

**REQUEST FOR PUBLIC COMMENT REGARDING THE PROJECT GROUP'S  
PROPOSED AMENDMENT TO ADD CROSS REFERENCE SHEET STANDARDS FOR  
NASAA GUIDELINES FOR REGISTRATION OF EQUIPMENT PROGRAMS.**

**To:** NASAA Members

**From:** NASAA Direct Participation Programs Policy Project Group

**Date:** September 21, 2011

The NASAA Board of Directors has authorized release for public comment the following amendment to add cross reference sheets in the NASAA Guidelines for the Registration of Equipment Programs. This is to aid the examiner and applicant for registration in complying with the NASAA Guidelines. The proposed cross reference sheets do not add or detract from existing Guideline provisions. Paraphrased terms for the cross reference sheets are not intended to interpret Guideline provisions or offer less compliance to the applicant. The public comment period will last for 30 days from the date of release listed above.

Most Statements of Policy define the term "Cross Reference Sheet," require it to be filed and offer the format of a cross reference. The NASAA Equipment Program Guidelines define the term but do not offer the format of a cross reference sheet and require it to be filed. Applicants often file cross-reference sheets voluntarily to expedite the review process. First time applicants that are unfamiliar with the examination of the offerings by NASAA jurisdictions may not have knowledge of the requirement to file a cross reference sheet or the format to use with the application. The proposal will assist issuers that may be filing applications for registration. The proposal will provide the Administrator with the authority to require the cross-reference sheet.

Comments on the proposed amendments in this proposal are invited. To facilitate consideration of comments, please send comments to each Project Group members and the NASAA Legal Department. An addressee roster is set forth below. We encourage, but do not require comments to be submitted by e-mail. We also welcome any general comments on cross reference sheets and the need to file them.

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**A) Add new section VIII.H. to the Statements of Policy for the Registration of Equipment Programs ‘Cross Reference Sheet General Instructions’ and a new section ‘Equipment Programs Guidelines Cross Reference Sheet’ for a sample cross reference sheet – NASAA Guidelines for the Registration of Equipment Programs.**

Add a new VIII.H.

**H. Cross Reference Sheet General Instructions.**

1. The CROSS REFERENCE SHEET, as required by the Administrator in section I.A.2. of these guidelines, shall be included with the application for registration.
2. Sections which are not applicable should be noted as such and explained.
3. Provisions which vary from the Guidelines must be explained by footnote. Footnotes should be numbered sequentially in the column designated Footnotes and should be presented on a rider or presented as endnotes.
4. The last page of the Cross Reference Sheet should be signed by the person executing the Form U-1 or other registration application.

Add Equipment Programs Guidelines Cross Reference Sheet.

**EQUIPMENT PROGRAMS GUIDELINES CROSS REFERENCE SHEET**

Name of Applicant \_\_\_\_\_

<u>Guideline Section</u>	<u>Section Number Program Agreement</u>	<u>Page Number Prospectus</u>	<u>Endnote</u>
<b>I.B. Definitions</b>			
1. Acquisition Expenses	_____	_____	_____
2. Acquisition Fee	_____	_____	_____
3. Administrator	_____	_____	_____
4. Affiliate	_____	_____	_____
5. Assessments	_____	_____	_____
6. Capital Contributions	_____	_____	_____
7. Carried Interest	_____	_____	_____
8. Cash Available for Distribution	_____	_____	_____
9. Cash Flow	_____	_____	_____
10. Competitive Equipment Sale Commission	_____	_____	_____
11. Cross Reference Sheet	_____	_____	_____
12. Equipment Management	_____	_____	_____
13. Front-End Fees	_____	_____	_____
14. Full Payout Leases	_____	_____	_____

<u>Guideline Section</u>	<u>Section Number Program Agreement</u>	<u>Page Number Prospectus</u>	<u>Endnote</u>
15. Independent Expert			
16. Investment in Equipment			
17. Leasing Fee			
18. Net Disposition Proceeds			
19. Net Lease Provisions			
20. Net Worth			
21. Operating Leases			
22. Organizational and Offering Expenses			
23. Participant			
24. Person			
25. Program			
26. Program Interest			
27. Prospectus			
28. Purchase Price of Equipment			
29. Roll-Up			
30. Roll-Up Entity			
31. Specified Equipment Program			
32. Sponsor			
<b>II. Requirements of Sponsor</b>			
A. Experience			
B. Net Worth			
1. 5% of offerings, maximum \$1 million			
2. Financial Information			
C. Tax Ruling or Opinion			
D. Reports to Administrator			
E. Liability & Indemnification			
1. (a) course of conduct in best interest of Program			
(b) on behalf of or services for program			
(c) not negligence or misconduct			
(d) not from Participants			
<b>III. Suitability of Participants</b>			
B. Income & Net Worth			

<u>Guideline Section</u>	<u>Section Number</u> <u>Program Agreement</u>	<u>Page Number</u> <u>Prospectus</u>	<u>Endnote</u>
Standards			
C. Determination that Sale to Participant is Suitable & Appropriate			
D. Subscription Agreements			
E. Completion of Sale			
F. Minimum Investment			
<b>IV. Compensation &amp; Expenses</b>			
B. Organizational & Offering Expenses			
C. Investment in Equipment			
2. Greater of: (a) 80% less .0625 of 1% indebtedness, or (b) 75% of Capital Contributions			
3. (a) Additional Investment-promotional interest 1% for 1% after 100% Return			
(b) Carried Interest-1% for the first 2.5% additional, 1% for 2% and 1% for 1%			
D. Promotional Interest			
1. (a) 5% of cash available for distributions and 1% of disposition proceeds until return of 100% plus 8% cumulative return, then 15%			
(b) 20% of cash available for distribution after a 100% plus 8% cumulative return			
E. Equipment Management Fee			
1. 5% of gross for Operating Leases			
2. 2% of gross for Full Payout Leases			
3. 1% supervision fee of			

<u>Guideline Section</u>	<u>Section Number Program Agreement</u>	<u>Page Number Prospectus</u>	<u>Endnote</u>
non-Affiliates			
4. Equipment Management and additional services-7% gross			
F. Resale Fee			
G. Re-leasing Services			
<b>V. Conflicts of Interest &amp; Investment Restrictions</b>			
A. Sales & Leases to or from Program			
1. Temporary (six months) and (a) best interest of program;			
(b) price no greater than cost;			
(c) no difference in interest terms; and			
(d) no other benefit to sponsor			
2. Sponsor manufacturers and sellers-sales to program if at cost without markup and fully disclosed at formation for specified equipment programs			
3. Program for Sponsor Use of equipment – appraisal requirement			
B. Loans			
C. Dealings with Related Programs			
D. Exchange of Program Interests			
E. Exclusive Agreement			
F. Commissions on Financing, Refinancing, Reinvestment			
or Distribution			
G. Services Rendered to the Program by the Sponsor			
1. a. Expenses and reimbursement			

<u>Guideline Section</u>	<u>Section Number</u> <u>Program Agreement</u>	<u>Page Number</u> <u>Prospectus</u>	<u>Endnote</u>
b. Controlling Persons			
c. Annual Program Report-special report of time records and nature of work			
d. Tabular estimate of next year's expenses and breakdown of last five public programs by Sponsor			
2. Other Services by Sponsor			
a. Comparable and competitive cost			
b. Fully disclosed			
c. Sponsor independently engaged in business of such services			
3. Written Contract			
H. Rebates, Kickbacks and Reciprocal Arrangements			
I. Commingling of Funds			
J. Investments in Other Programs			
1. Prohibited unless controlling interest and with non-affiliate; Duplicate fees prohibited			
2. Affiliate Joint Ventures if:			
a. substantially identical investment objectives;			
b. no duplicate fees			
c. Sponsor compensation identical in each Program			
d. Program has right of first refusal to buy			
e. Investment is on substantially same terms and conditions			
f. Purpose is for diversification or relieving V.A.1.			

<u>Guideline Section</u>	<u>Section Number</u> <u>Program Agreement</u>	<u>Page Number</u> <u>Prospectus</u>	<u>Endnote</u>
commitment			
g. Disclosure of Potential Risk of Impasse			
K. Lending Practices			
L. Minimum Capitalization			
M. Statement of Investment Objectives			
N. Multiple Programs			
O. Period of Offering			
P. Assessments, Staged or Deferred Payments			
Q. Distributions in Kind			
R. Appraisal and Compensation			
<b>VI. Rights &amp; Obligations of Participants</b>			
A. Meetings			
B. Voting Rights of Participants			
C. Reports			
D. Access to Records			
E. Assessments & Defaults			
F. Admission of Participants			
G. Redemption of Program Interests			
H. Transferability of Program Interests			
<b>VII. Disclosure &amp; Marketing</b>			
A. Sales Promotional Efforts			
B. Prospectus			
C. Forecasts			
<b>VIII. Miscellaneous Provisions</b>			
A. Fiduciary Duty			
B. Deferred Payments			
C. Reserves			
D. Reinvestment of Cash Available for Distributions			
E. Reinvestment of Proceeds On Disposition of Equipment			



**Guideline Section**

**Section Number**  
**Program Agreement**

**Page Number**  
**Prospectus**

**Endnote**

F. Payments to Terminated  
Sponsors

_____	_____	_____
_____	_____	_____

**Additional Supplemental Cross References:**

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature \_\_\_\_\_

**Reasons to make these changes and conclusion.**

The equipment guidelines do not offer a sample cross reference sheet and also fails to include a requirement that the cross reference sheet be filed with the application. A first time applicant may be unaware of the need to prepare and file a cross reference sheet. This may delay an offering from an initial review. The proposals will provide a sample cross reference sheet, require it to be filed upon the request of the Administrator and provide instructions. There are no new substantive changes to the Guidelines.

We encourage you to review the accompanying memorandum and submit your comments to the members of the project group.