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March 31, 2022

Via Electronic Submission

Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: Share Repurchase Disclosure Modernization File Number S7-21-21 (Release Nos. 34-93783 and IC-34440) (the "Release")

Dear Sir or Madam:

The Alternative and Direct Investment Securities Association (ADISA),<sup>1</sup> is writing to express concerns with the Release's impact on perpetually offered real estate investment trusts (NAV REITs) and perpetually offered business development companies (NAV BDCs) which are not traded on an exchange (collectively, NAV Funds), which redeem shares on a periodic basis at a price based on net asset value. NAV Fund shares are registered under Section 12(g) of the Securities Exchange Act of 1934.

The share repurchase plans utilized by NAV Funds are approved by the Fund's board of directors at the inception of the Fund, the terms of which are disclosed in the Fund's prospectus filings and periodic reports. The disclosure of the terms of a NAV Fund's share repurchase plan typically includes:

- The frequency that the NAV Fund will repurchase shares (daily, weekly, monthly, quarterly)
- The time/date by which a shareholder must tender/submit a repurchase request to have their shares repurchased during each repurchase time frame
- That the price to be paid by the NAV Fund to repurchase shares is based on the net asset value of the shares, which is calculated based on the NAV Fund's assets and liabilities – a NAV Fund may only purchase shares of its common stock under its share redemption plan at a price that does not exceed the then current public offering price of its common stock.

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<sup>1</sup>ADISA is the largest association of the retail direct investment industry in the United States. ADISA has approximately 4,500 members who employ over 220,000 investment professionals, together serving the interests of more than 2 million investors throughout the country. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios.

- The source of funds to be utilized by the Fund to repurchase shares
- Limitations on the percentage of outstanding shares which may be repurchased
- Whether the share repurchase plan may be amended, suspended or terminated by the NAV Fund's board of directors and the time frame for advance notification to shareholders of such a change

### Nature of NAV Funds

NAV Fund shares are not traded on an exchange and no public market (primary or secondary) exists for NAV Fund shares to allow NAV Fund shareholders to sell their shares on the open market.<sup>2</sup> NAV Fund share repurchase plans are created to provide for limited liquidity for NAV Fund shareholders. The amount of shares eligible for repurchase pursuant to a NAV Funds' share repurchase plan is capped at a percentage of shares outstanding per quarter and per year, and is ordinarily limited to the amount of proceeds received by the NAV Fund through its distribution reinvestment plan or other sources. The number of shares actually repurchased is driven by the shareholders' need for liquidity, subject to the limitations of the share redemption plan, and not driven by the NAV Fund. If the number of shares submitted for repurchase (and not withdrawn) is below the limitations set forth in the share repurchase plan, the NAV Fund repurchases all such shares submitted for repurchase. In the event there are more shares submitted for repurchase (and not withdrawn) than the limitations in place under the share repurchase plan, the NAV Fund repurchases shares on a pro rata basis from the pool of shares submitted for repurchase. The Commission has provided no-action relief for NAV REIT share repurchase plans under Rule 13e-4 of the Securities Exchange Act (See Jones Lang LaSalle Income Property Trust, Inc. (October 11, 2012) and Blackstone Real Estate Income Trust, Inc. (September 12, 2016)); and provided class relief to NAV REITs, exempting NAV REITs' share redemption plans from Rule 102(a) Regulation M (See Class Relief for Real Estate Investment Trust Share Redemption Programs Regulation M Rule 102, issued to Alston & Bird LLP (October 22, 2007)). While the share repurchase plan is in place, this is the only mechanism by which a NAV Fund may conduct share repurchases.

The share repurchase plan for a NAV Fund is in place from inception and is intended to remain in place for the life of the NAV Fund, unless amended, suspended or terminated by the NAV Fund's board of directors. As such, the existence of a non-exchange traded NAV Fund's ongoing share repurchase plan does not create the situations of concern raised in the Release, which concerns may otherwise be applicable to publicly traded issuers that do not have an ongoing share repurchase plan but instead conduct share repurchases on a sporadic basis, as reflected in the Release – new public announcement of a repurchase plan, affecting reported EPS, meeting or beating consensus forecasts, signaling undervalued shares, offset of share dilution, pressures on market prices of the shares, influence on compensation arrangements, etc.

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<sup>2</sup> The relative illiquidity of the NAV Funds compared to open market funds can generally be regarded as an investment advantage: such funds avoid a liquidity premium, that is the cost incurred to immediately free up funds to sell on demand. An earlier study calculated this as at least 1.4%, but the premium fluctuates (Whitman, K. "The Hidden Cost of Liquidity: How Alternatives Can Reward Long-term Investors," *Alternative Investment Quarterly*, January 2014) and may trend higher with increased investor demand, driven particularly by fatigue from market volatility.



NAV Funds conduct a thorough valuation process in establishing the net asset value of the NAV Fund's shares, utilizing the services of independent valuation advisors. Under the oversight of the NAV Fund's board of directors, including the independent directors, the independent valuation advisors provide material assistance in this valuation process, including appraising the NAV Fund's investments at least annually, and in some instances quarterly, as well as taking into account material interim changes to the valuation of investments. Since the NAV Funds are not traded on an exchange and the repurchase price is based on net asset value, there is no ability for the existence of the share repurchase plan to affect the price of the NAV Fund shares. The information asymmetries of concern as set forth in the Release and the potential for an issuer to have incentive to engage in opportunistic share repurchases simply do not exist in the operation of the share repurchase plans of NAV Funds.

#### Burden without Benefit

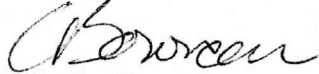
Typically, NAV Funds disclose the actual repurchase amounts in prospectus supplements publicly filed ahead of their periodic quarterly and annual reports, and in any event publicly disclose the repurchase amounts in their periodic reports.

The costs and burdens of complying with the rule amendments by NAV Funds, as proposed, outweigh any benefits to the NAV Fund investors. Many NAV Funds repurchase shares pursuant to their ongoing share repurchase plans on a daily basis. The proposal would require these NAV Funds to make filings on a daily basis, likely triggering a need to engage outside service providers to assist in this process. Since the NAV Fund share repurchase plan terms and net asset values are continuously publicly disclosed, shareholders know that the purpose of the share repurchase plan is to provide limited liquidity to the shareholders and that the price a shareholder will receive for any shares repurchased is based on the NAV Fund's net asset value calculation, prior to the shareholder submitting shares for repurchase. There are no factors in a NAV Fund's share repurchase plan and the execution of that plan that would be triggered to be disclosed under the proposed rule amendments in the Release that are not already continuously disclosed.

We urge the Commission to exempt NAV Funds from the rule amendments proposed in the Release either explicitly or by limiting the proposed rule amendments to those issuers whose shares are registered under Section 12(b) of the Securities Exchange Act.

ADISA appreciates the opportunity to provide our comments to the Commission regarding the proposals set forth in the Release. We ask that you give our comments consideration, and we stand ready to discuss our comments at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Bowman".

Catherine Bowman

Co-Chair of the ADISA Legislative and Regulatory Committee

ADISA Drafting Committee: Catherine Bowman (Bowman Law), John Grady (ABR Funds)