

STATEMENT OF POLICY REGARDING PROMOTIONAL SHARES

Amended November 17, 1997, September 28, 1999, and March 31, 2008

I. INTRODUCTION

This statement of policy applies to all applications to register by coordination or by qualification.

II. DEFINITIONS

This statement of policy uses the following terms defined in the NASAA *Statement of Policy Regarding Corporate Securities Definitions*:

Administrator
Affiliate
Aggregate Revenues
Associate
Disclosure Document
Escrow Agent
Equity Securities
Independent Directors
Issuer
Person
Promoter
Promotional Shares

III. ESCROW OF PROMOTIONAL SHARES

As a condition to registering a public offering of Equity Securities, the Administrator may require that some or all of the Promoters deposit Promotional Shares into an escrow account (“escrow”) with an Escrow Agent, as provided by an escrow agreement. Promoters who deposit Promotional Shares into escrow will be collectively referred to as “depositors”.

- A. Use the following formula to determine the number of Promotional Shares for deposit in escrow, except in situations where a Promoter must comply with paragraph B below:

$$A - B$$

where

A equals total number of shares that the Promoters hold

B equals the number of fully paid shares, calculated as follows:

$$\frac{C}{D \times 0.85}$$

C equals the total that the Promoters paid for the shares, and

D equals the public offering price per share

Sample Calculation of Value.

| | Shares | Total Price | Per Share |
|---------------------------------------------|------------|--------------|-------------------|
| Shares Held by Promoters | 100 | | \$1.00 |
| Public Offering Price per Share | | | \$10.00 |
| <u>Total Paid by Promoter*</u> | | <u>\$100</u> | = 11.77 |
| Public Offering Price Per Share x .85 | \$10 x .85 | | Fully Paid Shares |
| Shares held by Promoters | | | 100 |
| Fully paid shares (rounded) | | | 12 |
| Number of Promotional Shares to be escrowed | | | 88 |

*The promoters cannot use consideration other than cash unless the Administrator accepts the value of the consideration.

- B. If the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, the Promoters must deposit all Promotional Shares in escrow.
- C. The Administrator may require each Promoter to deposit Promotional Shares into escrow on a pro rata basis.

IV. RELEASE OF PROMOTIONAL SHARES

- A. The Escrow Agent must release the Promotional Shares held in escrow in the manner set out in the table below:

If the issuer's Aggregate Revenues are:

- a. \$500,000 or more (class A offering), and neither the auditor's opinion nor any footnote to the issuer's latest audited financial statements contain an opinion or statement regarding the ability of the issuer to continue as a going concern, then the required release of escrow or lock-in shares are as follows:

- i. Year 1 – none
 - ii. Year 2 – 2 ½% pro rata per quarter
 - iii. Year 3 – all
 - b. Less than \$500,000 (class B offering), then the required release of escrow or lock-in shares are as follows:
 - i. Year 1 – none
 - ii. Year 2 – none
 - iii. Year 3 – 2 ½% pro rata per quarter
 - iv. Year 4 – 2 ½% pro rata per quarter
 - v. Year 5 – all
- B. In the event securities in the escrow become “Covered Securities,” as defined in Section 18(b)(1) of the Securities Act of 1933, the Escrow Agent must release all securities in escrow.
- C. If the public offering is terminated, and no securities were sold, the Escrow Agent must release all securities in escrow.
- D. If the public offering is terminated, and all of the gross proceeds of the offering have been returned to the public investors, the Escrow Agent must release all securities in escrow.

V. DISTRIBUTION OF THE ISSUER’S ASSETS OR SECURITIES

The depositors agree that if any transaction or proceeding results in a distribution of the issuer’s assets or securities (“distribution”), while the agreement remains in effect, one of the following happens:

- A. If the transaction is with a person that is not a Promoter, :
 - 1. Holders of the issuer’s Equity Securities initially share in the distribution on a pro rata basis, depending on the price the holders paid per share. This continues until the public shareholders are paid out in full. For the purpose of this Statement of Policy, the public shareholders are paid out in full when they have received, or have had irrevocably set aside for them, an amount equal to

$$A \times B \times 100\%$$
 where **A** equals price per share in the public offering, and where **B** equals the number of shares they purchased under the public offering and still hold at the time of the distribution.
 - 2. Once the public shareholders are paid out under paragraph 1, holders of the issuer’s Equity Securities participate on a pro

rata basis, depending on the the number of shares of Equity Securities they hold at the time of the distribution.

3. A distribution may proceed on lesser terms and conditions than those stated in paragraphs 1 and 2, if the holders of a majority of the Equity Securities, not including related party securities, approve the lesser terms and conditions at a special meeting called for that specific purpose. For the purpose of this subparagraph, “related party securities” mean those Promoters or their Associates or Affiliates.
4. The number of shares calculated for distribution under paragraph 1 and 2 may be adjusted if there is a stock split, stock dividend, recapitalization or similar transaction.

- B. If the transaction is with a Promoter, the depositors’ Promotional Shares must remain in escrow subject to the terms of the agreement.

VI. DOCUMENTATION REGARDING THE TERMINATION OF THE ESCROW AGREEMENT AND/OR THE RELEASE OF PROMOTIONAL SHARES

- A. A request for the release of any of the Promotional Shares from escrow must be in writing and forwarded to the Escrow Agent.
- B. The issuer must provide the documentation, showing that the requirements of paragraph IV, above, have been met to the Escrow Agent.
- C. The Escrow Agent must terminate the agreement and/or release some or all of the Promotional Shares from escrow if all the applicable provisions of the agreement have been satisfied. The Escrow Agent must maintain all records relating to the agreement for a period of three (3) years following the termination of the agreement.
- D. The Escrow Agent must forward copies of all retained records to the Administrator promptly upon written request.

VII. NON-EXCLUSIVE RESTRICTIONS ON THE TRANSFER, SALE OR DISPOSAL OF PROMOTIONAL SHARES

- A. A depositor must not transfer any Promotional Shares held in escrow or any interest in the Promotional Shares in escrow.

- B. Despite subsection A, a depositor may transfer Promotional Shares held in escrow by gift to the depositor's family members, if the depositor's family member agrees that the Promotional Shares remain subject to the terms of the escrow agreement.
- C. For a self-underwritten offering, Promoters must not sell any of their Promotional Shares during the time that the issuer is offering its securities to the public, even if the Promotional Shares are not subject to escrow or would otherwise be released from escrow.

VIII. TERMS OF THE ESCROW

A summary of the agreement must be included in the Disclosure Document annual reports to shareholders, proxy statements and other disclosure materials used to make investment decisions until the public offering ends.