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ADISA'S POLICY STATEMENT: 1031 REAL PROPERTY LIKE-KIND EXCHANGES

ADISA

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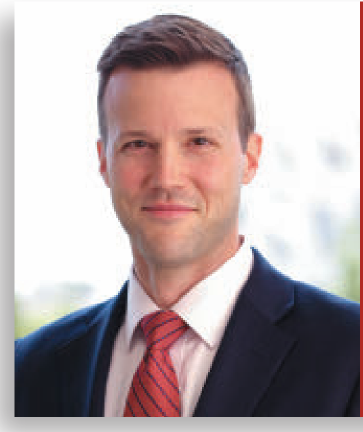


President's Letter

By Matthew Malone, CFA, Esq., FS Investments
2021 ADISA President

As I write this, it's about three weeks after our Spring Conference, which by all standards was a resounding success. As the first in-person event ADISA has held in more than a year and a half, the Spring Conference was marked by sold-out registration, high energy, and enthusiastic participants and speakers.

The 500 attendees took advantage of 27 breakout sessions that bookended important general sessions, fascinating round tables and keynote speeches and, of course, ongoing, active-and very welcome-in-person networking. It was a much needed event for our industry as we move into being back to in-person business.

In addition to our conference activities, the ADISA board and staff remain focused on our three key initiatives for this year-enhancing advocacy efforts, modernizing our digital presence and focusing on the future growth of ADISA.

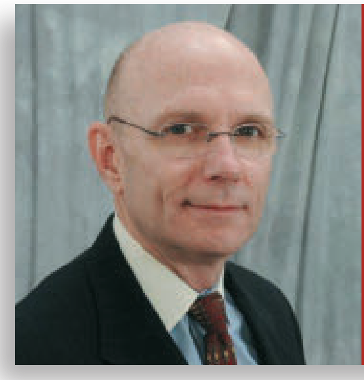
At top of mind is ADISA's advocacy efforts, with a particular focus on support of 1031 Like-Kind Exchanges, which the Biden Administration is seeking to curtail. During the month of May, Executive Director John Harrison and the Legislative & Regulatory Committee have continued to advocate with coalition partners, meeting with six senators, five members of Congress, and the full Ways & Means Democratic Tax Staff to affirm the massive economic impact of 1031s on the US economy, including 568,000 jobs and $11 billion in labor income. In addition, the coalition sponsored a tutorial for 70 members of Congress and staff, educating them about the 100-year-old public policy incentive behind 1031s: investing and reinvesting in communities across the country.

ADISA will continue to advocate on our members' behalf. Whether in combination with our coalition partners or fighting on our own, ADISA proudly represents the alternative investment industry. We urge you to read more about ADISA's position on LKEs as well as other advocacy news on ADISA's website. Going forward, we will look to engage and empower more of our members in these efforts as well as in structured outreach to state regulators to provide education on alternative investments.

Focusing and streamlining ADISA's digital activities remains a significant goal this year. ADISA recently launched its updated website, featuring simpler navigation, improved content, mobile compatibility and a fully functional search engine. Further digital initiatives include a more robust social media presence; multi-format content, including videos and blogs; and more promotional opportunities for our members. In addition, the website hosts our new Products & Services Directory as well as the AIQ digital library.

Finally, as result of the quickly evolving alternative investment industry and the strong growth ADISA has seen in recent years, the board and staff have engaged an expert consultant to support a deep analysis of the industry and ADISA members' goals in order to optimize ADISA's overall suite of services. The result of this analysis will be to outline a long-term vision that is driven by maximizing member value, keeping in mind that ADISA's strength lies in its ability to bring together a broad constituency of alternative investment sponsors, distributors, financial advisors and service providers.

As we close in on the first half of 2021, I will continue to work with my fellow board members, staff and volunteers to ensure the growth and advancement of the association, as well as the alternative investments industry. ▲



Executive Director's Letter

The Math Is All Here on 1031s

By John Harrison, DBA, CRCP®, CAE
Executive Director, ADISA

We now have the math on the table for both sides on the issue of 1031s.

Here's one side: the Biden Budget estimates the IRS will raise less than $2 billion per year for the next ten years if 1031s are eliminated (their exact figure is $19.55 billion over ten years). In a federal budget of trillions, this is perhaps a rounding error. That's the plus column for the IRS. And that plus column would be even less if there were the proposed $500k allowance for deferral for each taxpayer using a 1031 (this amount goes to $1 million for married filing jointly). So, the $2 billion figure would shrink from a rounding error to de minimis no mention. Incidentally, the $2 billion per year figure is close to that of the Ling & Petrova study—thus, we have a solid idea of what the IRS would "gain."

On the other side, we have well-vetted estimates of what 1031s actually do: they enable a surprising amount of economic activity—that is about 15% of commercial real estate. First (from Ernst & Young), 1031s provide over half a million good jobs, and this brings a value add of over $55 billion per year to the economy. In case you're wondering about what kind of jobs—perhaps it's just folks in financial services—that is not the case. The financial services jobs only comprise 73,000 of the mix; the lion's share of 226,000 are in leisure, hospitality, trades and transportation. About 153,000 are in education, health services and other business services. Then the rest are in manufacturing, construction and the like. These people and their families depend on the activity generated by 1031s.

Those are the plus numbers for 1031s. What would be the minus numbers if they go away? Costs to maintain buildings would go up. Rents would go up (somewhere in the 12% range), capital investment would go down—as a result properties would sit longer (a holding period increase of a year or more). This means lower local tax revenues and decreases in services. State and local tax revenue losses of close to $3 billion per year. At least the pain would be spread across a diverse crowd: farmers, city apartment dwellers, conservation landowners and commercial businesses of all sorts.

If we try to net both sides together—that is, an annual gain to the IRS of little measure, added to estimated losses of around $55 billion and 558,000 jobs per year—then we get, well, negative $55 billion and minus 558,000 jobs, at least in the short term. Who's to say those workers can't find other employment easily, but then, who's to say they can't and end up as further government costs? Thus, job losses at least have to be considered in the short term as a cost.

As you might suspect, we've done this math before, and when we show it to the legislators, they nod and want to move on to something else. Even those not directly involved in 1031s at all see the value—and most likely how that value affects them personally. The creation of 1031 like-kind exchanges over 100 years ago was a good policy move by the Feds (and they should be proud of that). We just sometimes need to remind them of their success. ▲

ADISA's Policy Statement: 1031 Real Property Like-Kind Exchanges

ADISA Position

ADISA supports retaining existing like-kind exchange provisions of real property permitted under Section 1031 of the tax code. 1031 LKEs create a ladder of economic opportunity for small and minority-owned businesses, generate tax revenue for states and localities, and promote conservation of land. Elimination of 1031 LKEs would have a detrimental economic impact on retail investors, jobs, and the real estate markets.

Issue

1031 Like-Kind Exchanges are a fundamental element of the tax code. Since 1921, Section 1031 of the Internal Revenue Code has permitted the deferral of capital gains on the sale of real property when the funds are reinvested in similar property of equal or greater value (a like-kind exchange). Utilizing 1031s for 100 years, farmers, retirees, and investors continue to drive capital expenditures and job growth, while also contributing to land conservation efforts and facilitating the smooth functioning of real estate markets.

President Biden released his $1.8T American Families Plan on April 28th. In it, the President proposed to ***end the special real estate tax break—that allows real estate investors to defer taxation when they exchange property—for gains greater than $500,000.***

Background

Section 1031 of the Internal Revenue Code, created 100 years ago in 1921 and amended by the 2017 Tax Cuts and Jobs Act (TCJA), permits the seller of real property held for use in a trade or business or for investment to be replaced with a like kind real property of equal or greater value within 180 days of the sale (a like-kind exchange) and a deferral of capital gains tax until the replacement property is sold in a fully taxable sale.

Rules for 1031 LKEs are narrowly tailored. Since their inception Congress has modified and improved the provision by eliminating potential abuses and creating strict and uniform rules and procedures for an exchange. In 2017 Congress narrowed the provision to eliminate LKEs for all assets other than real property. 1031 LKEs remain a deeply ingrained and beneficial aspect of commercial real estate markets and the overall economy.

Two in-depth studies by authors Ling & Petrova, *The Economic Impact of Repealing or Limiting Section 1031 Like-Kind Exchanges in Real Estate* (2015) and *The Tax and Economic Impacts of Section 1031 Like-Kind Exchanges in Real Estate* (2020) highlight the critical role 1031 LKEs play in safeguarding property values, increasing state and local tax receipts, and strengthening the economy. Other studies and analyses, including by EY, demonstrate the positive impact of 1031 LKEs.

1031 LKEs Help Small and Minority-Owned Businesses Expand and Grow. Veteran-owned, women-owned, and minority-owned businesses use 1031 LKEs to expand and build equity in their companies without having to rely on expensive and difficult-to-obtain bank or third-party lending. These owners lack access to the capital markets that finance large corporations. 1031 LKEs also help small and minority-owned businesses grow organically, with 30% less debt than similar real estate acquired outside of a 1031 LKE—an issue negatively impacting minorities.

• Despite significant benefits, some policymakers propose eliminating 1031 LKEs.

The result: taxes will increase. For a typical property owner who defers his or her gain on a commercial property, repealing 1031 LKEs would raise the effective tax rate on the taxpayer's investment (including rental income and gain; nine-year holding period) from 23 percent to 30 percent.

Continued on page 15

What's in FINRA's 2021 Examination and Risk Monitoring Program Report That Could Impact Your Firm's Private Placement Offerings?

By Lynn Lawson, *Founder/CEO of Advertising Regulatory Consulting, LLC*

ISTOCK.COM/GREMLIN

Are you fully up to speed on your firm's regulatory obligations, and does your firm's compliance program implement effective practices in connection with private placement offerings? If the answer is no, or not quite, you should consider spending some time reading FINRA's 2021 Report on FINRA's Examination and Risk Monitoring Program (the Report).[1]

The Report is a 45-page publication that provides broker-dealers with, among other things, a summary of key findings from recent FINRA risk-based examinations[2]; an overview of areas FINRA plans to review in 2021 and a list of effective practices FINRA observed member firms implement in their compliance programs. It also serves as a primer for firms as it provides insight into what firms can expect during their next exam.

What notable priorities specific to private placement offerings are identified in the Report?

If your firm engages in the sale of private placement offerings, pay particular attention to subject matter areas the Report identifies as regulatory obligations. Noteworthy highlights include a reminder of broker-dealers' obligations to conduct reasonable investigations in Regulation D offerings as part of their responsibility under FINRA's suitability and supervision rules.[3] In addition, the Report notes that (i) the SEC's Reg BI[4] applies to recommendations of private placement offerings to retail investors (ii) timely filings for specific private placement offerings must be made as required by FINRA Rule 5122 and (iii) required disclosures must be made as specified in FINRA Rule 5123.[5]

What risk-based exam questions should you consider?

In connection with a firm's private placement offerings, the Report raises several questions to consider. These considerations include:

- How does your firm use and evaluate consultants or third-party due diligence reports?
- Do your firm's policies and procedures address timeliness and filing requirements to satisfy the standards of FINRA Rules 5122 and 5123?
- How are "reasonable investigations" of private placement offerings conducted?
- If your firm engaged in new business, are the written supervisory procedures (WSPS) updated and if applicable, did your firm submit a Continuing Membership Application to FINRA?
- What other noteworthy findings regarding deficiencies were included in the Report?

As part of FINRA's ongoing risk-based exam program, the Report also identifies a variety of deficiencies found during recent examinations. These findings include:

- Failure to have or implement policies and procedures to satisfy the filing requirements under FINRA Rules 5122 and 5123.
- Failure to perform reasonable investigations of private placement offerings that include failure to conduct additional research about new offering(s), relying on the prior experience with issuers in previous offerings and not conducting sufficient third-party due diligence.
- Failure to file private placement filings and lack of policies and procedures to ensure compliance with submitting filings in a timely manner as specified in FINRA Rule 5122 and FINRA Rule 5123.

Lynn Lawson, Esq. is the founder of Advertising Regulatory Consulting, LLC, which provides advertising and marketing guidance to broker-dealers, registered investment advisors, product sponsors, and financial services industry associations. Prior to starting Advertising Regulatory Consulting, Ms. Lawson served as a manager in FINRA's Advertising Regulation Department for 22 years.

**Originally published as a blog post on FactRight's website*

How can broker-dealers actively navigate the regulatory maze?

Broker-dealers face constant challenges to satisfy their ongoing compliance responsibilities that often resemble a maze with many twists and turns. To find your way to the other side and clearly navigate the ever-changing regulatory landscape, use the Report as one tool to determine where additional attention or enhancements may be needed.

Also, review the Report's list of effective practices observed by FINRA in recent exams to evaluate whether some of these practices can improve your compliance programs. Examples include:[6]

- Creating private placement checklists that include steps such as filing dates, related documentation requirements, and proof of supervisory principal approval.
- Establishing an automated alert system that alerts responsible individuals of missed deadlines or due filings.
- Conducting independent research and documenting key aspects of the offering.
- Implementing reasonable investigation processes to limit conflicts of interest.

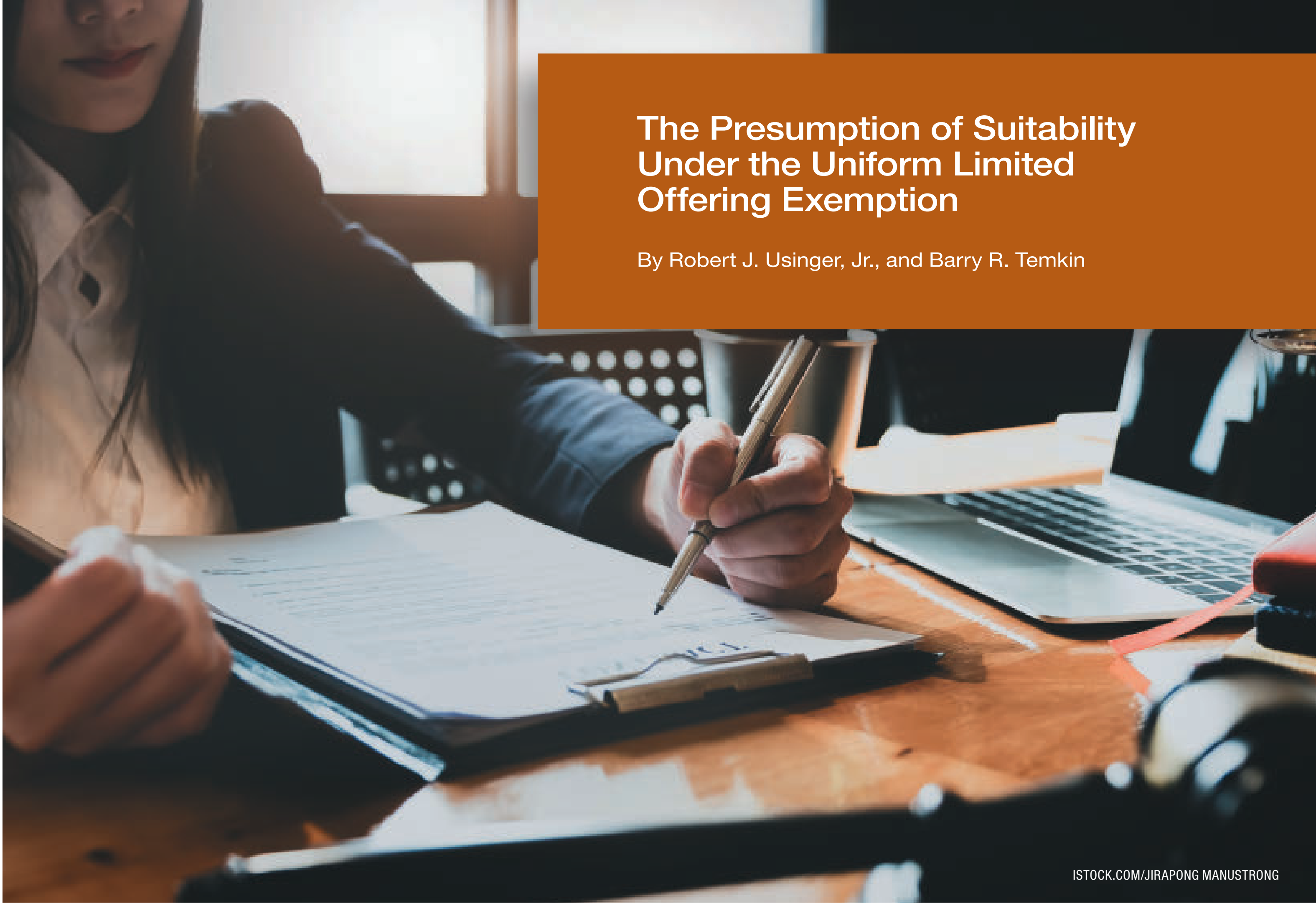
The Report also encourages firms to remain informed about evolving trends in the private placement market and stay aware of any amendments to FINRA rules and/or federal securities laws. Designating key personnel to be the "gatekeeper" of regulators' updates is also essential. In addition, circulate important information to compliance, marketing and legal teams and provide in-depth training on a regular basis.

How can you make the most of the available resources?

Many factors can influence the success of your firm's compliance program. Read the Report's "Appendix" section as it serves as a helpful resource to review how member firms use FINRA publications as a "guide" to improve their compliance programs. Also, make sure to actively communicate with regulators if you need assistance or further clarification about any regulatory matter. And remember, if your firm's active area of business involves private placement offerings, the Report helps take some of the mystery out of FINRA's examination process. Use this treasure trove of information to your advantage. ▲

Footnotes:

1. On February 1, 2021, FINRA published the 2021 Report on FINRA's Examination and Risk Monitoring Program (the "Report"). The report consolidates FINRA's Risk Monitoring and Examination Program Priorities Letter, a letter that identified areas of regulatory concern for the upcoming year and the Report on Examination Findings and Observations, a publication that provided analysis of prior FINRA examination findings program. For the complete report please refer to the original document link. https://www.finra.org/sites/default/files/2021-02/2021-report-finras-examination-risk-monitoring-program
2. According to FINRA's "Preparing for A Cycle Examination," FINRA's exam process is risk-based. FINRA's exam process is risk-based, which means that the approach for identifying firms for examination is based less on the calendar and more upon risk, scale and scope of firm operations. Based on an assessment of these factors, cycle examinations are performed periodically—on a one-, two- or four-year cycle. The risk assessment is performed annually, so it's possible that your firm's cycle may change from one year to the next.
3. FINRA Rule 2211 (Suitability) and FINRA Rule 3310 (Supervision).
4. The SEC's Regulation Best Interest (Reg BI) under the Securities Exchange Act of 1934 establishes a "best interest" standard of conduct for broker-dealers and associated persons when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities, including recommendations of types of accounts. As part of the rulemaking package, the SEC also adopted new rules and forms to require broker-dealers and investment advisers to provide a brief relationship summary, Form CRS, to retail investors. In addition, the SEC published interpretations concerning investment advisers' standard of conduct under the Investment Advisers Act of 1940, and the "solely incidental" prong of the broker-dealer exclusion from the Advisers Act.
5. FINRA Rule 5123 is part of a multi-pronged approach to enhance oversight and investor protection in private placements. In Rule 5122, FINRA established standards on disclosure, use of proceeds and a filing requirement for private placements issued by a member firm or a control entity. FINRA also has previously provided guidance on the scope of a firm's responsibility to conduct a reasonable investigation of private placement issuers in Regulatory Notice 10-22.
6. See pages 25 and 26 of the Report for the full list of "Effective Practices."



The Presumption of Suitability Under the Uniform Limited Offering Exemption

By Robert J. Usinger, Jr., and Barry R. Temkin

ISTOCK.COM/JIRAPONG MANUSTRONG

The Financial Industry Regulatory Authority (FINRA) and Securities and Exchange Commission (SEC) have announced similar inquiries, which are still underway.[3] In May 2020, the Massachusetts Securities Division filed formal charges against GPB Capital Holdings, LLC. GPB, a complex network of car dealerships, waste carting, and oil and gas limited partnerships, is alleged to have raised $1.5 billion based on false and misleading offering statements.[4]

A federal class action in *Texas, Kinnie Ma Individual Retirement Account v. Ascendant Capital LLC.*, alleges that seventy-five broker-dealers facilitated the sale of financially troubled and insufficiently vetted limited partnerships that invested in oil and gas and car dealerships.[5] In addition to the class action, hundreds of individual FINRA arbitration claims have been filed, and it would appear that more are forthcoming.

These developments bring to mind earlier enforcement actions, in the wake of the financial crisis and Great Recession of 2008–2009, which challenged investor exposure to alternative investments and sought to impose concentration limits on such investments for retail investors.

GPB can rightfully be called a major event in the broker-dealer world due to the sheer number of broker-dealers involved. It may also, however, present an opportunity to test some novel legal theories, some of which will be discussed in this article. As explained in detail below, the Uniform Limited Offering Exemption (ULOE), approved by the North American Securities Administrators Association (NASAA) in 1983 and adopted, in varying formats, by eleven U.S. states, provides a presumption of suitability for portfolio allocations of up to 10 percent of alternative investments, such as nontraded real estate investment trusts (REITs) and limited partnerships. The ULOE has not been extensively tested by the courts or arbitration panels. While NASAA has more recently proposed a 10 percent concentration limit for nontraded REITs, that proposal has not been fully adopted.

Alternative investments are back in the news. The Massachusetts Securities Division has announced an investigation of broker-dealers selling oil and gas and car dealership limited partnerships, and has issued subpoenas to sixty-three firms selling the private placements.[1,2]
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The Great Recession

The financial crisis of 2008 and the ensuing Great Recession brought unprecedented and unwelcome attention to nontraditional investments, such as nontraded REITS, tenant-in-common investments, oil and gas limited partnerships, and similar alternative investments. With the crash of the real estate markets, investors concentrated in securitized (and nonsecuritized) real estate investments found themselves strapped for cash, as numerous limited partnerships and Regulation D offerings failed or struggled, along with broad swaths of the overall economy. As Warren Buffet famously quipped, "It's only when the tide goes out that you see who's been swimming naked."[6]

Regulators, quick to pounce, prosecuted the issuers and sellers of nontraditional alternative investments. Federal and state regulators brought numerous enforcement actions against issuers of syndicated real estate and other alternatives, along with the broker-dealers who marketed and recommended them.

State Concentration Limits

In the wake of the 2008–2009 financial crisis, many states implemented concentration limits on alternative investments, which they defined as nontraded REITS, limited partnerships, and other alternatives to the traditional baskets of publicly traded stocks, bonds, and money market investments.[7] Alternative investments include structured products, nontraded REITS, limited partnerships, Regulation D offerings, and the like. In order to manage risk and comply with state regulations, many independent broker-dealers have modified their written supervisory procedures to impose concentration guidelines of their own—typically, between 10 and 20 percent of an investor's net worth, depending on such factors as overall net worth, trading experience, sophistication, and age.[8] NASAA, an association of state blue sky securities regulators, proposed a rule in 2016 that would cap the exposure of nonaccredited investors at 10 percent of liquid net worth.[9] According to NASAA, its proposal "would add a uniform concentration limit of ten percent (10%) of an individual's liquid net worth, applicable to their aggregate investment in a REIT, its affiliates, and other nontraded REITs, as defined therein."[10]

While alternative investments are often disparaged, they have some distinct features that make them attractive. For one, alternative investments typically do not correlate with the stock market, which offers investors downside protection in a falling market.[11] And while publicly traded REITs provide a measure of liquidity, they tend to rise and fall with the vagaries of the market. Alternative investments clearly offer investors diversification that standard equities do not, but how much is too much when it comes to concentration levels in alternative investments?

Uniform Limited Offering Exemption

While the trend over the past ten years has clearly been in favor of imposing concentration limits, the converse question is worth considering. In other words, if a recommendation of over, say, 10 percent of an investor's portfolio in alternative products is presumed unsuitable, is the converse true? Is an investment of 10 percent or less of the same customer's net worth in an alternative investment presumed to be suitable? This question is posed in *Securities Regulation* by Professors Coffee, Sale, and Henderson.[12] John Coffee and his co-authors discuss the Uniform Limited Offering exemption, adopted by NASAA in 1983 under the authority of §19 (d) of the 1933 Securities Act, which was intended to create an exemption from state registration and qualification for certain specified private offerings.[13] While the ULOE references some of the terms and standards in SEC Regulation D,[14] it also contains a suitability standard.[15] According to Coffee and his colleagues, "Even more importantly, [the ULOE] includes a suitability standard for sales to non-accredited investors, which requires that the investment be suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to other security holdings and as to his financial situation and needs."[16] The ULOE "then adds a presumption that if the investment does not exceed 10% of the investors' net worth, it is presumed to be suitable."[17]

The text of the ULOE provides the following: "For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investors' net worth, it is suitable."[18] The ULOE applies to any offer or sale of securities sold under Reg. D Rule 506 (§ 505 having been repealed subsequent to issuance of the ULOE), "including any offer or sale made exempt by application of Rule 508(a)." Thus, thirty-seven years ago, NASAA suggested that at least for some Regulation D issues, a recommendation of no more than 10 percent of an investor's net worth would be presumed suitable.[19] And while in 2016 NASAA proposed imposing a concentration limit of 10 percent on nontraded REITs, that proposal has yet to pass.

Eleven states have adopted the suitability presumption in the NASAA ULOE. For example, Alabama and Indiana provide a presumption of suitability if an alternative investment does not exceed a specified minority presumption of the investor's net worth.[20] For Alabama, suitability is presumed if alternatives do not exceed 20 percent of the investor's net worth; in Indiana, the presumption applies for a recommendation of no more than 10 percent.[21] Tennessee agrees that, for an alternative investment, "It may be presumed that if the investment does not exceed 10% of the sum of the purchasers' net worth, the investment is suitable."[22] Louisiana provides that "it may be presumed that if the investment does not exceed 25% of the investor's net worth, it is suitable." These various state regulations survived the 2008–2009 financial crisis and the ensuing Great Recession, and, while they harken to an earlier era, they seem to bespeak a more balanced view of customers' investment portfolios. Thus, at least in some states (by our count eleven), while an overconcentration in alternative securities might be deemed unsuitable, alternatives are presumed to be suitable in smaller doses.[23]

This allocation approach is consistent with the philosophy that suitability must be viewed on balance as a whole and not in isolation. This viewpoint is also consistent with the teaching of the FINRA suitability rule, Rule 2111, which provides that suitability should include an assessment of the customers' other securities holdings (quantitative suitability), net worth and income, along with other traditional factors such as customers' risk tolerance and investment objectives.[24]

Moreover, the presumed suitability of relatively modest concentrations is consistent with the teachings of new Regulation Best Interest (Reg. BI), which imposes a three-tiered approach to suitability.[25] Under Reg. BI, a registered representative should consider three aspects of suitability. First, is the investment suitable for anyone? Second, is the investment suitable for this investor? Third, the registered representative must determine whether the recommended quantity is suitable for the customer in question.[26]

This is not to suggest that the presumed suitability of smaller holdings, under 10 percent concentration levels, can be bootstrapped into a substitute for the suitability of a product that is not suitable for anyone or not suitable for this specific customer under any circumstances under Reg. BI. A product that was never suitable for any investor cannot be sanitized by a presumed statutory concentration level. Moreover, there probably are some products that, while objectively suitable, will likely be viewed as unsuitable for particular investors based on the product's complexity.[27] However, regulators, particularly those in jurisdictions that have been aggressive in securities enforcement, should be mindful of these concentration presumptions in their prosecutions. Moreover, firms that have complied with their state's concentration guidelines might make the argument that an overall view of a balanced portfolio is more appropriate than the cherry-picking approach favored by some regulators and claimants' lawyers. If alternative investments, generally, are viewed as a legitimate tool for diversifying a client's portfolio, it would appear to be unfair to punish an advisor for a small portion of a portfolio that did not produce that same rate of return as equities in a rising market, for example.

The ULOE and Preemption

Any discussion of state blue sky laws should also include a mention of federal preemption. Federal preemption of securities regulation is far from complete, and many blue sky laws, some of which antedated the Securities Act of 1933, exist side by side with their federal counterparts.[28] Yet there are areas of both express and implied preemption. Under the Supremacy Clause of the Constitution, federal law displaces state law where (1) Congress expressly preempts state law; (2) Congress has established a comprehensive regulatory scheme in the area, effectively removing the entire field from the state realm; or (3) state law directly conflicts with federal law or interferes with the achievement of federal objectives.[29]

The National Securities Markets Improvement Act of 1996 (NSMIA) precludes state regulation of enumerated federally regulated securities, including some Regulation D exempt offerings.[30] NSMIA, while permitting state fraud claims, bars state regulation of covered securities, including both listed securities and some transactions exempt from registration.

The Securities Litigation Uniform Standards Act (SLUSA) preempts covered class actions based on state law that alleges a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security, which generally means a listed security.[31]

The Supreme Court declined to extend the reach of SLUSA in *Chadbourne & Parke LLP v. Troice*.[32] The plaintiffs in Troice did not purchase covered securities from the defendants. Rather, they purchased bogus certificates of deposit from fraudster Alan Stanford, which they alleged were going to be used in the future to purchase covered securities on their behalf. Thus, in that case, the victims did not allege that they themselves directly purchased covered securities. Rather, they alleged that they purchased CDs that would be used indirectly in the future to purchase securities. This, the Supreme Court held, was more in line with traditional garden-variety state court fraud, which was traditionally relegated to state court enforcement actions. The Court did not seek to "limit the scope of protection under state laws that seek to provide remedies for victims of garden variety fraud."[33] The Court reasoned that the intent of Congress was to "protect securities issuers, as well as investment advisors, accountants and brokers who help them sell financial products, from abusive class action cases."[34] The Court sought to strike a balance between providing relief for federally registered brokers and investment advisors, on the one hand, and allowing traditional state claims on the other, noting that the majority opinion "preserved the ability for investors to obtain relief under state laws when the fraud bears so remote a connection to the national securities market that no person actually believes he was taking an ownership position in that market."[35]

In *Temple v. Gorman*, a Florida district court held that state law claims for selling unregistered Regulation D securities are preempted by NSMIA.[36] According to the Temple court: Regardless of whether the private placement actually complied with the substantive requirements of Regulation D or Rule 506, the securities sold to Plaintiffs are federal "covered securities" because they were sold pursuant to those rules. As a result, FLA. STAT. §517.07 does not require registration of such securities. Furthermore, any attempt by Florida to require registration of such securities or securities transaction would be preempted by NSMIA. Congress expressed its intent in NSMIA that federal regulations alone should govern the registration of national securities offerings. Where a Form D was filed with the SEC for a transaction that purported to merit an exemption from federal registration pursuant to Regulation D, Florida law could not require duplicative registration or a transactional exemption from registration.[37]

Thus, the *Temple* court dismissed state law claims on federal preemption grounds, suggesting that future state law claims alleging sale of unregistered securities might face significant headwinds. Other district courts have agreed, noting that "Defendants' state law failure-to-register claim is preempted because [issuer] Pinnacle purported to sell its stock under the Rule 506 exemption."[38]

Subsequent decisions have distinguished Temple or questioned its reasoning. For example, the Sixth Circuit Court of Appeals has held that "offerings must actually qualify for a valid federal securities registration exemption in order to enjoy NSMIA preemption."[39] The Court of Appeals in *Brown v. Earthboard Sports USA, Inc.* reasoned that NSMIA did not expressly preempt state claims against imperfectly registered exempt securities and concluded that "NSMIA preempts state securities registration laws with respect only to those offerings that actually qualify as 'covered securities' according to the regulations that the SEC has promulgated."[40]

Would application of the ULOE be preempted by federal law? The answer to this question, as is often the case with securities law, depends on the surrounding facts and circumstances. For example, a respondent in a state court regulatory prosecution by local blue sky regulators would presumably be able to avail itself of that state's version of the ULOE exemption. Thus a hypothetical Tennessee broker-dealer facing regulatory sanctions in a suitability prosecution by the Tennessee State Securities Division would be able to assert the presumption of suitability in that state's version of the ULOE. On the other hand, the same broker-dealer might face a chillier reception when trying to assert a state statute as a defense to a federal enforcement action brought by the SEC in federal court or before an administrative law judge alleging a violation of federal law.

Closer questions are presented by a regulatory action brought by a self-regulatory organization, such as FINRA, for violation of an SRO rule, especially the suitability provisions of FINRA Rule 2111.[41] FINRA rules approved by the SEC might be candidates for preemption. On the other hand, a private arbitration brought by an individual investor should be defensible by reference to the ULOE, especially if the statement of claim alleges violations of state law.

Conclusion

The Uniform Limited Offering Exemption, approved by the North American Securities Administrators Association in 1983 and adopted, in varying formats, by eleven U.S. states, provides a presumption of suitability for portfolio allocations of up to 10 percent of alternative investments, such as nontraded REITs and limited partnerships. Although the ULOE could be viewed, at least by some investor advocates, as a holdover from the deregulation ethos of the Reagan era, it remains on the books in several jurisdictions (and of the NASAA) and could be used as a defense to a claim of unsuitable recommendations in violation of state blue sky laws. While NASAA has proposed a 10 percent concentration limit for nontraded REITs, that proposal has not been fully adopted.

Whether an individual state's ULOE rule is preempted by federal law is likely to depend on the nature of the proceeding and the plaintiff bringing the claim. An individual investor bringing a claim alleging a violation of state law, in FINRA or state court, is more susceptible to a defense based on the ULOE than, say, a federal regulatory agency bringing an enforcement action in federal court. ▲

Footnotes:

1. Robert J. Usinger is a graduate of Brooklyn Law School and a claims professional specializing in financial institutions claims. Robert has also worked as a coverage attorney, with a focus on professional liability matters. Barry R. Temkin is a partner at Mound Cotton Wollan & Greengrass LLP and an adjunct professor at Fordham University School of Law, where he teaches broker-dealer regulation. The views expressed in this article are the authors alone and not those of Fordham or Mound Cotton. Arie Smith, an associate at Mound Cotton, contributed to the research and writing of this article.
2. See *Massachusetts Securities Division v. GPB Capital Holdings, LLC*, May 2020, https://www.sec.state.ma.us/sct/current/sctgpb/2020-5-27-MSD-GPB-Complaint-E-2018-0100.pdf; Massachusetts Securities Division Newsletter, December 2018, http://www.sec.state.ma.us/sct/sctpdf/newsletters/Securities-newsletter-Dec-2018. pdf.
3. See Investment News, November 27, 2019, https://www.investmentnews.com/gpb-announces-another-delay-in-release-of-audited-financials-170779.
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5. See Investment News, November 6, 2019, https://www.investmentnews.com/lawsuit-claims-gpb-a-ponzi-riven-with-conflicts-and-self-dealing-170607.
6. Letter from Warren Buffett to Berkshire Hathaway Shareholders, March 1, 1993, Annual Meeting.
7. See, e.g., *Mass. Securities Division v. Securities America*, https://www.sec.state.ma.us/sct/archived/sctfive/SecuritiesAmericaSignedConsentOrder. pdf (10% Concentration limit); In Re LPL Financial, https://securitiesarbitration.com/wp-content/uploads/lpl-financial-complaint.pdf.
8. *See, e.g., Mass. Securities Division v. Securities America*, https://www.sec.state.ma.us/sct/archived/sctfive/SecuritiesAmericaSignedConsentOrder.pdf (10% Concentration limit).
9. See IPA Letter to NASAA, September 12, 2016, https://www.nasaa.org/wp-content/uploads/2016/10/IPA-Comment-letter-Regarding-Proposed-Amendment-to-the-NASAA-Statement-...pdf.
10. Notice of request for public comment regarding a proposed amendment to the NASAA statement of policy regarding real estate investment trusts, http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2016/07/Notice-for-Public-Comment-REIT-Concentration-Limit-07272016.pdf.
11. See IPA Letter to NASAA, September 12, 2016, https://www.nasaa.org/wp-content/uploads/2016/10/IPA-Comment-letter-Regarding-Proposed-Amendment-to-the-NASAA-Statement-...pdf.
12. John Coffee, Hillary Sale, and M. Todd Henderson, *Securities Regulation* (13th ed., 2013 at 395).
13. Section 19(d) of the 1933 Act provides for cooperation, information sharing and an annual conference between the SEC and state securities regulators. 15 USC 77 (s); Uniform Limited Offering Exemption.
14. 17 CFR §200.501 et seq.
15. Uniform Limited Offering Exemption Rule 1, D (1).
16. Coffee, Sale, and Henderson at p. 395.
17. See Coffee, Sale, and Henderson, Id.
18. Uniform Limited Offering Exemption Rule 1 D (1).

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ISTOCK.COM/CASPHOTOGRAPHY

Expecting Inflation? Consider Alternatives

By Joseph Burns, *iCapital Network*

Shifting capital from public bonds and stocks into select alternative strategies can protect capital and improve returns in an inflationary environment.

Because we all occasionally suffer from information overload in a nonstop news cycle, putting current market conditions into a historical framework is difficult. Case in point—We know that fixed income has struggled as the Bloomberg Barclays U.S. Aggregate Bond Index (U.S. Aggregate) has annualized at less than 3% since 2013.[1] It is nevertheless surprising that the index just had its worst quarter in four decades.[2]

While many investors have embraced a “buy-the-dip” strategy in the stock market, thinking about the bond market historically tells us that this approach is unlikely to provide the same opportunistic bounce as it sometimes offers in public equities.

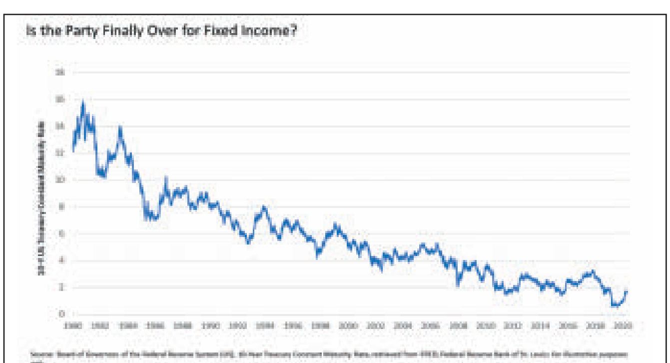
Going back to 1981—that last time bonds experienced a quarterly decline on par with the first quarter of this year—10-year U.S. Treasury bonds yielded over 15% and bonds of all kinds were about to embark on a 30-plus year bull market. Obviously, the starting point in today’s market paints a far different story.

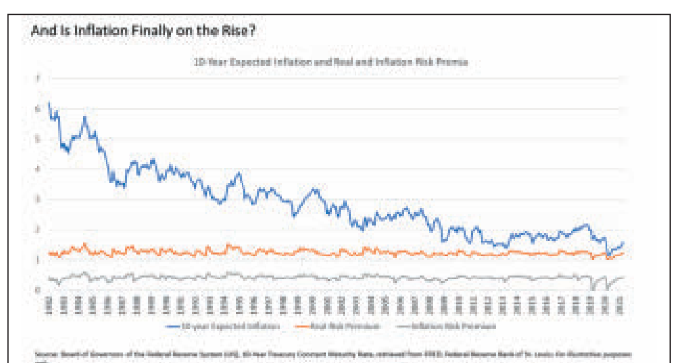
Government bonds comprise roughly 40% of the U.S. Aggregate index, along with 30% in agency mortgages, 20% investment grade bonds, and 10% in non-U.S. developed and emerging market debt and securitized credit. And with the flagship Fannie Mae 30-year agency mortgage bond now yielding less than 2.5%,[3] along with single-A corporate bonds trading with an effective yield of 1.9%,[4] traditional bond investors are facing real, structural problems across the entire fixed income marketplace.

Possible Inflation Fighters: Real Assets, Private Credit, and Diversified Growth Equity

After steadily declining over the past 40 years, inflation expectations are now on the rise, leading advisors to question which asset classes or investment strategies may offer protection and diversification. Here are three choices worth considering:

- Real Assets—Real assets and commodities tend to be positively correlated with inflation and interest rates, unlike financial assets such as stocks and bonds. According to a recent note by Bank of America’s chief investment strategist Michael Hartnett,





the price of real assets relative to financial assets are now at the lowest point since prior to the Great Depression, nearly a century ago.[5]

- Private Credit—The tradeoff from public to private credit securities requires a shift in liquidity and client expectations. But securitized credit, specialty finance, direct lending, and exposure to floating rate securities can provide protection, diversification, and capital appreciation.
- Growth Equity—While value may outperform growth in public markets, particularly for those companies trading at extreme valuations (by discounting future earnings), shifting away from long-only public equities and into private market strategies and hedged equity offers valuable exposure to less efficient markets and active asset allocation and risk management.

Many investors and advisors have already begun shifting away from traditional fixed income and into strategies and structures that can improve client outcomes. Anticipating the challenges of tomorrow through thoughtful portfolio construction and multi-asset diversification appears to be the right approach in today's environment. ▲

References:

1. Source: Evestment. For the period Jan. 2013 through March 2021, the Index generated an annualized return of 2.77%.
2. Source: Evestment. The Index fell by (-3.37%) in Q1'21, reflecting the worst quarterly return since Sept. 1981 (-4.06%).
3. Source: https://www.bankrate.com/rates/interest-rates/fannie-mae-30-year-mtg-com-del-60-days.aspx
4. Source: https://fred.stlouisfed.org/series/BAMLC0A3CAEY
5. https://markets.businessinsider.com/news/stocks/stock-market-outlook-real-assets-inflation-hedge-portfolio-investing-wine-2021-4-1030272667

THE PRESUMPTION OF...

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21. Alabama Rule 830—X-6-.11; Indiana Regulation Section 710 IAC 4-2-4.
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28. Section 19(d) of the 1933 Act assumes the presence of blue sky regulation, and provides for cooperation, information sharing, and an annual conference between the SEC and state securities regulators. 15 USC Section 77s.
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30. 15 U.S.C.A. Section 77r; Thomas Lee Hazen, *Treatise of the Law of Securities Regulation* (5th Ed. 2005), Section 8.1 [3] at 251; *Myers v. Merrill Lynch & Co.*, 1999 WL 606082 (N.D. Cal. 1999).
31. 15 USC § 78 (bb)(f)(1). *R.W. Grand Lodge of Free and Accepted Masons of PA v. Meridian Capital Partners, Inc.*, 634 Fed. Appx. 4, at *8-9 (2d Cir. 2015); see also, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71 (2006).
32. *Chadbourne & Parke LLP v. Troice*, 571 U.S. 377, 134 S.Ct. 1038 (2014).
33. 134 S.Ct. at 1069.
34. *Id.* at 1068 (emphasis added).
35. *Id.* at 1070.
36. *Temple v. Gorman*, 201 F. Supp. 2d 1238 (S.D. Fla.) 2002.
37. *Temple v. Gorman*, 201 F. Supp. 2d at 1244. *Accord, Pinnacle Communications Int. v. American Fam. Mortg*., 417 F. Supp. 2d 1073 (D. Minn. 2006) ("When an offering purports to be exempt under federal Regulation D, any allegation of improper registration is covered exclusively by federal law."). But see *Brown v. Earthboard Sports USA, Inc.*, 481 F. 3d 901, 910 (6th Cir. 2007) (only registered Regulation D securities preempt state law claims) and *Ciuffitelli for Trustee of Ciuffitelli Revocable Trust v. Deloitte & Touche LLP*, 2017 WL 2927481 (D. OR. 2017) ("The court concludes NSMIA preemption is limited to securities that actually qualify as covered securities under federal law.")
38. *Pinnacle Communications Int. v. American Fam. Mortg.*, 417 F. Supp. 2d 1073 (D. Minn. 2006)
39. *Brown v. Earthboard Sports USA, Inc.*, 481 F. 3d 901, 910 (6th Cir. 2007).
40. *Brown v. Earthboard Sports USA, Inc.*, 481 F. 3d at 912.
41. FINRA Rule 2111, https://www.finra.org/rules-guidance/rulebooks/finra-rules/2111.

ADISA'S POLICY STATEMENT...

Continued from page 5

The result: property values will drop. A repeal of 1031 tax provisions would result in a decline of property values by 8-12 percent, just to maintain the same rate of return to retail investors. These price declines would reduce the wealth of a large cross-section of households and slow or stop construction in many local markets.

1031 LKEs Increase the Supply of Affordable Rental Housing. 1031 LKEs provide incentives for the development of affordable housing. Multifamily housing transactions represent 40% of 1031 LKEs. Expanding workforce housing requires significant investment of private capital, but tax incentives like the low-income housing tax credit do not apply to land acquisition costs. 1031 LKEs fill that void: developers and investors can use 1031 LKEs to acquire land for the development of new housing. The repeal of 1031 LKEs would increase costs, resulting in a significant increase in rents.

• Despite significant benefits, some policymakers propose eliminating 1031 LKEs.

The result: Rents will increase. Rents would need to increase 8-13 percent before new construction would be economically viable. These higher rents would reduce the affordability of commercial space for both large and small tenants. The price declines and rent effects of eliminating real estate like-kind exchanges would be more pronounced in high-tax states.

1031 LKEs Drive Job Creation. Research by EY estimates that 1031 LKEs support 568,000 jobs generating over $55 billion of annual value added, including $27.5 billion of labor income. Employment directly and indirectly supported by 1031 LKEs include jobs for skilled tradesmen, architects, designers, building material suppliers, movers, building maintenance and cleaning staff, security, landscapers, qualified intermediaries, real estate brokers, title insurers, settlement agents, attorneys, accountants, lenders, property inspectors, appraisers, surveyors, insurers, and contractors.

• Despite significant benefits, some policymakers propose eliminating 1031 LKEs.

The result: real estate sales activity will decline. 1031 LKEs increase the liquidity of the real estate market. An analysis of 336,572 properties that were acquired and sold between 1997 and 2014 showed that properties involved in 1031 LKEs had significantly shorter holding periods.

Farmers Rely on 1031 LKEs. Farmers and ranchers use like-kind exchanges to combine acreage, acquire higher-grade land, or otherwise improve the quality of their operations. Retiring farmers are able to exchange their most valuable asset, their farm or ranch, for other real estate without diminishing the value of their life savings.

1031 LKEs Promote Land Conservation and Environmental Protection. Land conservation organizations rely on 1031 LKEs to preserve open spaces for public use or environmental protection. Land conservation transactions often involve the exchange of environmentally sensitive areas for other privately held property, such as adjacent farmland or ranchland. These transactions protect environmentally significant land and open space for the future while enabling private landowners to preserve capital for expansion or diversification of existing operations, retirement, or other needs.

States and Localities Depend on 1031 LKE Tax Revenue. 1031 LKEs generate much-needed tax revenue for States and localities. The more frequent turnover of real estate attributable to section 1031 generates property transfer and recording fees, as well as property reassessments that increase the tax base. Most importantly, because of lower debt and greater capital investment rates, the taxes paid on the subsequent sale of these properties are significantly greater.

• Despite significant benefits, some policymakers propose eliminating 1031 LKEs.

The result: tax receipts will decline. In the absence of exchanges, investors would delay disposing of their properties or engage in alternative tax deferred disposition strategies, which would reduce the tax revenues collected.

Federal Tax Revenues Depend on 1031 LKEs. Capital gain deferred in an exchange reduces the owner's tax basis in the replacement property. This results in smaller depreciation deductions going forward. In 34% of LKEs, some federal tax is paid in the year of the exchange. More importantly, over the long run, 1031 LKEs boost tax revenue because of the higher tax liability that arises in the years following the initial exchange. ▲

ADISA 2021 SPRING CONFERENCE RECAP

It Was Great to Be Back

In our first face-to-face gathering in more than a year, the ADISA 2021 Spring Conference was marked by sold-out registration, high energy, and enthusiastic participants and speakers.

The 500 attendees took advantage of 27 breakout sessions that bookended important general sessions, fascinating round tables and keynote speeches and, of course, ongoing, active—and very welcome—in-person networking.

Thanks to our attendees, exhibitors and conference planners for making this gathering at the JW Marriott Scottsdale Camelback Inn Resort & Spa in Arizona such a resounding success!

Here's Who Attended…

35% Broker-Dealers, Registered Investment Advisors, Family Offices, Financial Advisors

40% Sponsors

25% Industry Affiliates

And Here are the Highlights…

Keynote Speaker

Mara Liasson, national political correspondent for NPR and Fox News Channel contributor, took the microphone as keynote speaker on Tuesday, May 11. Her talk on "The Changing Face of American Politics" provided a candid, enlightening view of what's going on in Washington D.C.—and its impact on alt investments.

ADISA's Women's Initiative Lunch

Cass McCrory, a sought-after marketing specialist, kicked off the conference during the Women's Initiative Lunch. She spoke about personal brand, connection, and the importance of aligning your values to your career.

General Sessions

- The *Industry & Sector Updates* provided an in-depth discussion about alternative investment sectors, especially within the past year. Kevin Gannon (Robert A. Stranger & Co.), Taylor Garrett (Mountain Dell Consulting), Mike Kell (iCapital Network) and Michael Andrews (SS&C Technologies) shared their expertise and commentary.
- During the *Legislative & Regulatory Updates*, Thomas Rosenfield (HillStaffer) and Joseph Borg (Alabama Securities Commission and NASAA Former Chair and President) shared in-depth commentary and up-to-date state and national news directly impacting the alternative investment industry.

Breakout Sessions: A Sampler

- *Fundamentals and Best Practices of Alts*. Ranging from due diligence, to diversification, to disclosures, to legislation and beyond, panelists offered advice and insights pertaining to proper handling and offerings of alternative investments. Greg Mausz with Preferred Capital Securities moderated the panel, which consisted of Mike Bendix (DFPG Investments), Angela Barbera (NexPoint Securities) and Colin Cosgrove (Inland Securities Corp.).
- *Pandemic Workaround to Mainstream*. Over the past year, the business world has operated much differently than in the past. Moderated by Angie Fisher with the CIM Group, the session focused on challenges, solutions and potential future of the remote

working model. Additional speakers were Mike Huisman (UMB Bank), Dan Breen (Great Lakes Fund Solutions) and Ned Montencourt (Phoenix American Financial Services).

- *What's Hot: Cannabis, Crypto, ESG, etc*. Led by Crescent Securities' Rick Chess, the session pinpointed challenges, benefits and opportunities of these investments. The panel, consisting of Adam Dooley (Alliance160), James Richmond (e2comply) and Christian Heyer (IGF Partners) also discussed the pitfalls and regulatory issues involved with the marijuana and cryptocurrency industries.
- *Impact Investing and Alts: Starting the Conversation*. Impact investing is becoming a hot topic, leading to questions as to whether doing good can mean good returns. Jeff Shafer with CommonGood Capital and Nick Veronis with the iCapital Network discussed current trends in the impact assets space, while focusing on examples of successful environmental and societal investments.
- *The Emergence Finally of Reg A.* With the recent increase to $75 mm, Reg A is finally finding a place in the real estate alternatives space. Rhys James of Kaplan Voekler Cunningham & Frank moderated a discussion with Ray Davis (Red Oak Capital Management), Matt Leiter (Trilogy Real Estate Group) and Myra Nicholson (International Assets Advisory) on why bond products are working and what the current structures are.

If You Want to See More…

- To access conference photos, visit www.adisa.org/events/photo-gallery/2021-spring-conference
- To access session presentations, visit www.adisa.ps.membersuite.com/Login.aspx

ADISA'S 2021 ANNUAL CONFERENCE & TRADE SHOW

October 4-6 The Wynn Las Vegas

ADISA's 2021 Annual Conference & Trade Show is the largest alternative investment event of the year, designed for all industry professionals who sponsor, analyze, market, distribute or sell alternative investments.

- Attend to receive timely regulatory updates, valuable compliance information, and to learn the latest on different investment products, programs and more
- Continuing education credits will be available
- Conference attendance is balanced, representing all sponsors, service providers and funding sources
- Ample networking time will be available

Exhibit at ADISA's Annual Conference & Trade Show

When you exhibit at an ADISA event, you reach a uniquely qualified audience. Get direct and immediate feedback on products, compliance issues and educational needs facing advisors and their clients today. Through conferences, webinars and networking events, sponsors can learn from top producers and experts on specific issues facing our industry.

Exhibitor Benefits

Exhibiting at ADISA's events provides you with the best opportunity to showcase your product. Additionally, you will:

- Gain exposure and new contacts with key audiences
- Connect with more than 500 Broker-Dealers, RIAs, Registered Representatives, Financial Advisors, and more
- Educate industry professionals on your products and convey information in real time
- Boost your business revenue and gain new contacts
- Gain access to a detailed attendee contact list, an ideal way to promote your company before, during and after the event

Level	Member Price	Non-member Price
Diamond	$38,900	$48,900
Platinum	$28,900	$38,900
Gold	$17,900	$27,900
Silver	$14,000	$24,000
Bronze	$9,500	$19,500

Register your exhibit at www.adisa.org/events/2021-exhibit-registration.

2022 ADISA EVENTS: SAVE THE DATES

2022 Spring Conference
Dates & Location TBD

2022 AI Research & Due Diligence Forum
July 19-20
New York Hilton Midtown

2022 Annual Conference & Trade Show
October 10-12
The Cosmopolitan of Las Vegas

ADISA ADVOCACY

Section 1031 Exchanges are Not a Loophole

The fight to protect Section 1031 of the Internal Revenue Code is underway, and ADISA is in the heart of the fray. Opponents of Section 1031 are trying to portray it as a "loophole." It isn't, and it's important for all of those engaged in this debate to correct the record as we begin this vital discussion.

ADISA's Executive Director, John Harrison, was published in both The Wall Street Journal and The DI Wire, to clarify this point.

The Wall Street Journal—Section 1031 Helps Many and Is No Loophole www.wsj.com/articles/section-1031-helps-many-and-is-no-loophole-11620668483

The DI Wire—Don't Call it a Loophole! www.thediwire.com/guest-contributor-dont-call-it-a-loophole/

ADISA Co-Signs Letters to Congress & Treasury on the Importance of 1031 Exchanges

On behalf of more than 30 national real estate, housing, environmental, farming, ranching, forestry and financial services-related organizations, ADISA co-signed letter to key members of chief tax counsels of the congressional tax-writing committees, as well as Secretary of the Treasury Janet Yellen, stressing the importance of Section 1031 Like-Kind Exchanges as Congress works to broaden the economic recovery as it reviews the impact of existing tax provisions.

The key points in the letters include:

- Like-kind exchanges will accelerate our economic recovery from the pandemic by preventing real properties from languishing, underutilized and underinvested.
- Rules for like-kind exchanges are narrowly tailored and well-designed.
- Like-kind exchanges are an engine of job creation.
- Farmers, ranchers, and forest owners heavily rely on like-kind exchanges.
- Like-kind exchanges promote land conservation and environmental protection.
- Increasing the supply of affordable rental housing requires like-kind exchanges.
- States and localities depend on like-kind exchanges for tax revenue.
- For many Americans, like-kind exchanges are a principal tool for retirement savings.
- Like-kind exchanges reduce the cost of capital and make the economy more efficient.
- Additional federal taxes are collected in the years following a like-kind exchange.
- Like-kind exchanges help stabilize property values and real estate markets during an economic crisis.

The coalition also included the study on the economic impact of like-kind exchanges by Professors David C. Ling and Milena Petrova in its communication to Congress and the Secretary of the Treasury.

The signatories include:

ADISA—Alternative & Direct Investment Securities Association
American Farm Bureau Federation
American Hotel & Lodging Association
American Land Title Association
American Resort Development Association
Asian American Hotel Owners Association
Building Owners and Managers Association (BOMA) International
CCIM Institute
Commercial Real Estate Finance Council
Federation of Exchange Accommodators
Forest Landowners Association
Institute for Portfolio Alternatives
Institute of Real Estate Management
International Council of Shopping Centers
Land Trust Alliance
Latino Hotel Association
Mortgage Bankers Association
NAIOP, the Commercial Real Estate Development Association
Nareit
National Alliance of Forest Owners
National Apartment Association
National Association of Home Builders
National Association of Black Hotel Owners, Operators and Developers
NATIONAL ASSOCIATION OF REALTORS®
National Cattlemen's Beef Association
National Council of Farmer Cooperatives
National Multifamily Housing Council
REALTORS® Land Institute
The Conservation Fund
The Nature Conservancy
The Real Estate Roundtable

You can view the Ling & Petrova study, as well as read the full letter to the Secretary of the Treasurer here. www.adisa.org/news-advocacy/article/adisa-co-signs-letters-to-congress-treasury-on-the-importance-of-1031-exchanges

ADISA Co-Signs Letters to New York State Governor and General Assembly in Opposition to Any Form of the Stock Transfer Tax

On behalf of organizations representing more than 544,000 workers in the financial services industry in New York State, ADISA co-signed letters to the Honorable Andrew Cuomo, Governor of New York State; the Honorable Andrea Stewart-Cousins, President Pro Tempore and Majority Leader; and the Honorable Carl Heastie, Speaker of the Assembly, to express opposition to re-imposing any form of a New York State Stock Transition Tax (STT).

New York State eliminated collection of a STT in 1981, in response to market globalization and significant technological changes affecting market transactions. During these unprecedented and critical times, a STT targeted at the financial markets will impair New York State's economy, adversely impact the state's business environment, and increase the cost of investing for everyday savers and investors.

The letters encourage New York State's General Assembly to consider the following:

- *This is a Tax on End Investors.* Imposing a STT on savers and investors in New York State runs counter to many longstanding policies promoting personal savings and investment in the state, and the cost of any amount of the STT would ultimately be passed on to both large and small investors.
- *Revenue Decline.* Faced with a STT in New York State, firms are likely to relocate trading activity outside of the State to offer a better price for their clients, taking jobs and related economic activity with them. Moreover, if New York imposes any STT, firms that process trades in the state could risk potential non-compliance with FINRA's "best execution" rule that requires broker-dealers to find the most favorable price for customers when buying and selling securities. No other state in the country imposes a STT, and increasingly we are seeing broker-dealer activities move to other states. According to the New York State Comptroller's 2020 report on the securities industry in New York City, in 2018, the securities industry was responsible for more than 17% of all economic activity in New York City, and made up 5.9% of the State's economy. Imposing a STT could lead to financial firms moving their back-office operations and the related jobs outside of New York. This would reduce employment and revenue in the state.
- *Unsuccessful Experiments with a STT.* In the European Union, there are 27 countries that have some regulatory barriers for companies to move their operations from one country to another, so the ability to relocate brokerage activity due to a national STT is limited. In sharp contrast, if New York State were to impose a STT, there are no such barriers to prevent businesses to move

to one of the 49 states without the tax. The signed organizations appreciate the opportunity to share their significant concerns on imposing a STT in New York State, and cannot express strongly enough the economic harm a STT could have on the state's retirement savers, investors, businesses and the economy.

The same letter was sent to all three leaders. You can read the letter to Gov. Cuomo in its entirety here. www.adisa.org/news-advocacy/article/adisa-co-signs-letters-to-new-york-state-governor-and-general-assembly-in-opposition-to-any-form-of-the-stock-transfer-tax

The signatories include:

Alternative & Direct Investment Securities Association
American Council of Life Insurers
American Retirement Association
American Securities Association
Business Council of New York State
Business Council of Westchester
Coalition to Prevent the Taxing of Retirement Savers
Council on State Taxation
Equity Markets Association
Financial Planning Association
Financial Services Institute
Foreign Exchange Professionals Association
Futures Industry Association—Principal Traders Group
Institute of International Bankers
Insured Retirement Institute
Investment Company Institute
Life Insurance Council of New York, Inc.
Long Island Association
Managed Funds Association
Modern Markets Initiative
NASDAQ
New York Bankers Association
New York State Economic Development Council
New York Stock Exchange
Partnership for New York City
Securities Industry & Financial Markets Association
SPARK Institute

ADISA WELCOMES NEW 2021 MEMBERS

Affiliate Firms

Alliance 160 LLC
Baseline Partners LLC
Concierge for Advisors
GoldStar Trust Company
Keyzie Lending

Broker-Dealer Firms

Aurora Securities
Nobles & Richards
Wentworth Management Services

Family Offices

Durado Peak Capital
KWCP

RIA Firms

Andalusian Wealth Management
Bourbon Financial Management
Endurance Investment Strategies, Inc.
Foundations Investment Advisors LLC
Harris Investment Advisors
Insight Investment Advisers LLC
Karl Schorr Wealth Management, LLC
Left Brain Wealth Management
Our House Wealth Advisors
Prota Financial
RMH Investment Management, LLC
Schulz Wealth, Ltd.
StrategIQ Financial Group, LLC

Sponsor Firms

Ashford Securities LLC
InCommercial
Keystone National Properties
Manufactured Housing Properties
Origin Investments