

NOTICE OF REQUEST FOR PUBLIC COMMENT:  
PROPOSED COORDINATED REVIEW PROGRAM FOR SECTION 3(b)(2) OFFERINGS

The Board of Directors of the North American Securities Administrators Association, Inc. (“NASAA”) has authorized release for public comment the accompanying materials regarding a new proposed coordinated review program for offerings exempt from registration federally under Section 3(b)(2) of the Securities Act of 1933.

Public Comment Period

The public comment period will remain open until November 30, 2013. To facilitate consideration of comments, please send comments to Jan Owen ([JanLynn.Owen@dbo.ca.gov](mailto:JanLynn.Owen@dbo.ca.gov)), Chair of the Corporation Finance Section Committee; Faith Anderson ([faith.anderson@dfi.wa.gov](mailto:faith.anderson@dfi.wa.gov)), Chair of the Small Business/Limited Offerings Project Group; and Rick Fleming ([rf@nasaa.org](mailto:rf@nasaa.org)); Deputy General Counsel for NASAA. We encourage, but do not require, comments to be submitted by e-mail. Hard copy comments can be submitted at the following address:

NASAA  
ATTN: Rick A. Fleming, Deputy General Counsel  
750 First Street, NE, Suite 1140  
Washington, DC 20002

Need for a Coordinated Review Program for Section 3(b)(2) Offerings

Section 3(b)(2) of the Securities Act of 1933 was enacted as part of the Jumpstart Our Business Startups Act (“JOBS Act”) and has been otherwise referred to as “Regulation A+.” This section provides an exemption from federal registration for public offerings of securities of up to \$50 million. The Act provides for preemption of state registration requirements only where the securities offered are listed on a national securities exchange or offered or sold to qualified purchasers. Thus, we anticipate that many Section 3(b)(2) offerings will be required to be registered in the states where the offerings will be made. The members of the Small Business/Limited Offerings Project Group have designed a coordinated review program for Section 3(b)(2) offerings to maximize efficiency and coordination among the states.

Accompanying this memo, we have included the following materials concerning the proposed coordinated review program:

- Review Protocol for NASAA Coordinated Review of Section 3(b)(2) Offerings;
- Memorandum of Understanding Among Members of the North American Securities Administrators Association, Inc. Concerning Participation in Coordinated Review of Section 3(b)(2) Offerings; and
- Application for Coordinated Review of Section 3(b)(2) Offering (Form CR-3(b)(2)-1).

In designing the proposed coordinated review program, the members of the Project Group considered the feedback provided to us by the members of the Reg. A+ Working Group of the State Regulation of Securities Committee of the American Bar Association's Business Law Section, as well as internal comments received from NASAA members. The Project Group members believe the proposed coordinated review program appropriately balances the suggestions of the Reg. A+ Working Group with the need for investor protection and the internal comments received from NASAA members.

### Proposed Coordinated Review Program

The proposed coordinated review program contemplates a one-stop filing for all states in which registration is required through the Electronic Filing Depository ("EFD") system currently in development by NASAA. The program administrator would select a lead merit examiner and a lead disclosure examiner from among the states in which registration is sought. If the issuer is not applying for registration in a state that applies merit standards, then only a lead disclosure examiner would be identified. The lead examiners would be responsible for drafting and circulating a comment letter to the participating jurisdictions. The lead examiners would also be responsible for seeking resolution of those comments with the issuer or issuer's counsel. As with existing coordinated review programs for registered public offerings, the issuer would have the option of withdrawing from select states or from coordinated review altogether. It is currently contemplated that Washington would serve as the program administrator.

By having the lead merit and disclosure examiners draft the initial comment letter, we believe there will be greater uniformity and less duplication of efforts among the states as compared to existing coordinated review programs. In the existing coordinated review programs, which include those for direct participation programs and equity offerings that are federally registered, each participating state submits comments to the lead examiners based on each state's individual review of the offering materials. This can result in a significant duplication of effort and varying comments. While individual states would continue to be afforded the opportunity to suggest additional comments and to ask for the inclusion of comments specific to an individual state's laws, each individual state would not be required to draft duplicative comments on the same issues. For example, where an issuer would be required to have independent directors, the lead examiners would draft that initial comment instead of having every participating state draft the same comment.

The coordinated review program would not be restricted to common stock offerings. As such, the Review Protocol specifies that comments will be based on whatever statements of policy are applicable. For copies of the statements of policy for various types of securities, see <http://www.nasaa.org/regulatory-activity/statements-of-policy/>.

The Review Protocol incorporates the following exceptions to existing statements of policy:

- The Statement of Policy Regarding Promoters' Equity Investment shall not apply;
- The Statement of Policy Regarding Promotional Shares shall apply except that one-third (1/3) of any promotional shares required to be locked-in or escrowed shall be released on the first, second, and third anniversary of the date of completion of the offering such that

all shares shall have been released from lock-in or escrow by the third anniversary of the date of completion of the offering; and

- The Statement of Policy Regarding Loans and Other Material Affiliated Transactions shall apply except that the disclosure document shall not be required to include representations by counsel to the issuer as contemplated in Section VII.C.3 of the policy.

Relief from these particular provisions is based on the comments received from the Reg. A+ Working Group. The Statement of Policy Regarding Promoters' Equity Investment is considered a potential "deal killer" for start-up companies by promoters who may not have put cash or physical assets into their companies, but who have contributed considerable "sweat equity." The members of the Project Group concluded that enforcement of the requirements of this statement of policy are not necessary to ensure appropriate investor protections are in place for these types of offerings. Other mechanisms, such as promotional share escrow or lock-in requirements, can be used to ensure that promoters' interests are aligned with public investors without disqualifying an offering. As such, the coordinated review program has been designed so that this Policy would not apply.

The Reg. A+ Working Group members also suggested that the promotional shares escrow or lock-in requirements in the Statement of Policy Regarding Promotional Shares should be relaxed for Section 3(b)(2) offerings. While the Project Group members did not believe the 180-day escrow or lock-in suggested would be sufficient to protect public investors, it was determined that the periods contemplated in the statement of policy were longer than necessary to protect public investors. The proposed coordinated review program is therefore designed to provide for shortened escrow or lock-in periods.

Finally, the review program is designed so that the disclosure document would not be required to include statements indicating issuer's counsel has performed due diligence as contemplated by the Statement of Policy Regarding Loans and Other Material Affiliated Transactions. The Reg. A+ Working Group pointed out that "counsel are generally not considered to be obliged under the securities laws to affirmatively perform due diligence concerning the disclosures in the offering materials." Further, it has been questioned as to whether administrative agencies may impose such requirements on counsel given the exclusive authority of state bar associations to regulate their members. For these reasons, the Project Group designed the review program such that this particular requirement would not apply to Section 3(b)(2) offerings. The Project Group has also made a suggestion to the Corporation Finance Policy Project Group to remove this requirement.

## NASAA Coordinated Review of Section 3(b)(2) Offerings

### Review Protocol

1. Applicants desiring coordinated multi-jurisdictional review of an offering to be conducted under Section 3(b)(2) of the Securities Act of 1933 shall file a request for coordinated review, along with required exhibits and filing fees, through the Electronic Filing Depository. The State of Washington is the program coordinator. Applicants shall indicate in what jurisdictions the offering is to be registered through coordinated review.
2. Washington will contact all participating jurisdictions to identify both a lead merit examiner and a lead disclosure examiner. If the issuer has not applied in a jurisdiction that applies merit standards, only a lead disclosure examiner will be identified. The lead examiner(s) will be identified within three (3) business days after receipt of the application for coordinated review.
3. The lead examiner(s) will draft and circulate a comment letter to the participating jurisdictions within ten (10) business days after their identification as lead examiner(s) by the program administrator. If the issuer has applied in a jurisdiction that applies merit standards, the lead merit examiner will include comments consistent with applicable NASAA Statements of Policy. The lead merit examiner shall apply and draft comments based on the applicable statements of policy, with the following exceptions:
  - a. The Statement of Policy Regarding Promoters' Equity Investment shall not apply;
  - b. The Statement of Policy Regarding Promotional Shares shall apply except that one-third (1/3) of any promotional shares required to be locked-in or escrowed shall be released on the first, second, and third anniversary of the date of completion of the offering such that all shares shall have been released from lock-in or escrow by the third anniversary of the date of completion of the offering; and
  - c. The Statement of Policy Regarding Loans and Other Material Affiliated Transactions shall apply except that the disclosure document shall not be required to include representations by counsel to the issuer as contemplated in Section VII.C.3 of the policy.
4. The participating jurisdictions shall have five (5) business days from the circulation of the draft comment letter by the lead examiners to submit additional comments or corrections to the lead examiners. If a jurisdiction does not submit comments to the lead examiners within five (5) business days, the lead examiners can assume the jurisdiction has no comments. After the expiration of the five (5) business days for review of the draft letter by the participating jurisdictions, the lead examiner(s) shall have three (3) business days to make any necessary revisions and send the initial comment letter to the issuer.
5. If the initial application is amended by adding more participating jurisdictions, the initial ten (10) business day review period will be extended to five (5) business days from the date the final amendment is received. Amendments to the application for purposes of adding

jurisdictions must be made prior to the expiration of the initial ten (10) business day review period. If an issuer seeks to add a jurisdiction after this time, the issuer may be required to pursue registration independently and be subject to non-coordinated review standards in each of the additional jurisdictions.

6. The lead examiners will communicate with the applicant and participating jurisdictions, as necessary, to resolve any outstanding comments. The lead jurisdictions will reply to each issuer's response to each coordinated review letter no later than five (5) business days after receipt of the issuer's response.
7. Participating jurisdictions will receive same-day notice from the lead disclosure examiner and the lead merit examiner when that lead examiner clears the application.
8. Once the lead disclosure examiner has cleared the application, all participating disclosure jurisdictions agree to clear the application.
9. Once the lead merit examiner has cleared the application, all participating merit jurisdictions agree to clear the application.

**MEMORANDUM OF UNDERSTANDING AMONG MEMBERS OF THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC. CONCERNING PARTICIPATION IN COORDINATED REVIEW OF SECTION 3(b)(2) OFFERINGS**

**WHEREAS**, The states participating in the Coordinated Review of Section 3(b)(2) offerings desire to achieve maximum uniformity and coordination in state regulatory standards in order to assist applicants seeking to register Section 3(b)(2) offerings; and

**WHEREAS**, These states desire to undertake their regulatory responsibilities regarding Section 3(b)(2) offerings in the most efficient and effective manner by sharing information, coordinating activities, and identifying regulatory priorities;

**NOW**, therefore, this state agrees as follows:

- I. To participate in a coordinated review system for Section 3(b)(2) offerings pursuant to the attached Review Protocol; and
- II. To adhere to the applicable NASAA Statements of Policy for registered securities offerings, as amended from time to time, that have been adopted by the state either for disclosure or merit purposes, whichever is applicable, unless all participating states agree to alter such Statements of Policy.

\_\_\_\_\_  
State

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Please return this signed form to: North American Securities Administrators Association, Inc.  
ATTN: Rick A. Fleming, Deputy General Counsel  
7501 First Street NE, Suite 1140  
Washington, D.C. 20002

## APPLICATION FOR COORDINATED REVIEW OF SECTION 3(b)(2) OFFERING

### Form CR-3(b)(2)-1

The Applicant hereby requests coordinated multi-jurisdictional review of an application for registration of an offering being made in reliance on the exemption from federal registration under Section 3(b)(2) of the Securities Act of 1933.

**Please note** this coordinated review program is not available to offerings registered under Section 5 of the Securities Act of 1933. Blank check offerings do not qualify for this coordinated review program. This program may not be available to an offering even if the offering fits within the initial screening criteria.

The state of [Washington] is acting as the Administrator of the coordinated review program. There is no additional fee for coordinated review.

The coordinated review process will take a minimum of 30 days. The Applicant should consider this time frame and file the application as soon as possible after filing with the Securities and Exchange Commission.

The Applicant agrees to resolve comments through the Lead Disclosure and the Lead Merit states until such time as the Lead states agree that the comment should be resolved through direct contact between the Applicant and the state with the unresolved comment.

### Jurisdictions of Application

Set forth below are the jurisdictions participating in this coordinated review program. [NOTE: The list will be modified to reflect only states who agree to participate.] This coordinated review program is available only if the issuer intends to register in two or more of the participating jurisdictions. Please indicate the jurisdictions in which you intend to file an application to register the offering through coordinated review. **Issuers are cautioned to identify all states in which they intend to utilize the coordinated review process. In accordance with the review protocol, it may not be possible to include additional states at a later date.**

<input type="checkbox"/> Alabama (M)	<input type="checkbox"/> Idaho (M)	<input type="checkbox"/> Missouri (M)	<input type="checkbox"/> Pennsylvania (M)
<input type="checkbox"/> Alaska (M)	<input type="checkbox"/> Illinois (D)	<input type="checkbox"/> Montana (M)	<input type="checkbox"/> Rhode Island (D)
<input type="checkbox"/> Arizona (M)	<input type="checkbox"/> Indiana (M)	<input type="checkbox"/> Nebraska (M)	<input type="checkbox"/> South Carolina(M)
<input type="checkbox"/> Arkansas (M)	<input type="checkbox"/> Iowa (M)	<input type="checkbox"/> New Hampshire (D)	<input type="checkbox"/> South Dakota (D)
<input type="checkbox"/> California (M)	<input type="checkbox"/> Kansas (M)	<input type="checkbox"/> New Jersey (D)*	<input type="checkbox"/> Tennessee (M)
<input type="checkbox"/> Colorado (D)	<input type="checkbox"/> Kentucky (M)	<input type="checkbox"/> New Mexico (M)	<input type="checkbox"/> Texas (M)
<input type="checkbox"/> Connecticut (D)	<input type="checkbox"/> Louisiana (D)	<input type="checkbox"/> New York (D)	<input type="checkbox"/> Utah (D)
<input type="checkbox"/> Delaware (D)	<input type="checkbox"/> Maine (M)	<input type="checkbox"/> Nevada (D)	<input type="checkbox"/> Vermont (M)
<input type="checkbox"/> District of Columbia (D)*	<input type="checkbox"/> Maryland (D)	<input type="checkbox"/> North Carolina (D)	<input type="checkbox"/> Virginia (M)
<input type="checkbox"/> Florida (D)	<input type="checkbox"/> Massachusetts (M)	<input type="checkbox"/> North Dakota (M)	<input type="checkbox"/> Washington (M)
<input type="checkbox"/> Georgia (D)	<input type="checkbox"/> Michigan (M)	<input type="checkbox"/> Ohio (M)	<input type="checkbox"/> West Virginia (D)*
<input type="checkbox"/> Hawaii (D)	<input type="checkbox"/> Minnesota (M)	<input type="checkbox"/> Oklahoma (M)	<input type="checkbox"/> Wisconsin (D)
	<input type="checkbox"/> Mississippi (M)	<input type="checkbox"/> Oregon (M)	<input type="checkbox"/> Wyoming (D)

M = Merit Review Jurisdiction

D = Disclosure Review Jurisdiction

\*NOTE: DC, NJ and WV reserve the right to make substantive comments in select areas.

The Applicant understands that any application filed in a state subsequent to the initial filing may be reviewed separately and may involve application of non-coordinated review standards. The Applicant should understand that the merit states participating in this program will be using certain NASAA Guidelines and/or Statements of Policy as the uniform standard. For information on the standards to be applied, please review the coordinated review program information website at <http://www.coordinatedreview.org>.

**Consent to Service of Process**

The Applicant irrevocably appoints the Securities Administrator or other legally designated officer of the jurisdiction in which the issuer maintains its principal place of business and any jurisdiction in which this application is filed, as its agents for service of process, and agrees that these persons may accept service on its behalf, of any notice, process or pleading, and further agrees that such service may be made by registered or certified mail, in any federal or state action, administrative proceeding, or arbitration brought against it arising out of, or in connection with, the sale of securities or out of violation of the laws of the jurisdictions so designated. The Applicant further hereby consents that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within the jurisdictions of application so designated hereunder by service of process upon the Securities Administrators or other legally designated officers so designated with the same effect as if the Applicant was organized or created under the laws of that jurisdiction and have been served lawfully with process in that jurisdiction. It is requested that a copy of any notice, process, or pleading served hereunder be mailed to:

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Name

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Address

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Authorized Representative:

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Signature

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Print Name

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Title

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Name of Issuer