annual reports covering data from 2016 onward).

[29] *See* NASAA Letter at 11-12 (footnotes omitted). The Secretary of State for North Carolina referred to an offering by Phoenix Capital Group Holdings, LLC, as a "direct example of an offering that was recently made effective by the SEC but was unable to comply with North Carolina disclosure requirements." Marshall Letter at 2. There does not appear to have been any federal or state regulatory enforcement action or any criminal prosecution of that company, its principals, or its successor, Phoenix Capital Group Holdings LLC.

The Secretary of the Commonwealth of Massachusetts cited nine cases, most of which are thirteen years old, and all of which appear to be enforcement actions against broker-dealers, not issuers. It is unclear whether any of those actions concerned the operation or structure of unlisted REITs or the state's review of their securities offerings. Galvin Letter at note 3.

The Oklahoma Administrator referred to, but did not identify, an application in which the Department identified several deficiencies that would have been harmful to Oklahoma investors, including negative shareholder equity and deficits not disclosed as risk factors. According to the Administrator, the issuer abandoned its application with the state, completed its registration with the Commission, and went bankrupt. Letter from Melanie Hall, Administrator, Oklahoma Department of Securities, to Vanessa A. Countryman 3 (July 24, 2026).

[30] Anderson Letter at 3.

[31] *Id.*

Washington investors before *and after* the Administrator's staff denied the application to register.[32]

iCap was a Washington corporation that derived its income through the operation of various subsidiaries.[33] *Neither iCap nor its subsidiaries were organized as REITs or BDCs.* iCap's subsidiaries purportedly made investments in single family, multi-family, light commercial, and land development projects.[34] Eight subsidiaries raised capital through the issuance of private placement debentures and promissory notes.[35]

From at least 2013 to 2023, iCap and its subsidiaries raised at least $250 million from more than 1,800 investors in China and the United States, 58 of whom resided in the State of Washington.[36] According to the Securities Division, iCap operated as a Ponzi scheme, deploying investor funds on legitimate business operations and relying on new investors to cover interest obligations to existing investors.[37] Around March 2023, iCap stopped making monthly payments to investors and filed for Chapter 11 bankruptcy later that year.[38]

iCap did not attempt to register any debentures and promissory notes issued by seven of the eight subsidiaries at issue.[39] Instead, iCap claimed that the offerings of securities by these seven subsidiaries were exempt under Rule 506(b) of the Commission's Regulation D. iCap filed Form Ds with the Commission and sent notifications to the Securities Division for only four of these offerings.[40]

In 2020, iCap attempted to register only one of the eight offerings with the Commission and the State of Washington.[41] According to the Securities Division, the Commission declared the registration to be effective, but "[a]fter reviewing iCap's updated financial statements, the Securities Division determined the company did not have the ability to satisfy" the state's debt offering standards.[42] iCap withdrew its Washington application at the Securities Division's

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[32] Washington Securities Division Order No. 2-23-3608-26-SC01 at 5 (February 17, 2026) ("iCap Order").

[33] iCap Order at 2.

[34] iCap Order at 2-3.

[35] iCap Order at 6-7.

[36] iCap Order at 5. iCap distributed debentures and promissory notes through broker-dealers in Texas, California, Iowa, Massachusetts, Tennessee, Illinois, Wisconsin, Minnesota, New York, Puerto Rico, Florida, Ohio, and Oregon. iCap paid the firms a commission to sell its debentures and promissory notes. iCap Order at 6.

[37] iCap Order at 5.

[38] *Id.*

[39] iCap Order at 6-7.

[40] *Id.*

[41] iCap Order at 7.

[42] *Id.*

request. Because the securities would remain unregistered in Washington, the Securities Division asked iCap for confirmation that it had not sold and would not sell the securities in the state. On or around January 14, 2021, iCap provided this confirmation. This representation, however, turned out to be untrue. *iCap subsequently sold at least $238,000 of those securities to at least three Washington investors.*[43]

On February 17, 2026 — three years after iCap declared bankruptcy — the Securities Division issued a statement of charges and a notice of intent to enter a cease and desist order, to impose a fine, and to deny future registrations against iCap and its affiliates.[44]

In short, iCap defrauded 58 Washington investors, three of whom it defrauded *after* the Securities Division denied its application to register its securities. There is no evidence that the Securities Division alerted other states about the ongoing fraud.

- *The UDF Offering*

The Commissioner for the State of Ohio similarly asserted that "the Division has used its state authority to successfully screen out fraudulent deals like the massive United Development Funding ("UDF") REIT at the registration stage."[45] This statement is simply untrue. The fraud appears to have begun three years *after* UDF's filing with the Division and continued for another five years without any action by the Division.[46]

UDF sold interests in five investment funds. These funds extended loans to real estate developers and distributed income to the funds' investors.[47] Two of these funds, UDF I and UDF II, raised capital by selling limited partnership interests in the private markets. UDF III, UDF IV, and UDF V raised funds in the public markets, with UDF IV and UDF V doing so as public

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[43] *Id.*

[44] *See generally,* iCap Order.

[45] Seidt Letter at 4.

[46] In a footnote, the Division cites but does not explain two other offerings that the Division "screened out." Seidt Letter at note 11. In a 2023 proposed rulemaking citing these two offerings, the Division asserted that it had "screened out multiple fraudulent or misleading offerings that were cleared by the SEC and other states." However, in the proposed 2023 rulemaking the Division only cites the UDF offering and two FINRA actions against broker-dealers who marketed unlisted REITs. The Division offers no evidence that those broker-dealer cases are relevant to any issues that the Division's examiners might have raised with the unlisted REITs. *See* Proposed Revisions to O.A.C. 1301-6-3-09 at 77 (Ohio Department of Commerce, Division of Securities) (cited in Seidt Letter at note 5). Both REITs were legacy "life-cycle" REITs, not perpetual life, net-asset-value REITs sold today.

[47] In 2003 and 2004, UDF sold limited partnership interests in UDF I and UDF II and raised a total of $33 million. Complaint, *Securities and Exchange Commission v. United Development Funding III, L.P, et al,* Case 3:18-cv-01735-1 at 6 (Filed July 3, 2018, N.D. Tex.) ("SEC Complaint"). Between 2005 and 2009, UDF III conducted a public offering and raised $350 million. *Id.* Between 2008 and 2013, UDF IV conducted a public offering and raised at least $610 million. *Id.* at 8. Between 2014 and 2016, UDF V conducted a public offering and raised about $51 million. *See* United Development Funding Income Fund V Consolidated Financial Statements at 7 (December 31, 2022) https://udfonline.com/wp-content/uploads/2023/08/UDF-V-Audited-Consolidated-Financial-Statements-2022.pdf?utm_source=chatgpt.com.

unlisted REITs. These two REITs were organized as legacy, "life-cycle" REITs, not perpetual life, net-asset-value REITs that are sold today.[48]

By 2011, UDF at times did not have sufficient monthly cash flow to cover its distributions.[49] UDF funded UDF III distributions in part by directing UDF IV to make secured real estate loans to UDF IV developers, who used the proceeds to pay down their previous loans *from UDF III*. UDF III then used the funds it received from the borrowers to make distributions to UDF III investors.[50]

In 2014, UDF IV listed its securities on Nasdaq.[51] In February 2016, all distributions to UDF III and UDF IV investors stopped.[52] In October 2016, Nasdaq delisted UDF IV.[53] The Commission brought a civil fraud charge against UDF III and UDF IV and its executives in July 2018 and obtained judgment in the same month.[54] Federal criminal prosecutors brought a case that resulted in a conviction of four UDF executives in January 2022.[55]

The Ohio Securities Division says that it denied securities registration of a UDF REIT. It is unclear whether the Division denied registration of the offering by UDF IV in 2008, UDF V in 2014, or both. The Division also has not explained why it denied registration. The Division may have denied registration because of a technical issue with the filing, or it may have done so because it discovered evidence of fraud.

It is unlikely, however, that the Division denied registration by UDF IV because the Division spotted the fraud. The fraud did not allegedly begin until 2011, three years after UDF IV filed its application to register with the Division. Moreover, the public record shows no effort by the Division to bring any enforcement action against UDF or its principals to enjoin them from violating Ohio statute or Division rules, including the antifraud provisions. The Division apparently did not notify other state securities administrators of an ongoing fraud. Moreover, the Ohio State Teachers Retirement System reportedly invested in UDF IV.[56]

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[48] *See* Registration No. 333-152760 (UDF IV prospectus); Registration No. 333-194162 (UDF V prospectus).

[49] SEC Complaint at 9.

[50] SEC Complaint at 10. Evidence also was presented at the subsequent criminal trial that UDF V assets were diverted to UDF III. *See United States v. Greenlaw* (5th Cir. 2023).

[51] SEC Complaint at 8.

[52] *See* SEC Complaint at 12.

[53] *See* "United Development Funding IV Receives Delisting Notice from Nasdaq," https://udfonline.com/united-development-funding-iv-receives-delisting-notice-nasdaq/ (October 18, 2016).

[54] *See* SEC Complaint; Notice of Approved Distribution Plan in *SEC v. United Development Funding III, LP* (November 18, 2021).

[55] "United Development Funding Executives Convicted of Fraud" (U.S. Attorney's Office, Northern District of Texas, January 21, 2022).

[56] *See* "FBI investigating United Development Funding" (Blue Vault February 23, 2016).

In short, UDF continued to perpetuate its fraud *for eight years* after the Securities Division may have denied UDF IV's application to register. The UDF case, like the iCap case, does not support the notion that state merit review prevents, deters or even discourages fraud.

Neither example involves the products this rulemaking would affect. iCap was not a REIT or a BDC and did not register the securities at issue. UDF IV and UDF V were legacy "life-cycle" REITs that predate the perpetual-life, net-asset-value structure through which unlisted REIT and BDC capital is raised today, and which is sponsored by many of the world's largest asset managers.[57]

Conclusion

Federal preemption is the only solution to the inefficiencies, cost and delays of state merit review. The unpredictable, conflicting, and burdensome mandates of state examiners have driven capital to the private markets. And this disparate application of state blue sky law serves little purpose. Contrary to the assertions of NASAA and its members, state merit review does virtually nothing to prevent fraud or abuse. Investors can be better protected by vigorous enforcement of the federal and state antifraud provisions.

The states are independent jurisdictions that cannot speak with a single voice. As a trade association without legal authority, NASAA cannot be expected to force consensus among its members. Only the Commission's adoption of the Proposed Rule will ensure that nationally registered products may be distributed nationwide and that investors will have access to these investment opportunities under the protection of federal securities laws.

* * *

The IPA appreciates the opportunity to provide supplementary comments on the Proposed Rule. Should you have any questions about our comments, please feel free to contact me or Jeff Evans, IPA's director of government affairs and policy, at jevans@ipa.com.

Sincerely,



Anya Coverman
President and CEO

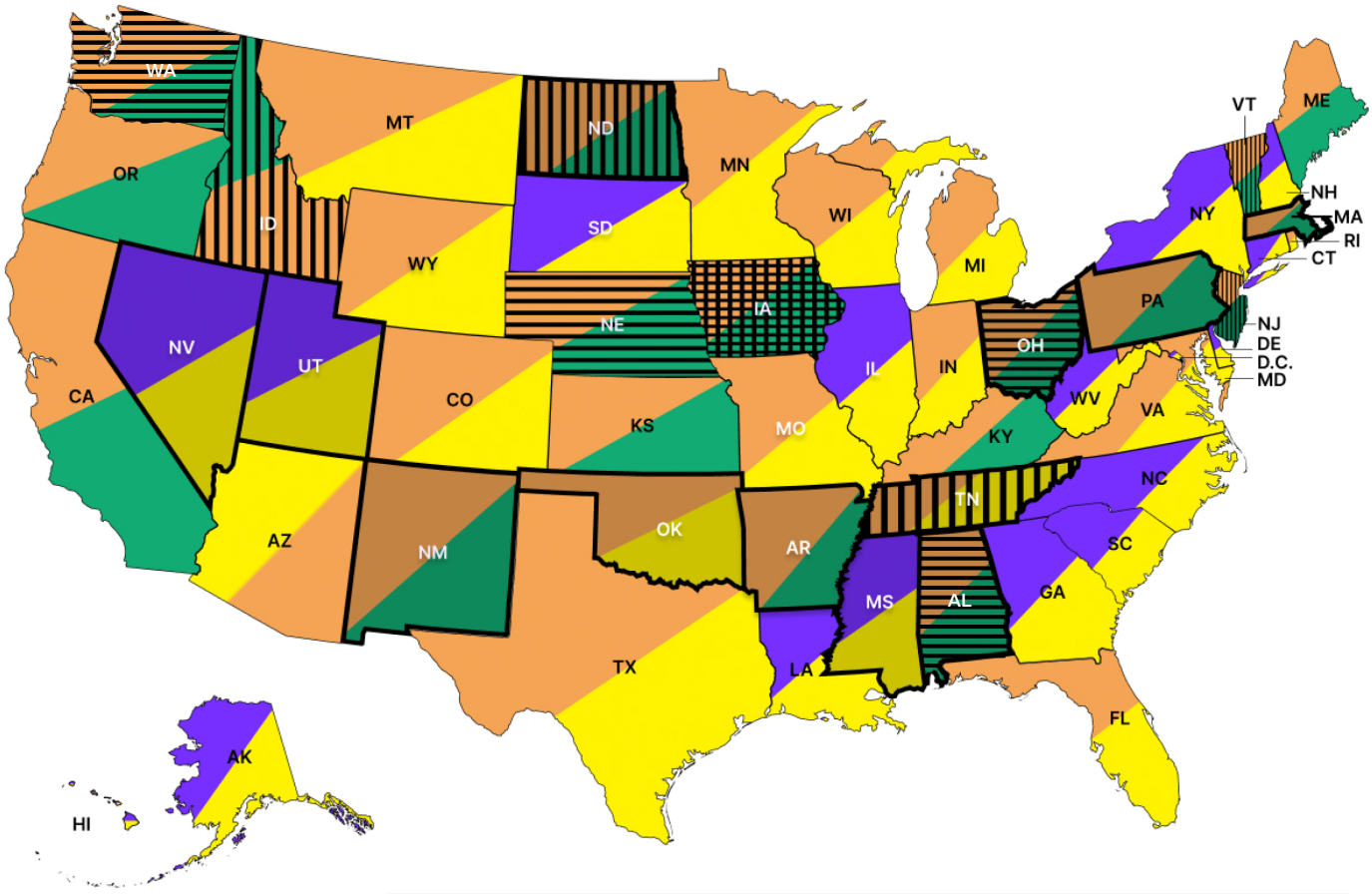
Attachments

Attachment A — State Requirements Applicable to Unlisted REIT and BDC Offerings

Attachment B — Accounts of State Registration Practice

[57] *See* IPA Letter at 3 and n.4.

ATTACHMENT A
State Requirements Applicable to
Unlisted REITs and BDC Offerings



MERIT-BASED REVIEW

DISCLOSURE-BASED REVIEW

NO CONCENTRATION LIMIT

10% CONCENTRATION LIMIT

ACCREDITED INVESTOR CARVEOUT TO CONCENTRATION LIMIT

MINIMUM INVESTOR INCOME/NET WORTH REQUIREMENTS - SUCH REQUIREMENTS DO NOT EXIST IN FEDERAL LAW BUT ARE INCLUDED IN NASAA REIT GUIDELINES. THESE STATES' REQUIREMENTS GO BEYOND NASAA'S GUIDELINES

BOLDED/DARKENED STATES AUTOMATICALLY ADOPT ANY UPDATES THAT NASAA MAKES TO ITS REIT GUIDELINES WITHOUT ANY PUBLIC INPUT OR REGULATORY REVIEW PROCESS

ATTACHMENT B

Accounts of State Registration Practice

The accounts below were provided to the Institute for Portfolio Alternatives by member firms and their counsel. Issuers, states, and individual examiners are not identified. Several accounts supplement examples summarized in the IPA's comment letter dated July 27, 2026, and are cross-referenced accordingly.

I. Charter Amendments Demanded After Registration

1. An issuer that first registered a public offering on Form S-11 in 2011 commenced its fifth public offering in June 2025. As a condition of approving the registration of that offering, one state required the issuer's management to propose amendments to the issuer's charter. The amendments were submitted to stockholders at the issuer's 2026 annual meeting as three separate proposals, each requiring the affirmative vote of at least a majority of all votes entitled to be cast.

2. Counsel reports more than one client receiving comments on the issuer's charter more than five years after initial registration, and in some cases more than ten years after initial registration (in the latter case after reviewing the registration on nine prior annual renewals without raising the point). The outcome was the same in each case. The state required the amendment. The issuer prepared revised governing and offering documents, made additional filings, and solicited its stockholders, at considerable time and expense.

3. An issuer registering its third public offering received a second comment letter from one state containing more than 30 comments, 26 of which requested or required charter amendments, including change of "if" to "only if" in the charter.

4. Another issuer filed its first registration statement on Form S-11 in 2018 and has conducted a continuous public offering since. It is now registering its third public offering. Each offering must be registered in every state, each state requires an annual renewal, and each state may comment at each stage. In connection with the third offering, one state issued a comment letter containing more than 40 comments, more than 20 of them directed at the issuer's charter — a document that had not been materially amended since the initial public offering, and that the same jurisdictions had reviewed at each prior registration and renewal. Most of the charter comments requested amendments requiring stockholder approval, imposing costs on the issuer and its stockholders with no corresponding investor protection benefit.

5. In a separate follow-on offering, a state required an issuer to amend its charter. Counsel advised the state that shareholders were unlikely to approve the amendment, and that soliciting their approval would impose substantial cost on the issuer and its shareholders for a change that was neither material nor achievable. The state required the issuer to proceed. The issuer amended its governing and offering documents, coordinated additional filings, and solicited approval from thousands of shareholders. The amendment failed. *See* IPA Comment Letter (July 27, 2026) at 12.

6. An unlisted BDC was required to amend a charter provision that already subjected certain adviser expenses to any special audit required by applicable federal and state securities laws, so that the provision also referred to the "NASAA Omnibus Guidelines." Because an audit required

by the Omnibus Guidelines is one a state administrator requires in the exercise of authority under that state's securities law, the amendment appears to have added nothing to the provision. The issuer nonetheless solicited its shareholders to approve it.

II. Delay, Sequencing, and Timing of Review

7. One state held two registrations for nearly three months after the Commission declared the registration statements effective, requiring repeated follow-up. The state applications had been filed seven months in advance in one case and more than a year in advance in the other.

8. One state processes filings strictly in the order received and does not indicate when a filing will be reached. Other states offer only general explanations for the delay: that the office is busy, or that a staff member is out with no stated return date. An issuer in this position cannot tell its distribution partners when the offering will be available in the state and cannot plan a closing date around the state's review.

9. Because state registration takes so long, an unlisted fund will often file a new registration statement with the Commission a year before its current registration statement expires, solely in order to begin the state registration process, and will continue selling under the current registration statement until the new one has cleared in every state. States take inconsistent positions on what happens next. Some issue a permit for the new registration statement while the current permit remains outstanding. Others require the current permit to be terminated first. One state requires termination but, unlike states that will coordinate the timing of the switch, refuses to indicate when the new permit will issue, even though its review of these filings is not substantive. An issuer that terminates its existing permit in order to obtain a new one therefore risks being unable to sell in that state on its next closing date, and interrupting its offering, notwithstanding that the transition requires approximately ten business days and that prospectuses must be delivered at least five business days before a closing under the NASAA guidelines.

10. For one registration, the issuer filed with the state on July 26, 2023. The state issued permits on November 4, 2024, more than fifteen months later. The Commission had declared the registration statement effective on August 7, 2024, so the state held the filing for over a year before federal effectiveness and for nearly three months after it.

11. Counsel filed two follow-on offerings in one state, in April and May. The state mischaracterized the May filing as a renewal and took a month to respond to a request to correct the error. A comment letter raising non-substantive comments arrived in July, was answered the same day, and was followed by weekly reminders that the permit would expire in August. Most of counsel's emails went unanswered. Two days before expiration, the examiner advised that the review would not be completed in time and offered no alternative. The registration was preserved only after counsel asked to renew the prior registration and the examiner agreed to review that renewal on an expedited basis, at an additional $2,000 in filing fees to the client. A further comment letter followed a month later; the requested change was made; and the offering remained under review two months after that, with counsel's emails unanswered. The April filing fared no better: a non-substantive comment letter arrived in September, was answered immediately, and was followed by a second non-substantive comment letter in October, with the permit set to expire in December. Counsel understood a single examiner to be handling all issuer filings in the state.

12. In another state, counsel reports receiving comments two to three days before the expiration of a permit regardless of how far in advance the filing is made. In one pending follow-on offering, counsel filed in April and received the state's comments two days before the permit was to expire. *See* IPA Comment Letter (July 27, 2026) at 12 (75% of survey respondents reported comments arriving only days before a permit or deadline).

III. Unresponsiveness

13. For one follow-on registration, counsel sent a state examiner twelve unanswered emails and telephone calls over three months.

14. Counsel reports escalating contact with one state from weekly to daily calls and emails as a permit's effectiveness date approached, and identifies the head staff examiner as particularly difficult to reach.

15. For one registration, the examiner took months to review responses submitted well after the Commission declared the registration statement effective. The matter was resolved only through supervisory review. *See* IPA Comment Letter (July 27, 2026) at 12 (87.5% of survey respondents reported unresponsive examiners or long stretches without a reply).

IV. Substantive Demands Without a Federal Analogue

16. Several states apply the NASAA Statement of Policy Regarding Real Estate Investment Trusts to BDCs, including by requiring annual meetings of shareholders and a majority quorum for shareholders and trustees. Counsel notes that the governance structure of a BDC differs from that of a REIT and is subject to a federal Investment Company Act overlay designed to protect shareholders from overreaching by management, directors, and affiliates, and that one state has used its securities law to impose corporate governance requirements on an entity organized in another state whose internal governance complies with the law of its state of organization.

17. In connection with a third follow-on registration application, a state examiner required a publicly offered unlisted BDC to file, as an exhibit to its registration statement, a tax opinion addressing the issuer's status as a regulated investment company under the Internal Revenue Code. Neither the Commission nor any other state requires a BDC to file such an opinion. After counsel explained why the opinion was neither required nor appropriate, the state proposed as an alternative that the issuer provide income tax returns and a private tax opinion addressed to the state commission alone. The request came less than four weeks before the expiration of the issuer's permit in that state and was resolved only on appeal to the examiner's supervisors. *See* IPA Comment Letter (July 27, 2026) at 15–16.

V. Renewal Obligations

18. While most states do not review renewal applications, some states regularly issue comments on renewal requiring issuers to revise offering documents, governing documents, and service provider agreements, notwithstanding a full review a year earlier and years of sales in the state.