

Request for Public Comment
NASAA Coordinated Interpretations Project Group
February 20, 2009

**NOTICE OF REQUEST FOR PUBLIC COMMENT ON NASAA'S
PROPOSED ADOPTION OF A STATEMENT OF POLICY
REGARDING MULTI-STATE REVIEW OF REQUESTS
FOR INTERPRETIVE OPINIONS AND NO-ACTION LETTERS**

The NASAA Coordinated Interpretations Project Group requests comment from the public on the adoption of a new Statement of Policy Regarding Multi-State Review of Requests for Interpretative Opinions and No-Action Letters.

The comment period begins February 20, 2009 and will remain open for 30 days. Accordingly, all comments should be submitted on or before March 22, 2009. Comments should be directed by email or in writing to:

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Background and Purpose of the Proposed Statement of Policy

Many state securities regulators have the authority issue “no-action letters” in which staff confirms that a transaction carried out under a set of assumed facts will not result in a recommendation for enforcement action. Some states also issue “interpretive opinions” in which staff provides guidance by indicating how a provision of law applies to a situation presented. These types of no-action letters and interpretive opinions are authorized by subsection 413(e) of the Uniform Securities Act of 1956, as amended, and subsection 605(d) of the Uniform Securities Act (2002).

Subsection 420(b)(7) of the 1956 USA and subsection 608(c)(9) of the 2002 USA authorize the states to cooperate with each other in the development of no-action letters and interpretive opinions in order to encourage uniform interpretation of laws and maximize the effectiveness of regulation. Toward those ends, NASAA proposes this Statement of Policy.

Summary of the Proposed Statement of Policy

The proposed Statement of Policy describes the application and review process for multi-state consideration of requests for interpretive opinions and no-action letters. The proposed Statement of Policy contains the following major elements:

- Section II contains definitions, including the terms “interpretive opinion” and “no-action letter.”
- Section III places restrictions on the types of matters that qualify for multi-state review. For example, it prohibits requests concerning purely hypothetical situations and transactions that have already occurred.
- Sections IV and V contain rules governing the content of the request letter, citation to state laws, payment of fees, etc.
- Section VI describes the review process. Conference calls and a list-serve will be used to facilitate communication between states, and responses to requests for interpretive opinions and no-action letters should be generated within 60 days.
- Section VII contains optional disclaimers for the states to consider using.

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**STATEMENT OF POLICY REGARDING
MULTI-STATE REVIEW OF REQUESTS FOR
INTERPRETIVE OPINIONS AND NO-ACTION LETTERS**

(Adopted ____)

I. OVERVIEW

1. This Statement of Policy of the North American Securities Administrators Association (NASAA) describes the application and review process for multi-state consideration of requests for Interpretive Opinions and No-Action Letters.
2. The policy is intended to promote efficiency in the review of applications and produce responses to requests within 60 days.
3. This policy is intended to promote consistency in the interpretation of blue sky laws, particularly when the laws are based upon uniform or model provisions. However, the issuance of Interpretive Opinions and No-Action Letters is done solely at the discretion of each state, and each state is ultimately responsible for interpreting and enforcing its own law.

II. DEFINITIONS

1. “Interpretive Opinion” means a letter that states a conclusion regarding the applicability of a relevant provision of law to a situation presented. An Interpretive Opinion represents a judgment based solely on the fact situation as described by the applicant and an analysis of existing law and judicial, legislative, and administrative history.
2. “No-Action Letter” means a letter by which a person is advised that a transaction carried out under a set of assumed facts will not result in a recommendation by staff that an enforcement action be taken. An Interpretive Opinion often includes an assurance of “no action;” however, a No-Action Letter does not necessarily include any interpretation of law.
3. “Participating Jurisdictions” means those states that have agreed to accept applications for multi-state review of requests for Interpretive Opinions or No-Action Letters in accordance with this Statement of Policy. Authority for a multi-state review is provided in section 608(c)(9) of the Uniform Securities Act of 2002 and section 420(b)(7) of the Uniform Securities Act of 1956, as amended by NASAA. All Participating Jurisdictions are listed on Form MS-ONA.
4. “Selected Jurisdictions” means the states from whom an applicant seeks an Interpretive Opinion or No-Action Letter, as indicated by the applicant on Form MS-ONA.
5. “Program Administrator” means the state designated by NASAA to coordinate the multi-state review of requests for Interpretive Opinions or No-Action Letters. The Program Administrator is indicated on Form MS-ONA.

III. CRITERIA FOR ELIGIBILITY

1. An application for multi-state review of a request for an Interpretive Opinion or No-Action Letter shall not involve a hypothetical situation, a past transaction, or an issue that is currently subject to or in preparation for litigation.
2. An application shall not involve a matter that the applicant knows or should know is currently under investigation or subject to regulatory action.
3. An application shall not relate to an interpretation of antifraud provisions.

IV. APPLICATION PROCESS

1. To apply for multi-state review of a request for an Interpretive Opinion or No-Action Letter, the applicant shall file the following documents with each Selected Jurisdiction and the Program Administrator:
 - a. A copy of “Form MS-ONA - Application for Multi-State Review of Request for Interpretive Opinion or No-Action Letter.” The form is available on the NASAA web site at [insert current web address] and contact information for each state is available at [insert current web address].
 - b. A request letter that complies with the requirements set forth below; and
 - c. Any supporting materials.
2. The applicant shall submit an application fee directly to each Selected Jurisdiction in the amount indicated on Form MS-ONA.

V. CONTENT OF REQUEST LETTER

1. A request for an Interpretive Opinion or No-Action Letter shall succinctly present the issue to be considered and provide a thorough recitation of all material facts. The request shall contain the applicant’s reasoning and legal analysis, including references to applicable law and previous Interpretive Opinions or No-Action Letters that support the interpretation or relief requested. Additionally, the request should include a discussion of previous Interpretive Opinions or No-Action Letters that militate against granting the interpretation sought or relief requested and set forth the applicant’s reasoning and legal analysis distinguishing them from the facts and issues presented in the request.
2. The request should be limited to one legal issue and should be narrowly tailored to resolve the specific issue. The request should not attempt to discuss every possible situation.
3. The request must identify the persons or entities that are the subject of the request or will rely upon the response and identify the states in which such persons reside or maintain their principal places of business. The request may state that the person or entity seeks confidential treatment to the extent permitted by the open records or public records laws of the Selected Jurisdictions (e.g., state laws modeled after section 607 of the Uniform Securities Act of 2002). However, the applicant should take note that the laws of some

states do not permit confidential treatment, and this Statement of Policy does not assure that any state will maintain the confidentiality of the person or entity or any other information contained in the application.

4. If a request for an Interpretive Opinion or No-Action Letter relates to a definition, exemption, or other provision that is derived from the Uniform Securities Act of 1956, the Uniform Securities Act of 2002, a NASAA model rule, or a NASAA Statement of Policy (SOP), the request letter shall include in the heading a citation to the relevant provision(s) of each applicable uniform act, model rule, or SOP.
5. The request shall set forth in tabular form, as an appendix, a specific citation to the relevant laws of each Selected Jurisdiction.
6. The request shall include a representation that any proposed transaction has not yet been consummated, that the matter is not currently subject to or in preparation for litigation, and that the applicant is not aware of any regulatory investigation involving the matter.
7. The request shall disclose whether any of the persons who are the subject of the request or will rely upon the response, or any of the persons' predecessors, affiliates, directors, officers, general partners, beneficial owners of 10 percent or more of any class of its equity securities, any promoter presently connected with the persons in any capacity, any underwriter to be involved in a transaction described in the request, or any partner, director or officer of the underwriter:
 - a. Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
 - b. within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;
 - c. is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - d. is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
8. If the applicant has communicated with any state securities administrator concerning the transaction or subject matter that is the subject of the request, the applicant shall disclose the nature of the communication and any response received from the state. If a separate request for an Interpretive Opinion or No-Action Letter has already been filed with one or more states in connection with the same transaction or subject matter, the applicant shall (1) provide a copy of any requests that have been filed and disclose the status of each state's response; (2) provide a copy of any response that has been issued by a state; and (3) explain the reason that it did not initially seek multi-state review.

VI. REVIEW PROCESS

1. Within 5 business days after receipt of an application, the Program Administrator will determine whether the application is eligible for multi-state review and in proper form. If the application is ineligible or deficient, the Program Administrator will notify the applicant and the Selected Jurisdictions. If the application is eligible for multi-state review, the Program Administrator will notify the applicant and Selected Jurisdictions of the deadline to review the application and issue responses in accordance with paragraph VI.3. The Program Administrator will also send a copy of the application to any other state that provides contact information in accordance with Paragraph VI.6.
2. Within 45 days after receipt of a proper application by the Program Administrator, the Program Administrator shall arrange for a conference call to discuss the application and shall provide notice of the call to all states who submit contact information in accordance with paragraph VI.6. The Program Administrator may appoint a facilitator for the conference call, and the Program Administrator or facilitator may schedule additional conference calls as needed.
3. Within 60 days after receipt of a proper application by the Program Administrator, each Selected Jurisdiction shall use its best efforts to issue its response to the applicant. The response may include an Interpretive Opinion, No-Action Letter, or letter declining to give any such assurance. Failure of a Selected Jurisdiction to issue a response does not indicate assent to the granting of the interpretation or relief requested. A copy of the response should be sent to the Program Administrator and added to an electronic library containing the Interpretive Opinions and No-Action Letters issued under this Statement of Policy.
4. The Program Administrator may seek additional information from the applicant on behalf of any Selected Jurisdiction, and the applicant shall file copies of all supplemental material with each Selected Jurisdiction and the Program Administrator. If supplemental material is requested, the review period may be extended up to 30 additional days after receipt of the supplemental material at the discretion of the Program Administrator. The Program Administrator will notify the applicant and Selected Jurisdictions of the extension and send copies of the supplemental material to states that are not Selected Jurisdictions.
5. The timelines contained herein may be postponed at the discretion of the Program Administrator in extenuating circumstances. The Program Administrator will notify the applicant and the Selected Jurisdictions of the new deadlines and the reasons for any postponement.
6. Each Participating Jurisdiction and any other state that wants to receive notices from the Program Administrator must provide and update the Program Administrator with the name, title, address, phone number, fax number, and e-mail address of one or more contact persons. The Program Administrator will maintain a list-serve or other electronic system to facilitate communication between such persons.

VII. DISCLAIMERS

1. Each Participating Jurisdiction is encouraged to use the following disclaimers in any letter issued under this policy:
 - a. The letter applies only to the party requesting it, and persons having similar fact situations should submit a separate request.
 - b. The letter is conditioned upon the specific facts set forth in the request and the accuracy of any representations that are required to be made under this Statement of Policy.
 - c. The conclusions are based upon current law, should not be regarded as precedent, and are not binding on any court, agency, or tribunal.
 - d. The letter does not preclude investors, other regulatory agencies, or other persons from asserting their rights under the law.