

# **STATEMENT OF POLICY REGARDING LOANS AND OTHER MATERIAL TRANSACTIONS**

*Adopted April 27, 1997; Amended 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 definitions adopted by the North American Securities Administrators Association, Inc. (“NASAA”) in the NASAA Statement of Policy Regarding Corporate Securities Definitions.

Administrator

Affiliate

Disclosure Document

Independent Director

Promoter

## **III. GROUNDS FOR DENIAL OF SECURITIES REGISTRATIONS**

The Administrator may deny the offer or sale of securities if:

- A. The issuer or its Affiliates have loans outstanding after the offering that are not permitted by this Statement of Policy;
- B. The issuer or its Affiliates have engaged in material transactions with Promoters that are not permitted by this Statement of Policy; or
- C. Required representations and statements are not included in the Disclosure Document.

## **IV. LOANS AND LOAN GUARANTEES**

The following types of loans or loan guarantees on behalf of Promoters of the issuer are permitted:

- A. Advances to officers, directors, and employees for travel, business expenses, and similar ordinary operating expenditures.
- B. Loans or loan guarantees to allow the issuer’s officers, directors, and employees to purchase the issuer’s securities, and loans for relocation of officers, directors, and employees, if the loan is approved under Section VI.
- C. Loans the issuer or its Affiliates make to its Promoters if an issuer or its Affiliates are in the primary business of making loans and if:

1. The loans are evidenced by promissory notes naming the lender as payee;
2. The loans bear interest at rates comparable to those that other commercial lenders normally charge for similar loans made in the lender's locale;
3. The loans require Promoters to repay the loans under appropriate amortization schedules;
4. The loans are supported by credit reports and financial statements that show the issuer or its Affiliates can collect the loans and that the borrowers are satisfactory credit risks, in light of the nature and terms of the loans and other circumstances;
5. The loans meet loan policies that other commercial lenders normally use for similar loans made in the lender's locale;
6. The issuer will review the purposes of the loans and monitor the disbursements of proceeds in a manner that other commercial lenders normally use for similar loans made in the lender's locale;
7. The loans will not violate the requirements of any banking or other financial institution's regulatory authority; and
8. The loans contain default provisions comparable to those other commercial lenders normally use for similar loans made in the lender's locale.

## **V. REPAYMENT OF LOANS**

Loans to Promoters that exist at the time of the application for registration must be repaid by Promoters in full:

- A. From proceeds of the offering, if a portion of the offering is made on behalf of a Promoter;
- B. Before the offering; or
- C. After the offering using appropriate amortization schedules, if the Administrator permits.

## **VI. INDEPENDENT DIRECTORS**

- A. If there have been or will be loans and other material affiliated transactions, the Disclosure Document must represent that the issuer will maintain at least two Independent Directors on its board of directors.
- B. The issuer must provide Independent Directors with access, at the issuer's expense, to legal counsel for the issuer or independent legal counsel.
- C. A majority of the issuer's Independent Directors that do not have an interest in the transaction must approve any loan or other material affiliated transaction involving its Promoters.

- D. If the issuer has only two Independent Directors on its board of directors, both Independent Directors must be disinterested in and approve loans and other material affiliated transactions.

## **VII. DISCLOSURE REQUIREMENTS**

- A. Loans. The issuer must disclose in the Disclosure Document whether or not it or its Affiliates have made or will make loans to or have made or will make loan guarantees on behalf of Promoters and the relevant terms and conditions.
- B. Affiliated Transactions. The issuer shall disclose in the Disclosure Document whether or not it or its Affiliates have engaged or will engage in material transactions with Promoters and the relevant terms and conditions.
- C. Representations. The Administrator may require the following statements and representations to appear in the Disclosure Document.
  - 1. A statement that the issuer or its Affiliates will make all future material affiliated transactions and enter into all future loans on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties.
  - 2. A statement that a majority of the issuer's Independent Directors will approve all future material transactions and loans, and any forgiveness of loans, in accordance with Section VI.
  - 3. A statement that the issuer's officers, directors, and counsel will:
    - a. Consider their due diligence and assure that there is a reasonable basis for these representations, and
    - b. Consider whether to embody the representations in the issuer's charter or bylaws.

## **VIII. MATERIAL TRANSACTIONS WITH PROMOTERS**

The following types of affiliated transactions are allowed:

- A. A transaction approved in accordance with Section VI, if the Disclosure Document discloses the terms of the transactions and indicates whether the terms are as favorable to the issuer or its Affiliates as those generally available from unaffiliated third parties.
- B. A transaction entered into when the issuer had less than two disinterested Independent Directors, if the Disclosure Document:
  - 1. Discloses the terms of the transactions;
  - 2. Indicates whether the terms are as favorable to the issuer or its Affiliates as those generally available from unaffiliated third parties; and
  - 3. Discloses that the issuer lacked sufficient disinterested Independent

Directors to approve the transactions at the time of the transactions were initiated.

The Administrator expects the issuer and its officers and directors to consider their due diligence and other obligations to demonstrate a reasonable basis for these representations.