

REQUEST FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO FOUR NASAA CORPORATION FINANCE STATEMENTS OF POLICY

March 7, 2023

Deadline for Public Comment: April 6, 2023

The Corporation Finance Section (“Section”) and the Corporation Finance Policy Project Group (“Project Group”) of the North American Securities Administrators Association, Inc. (“NASAA”) seek public comment on proposed amendments to the following four NASAA statements of policy (each individually an “SOP” and collectively the “SOPs”):

- 1) *NASAA Statement of Policy Regarding Debt Securities*;¹
- 2) *NASAA Statement of Policy Regarding the Impoundment of Proceeds*;²
- 3) *NASAA Statement of Policy Regarding Options and Warrants*;³ and
- 4) *NASAA Statement of Policy Regarding Promotional Shares*.⁴

The text of the revised SOPs are attached behind this request for public comment. Comments should be submitted on or before the deadline above. We are only accepting comments by electronic mail. Comments should be emailed to NASAAComments@nasaa.org, with a copy (via cc:) to the Section Chair, Bill Beatty (William.Beatty@dfi.wa.gov), and the Project Group Chair, Jeff Soderstedt (jsodersted@pa.gov). All comments received in response to this request will be posted to NASAA’s website (www.nasaa.org) without edit or redaction, though inappropriate comments will not be posted. Please do not include any information in your comment letter that you do not wish to become publicly available. After the close of the comment period, the Section and Project Group will review all comments received and consider whether to present the amended SOPs in their current or revised form for potential adoption by vote of the NASAA membership.

BACKGROUND ON PROPOSED AMENDMENTS

The Project Group recently reviewed NASAA’s corporation finance related statements of policy, including those related to the Coordinated Review (CR-Equity) program, for potential updates. The majority of CR-Equity statements of policy were adopted in 1997 and were last amended in

¹ The current text of this SOP is available at: https://www.nasaa.org/wp-content/uploads/2011/07/37-Debt_Securities.pdf.

² The current text of this SOP is available at: https://www.nasaa.org/wp-content/uploads/2011/07/29-IMPOUNDMENT_OF_PROCEEDS.pdf.

³ The current text of this SOP is available at: https://www.nasaa.org/wp-content/uploads/2011/07/20-OPTIONS_AND_WARRANTS.pdf.

⁴ The current text of this SOP is available at: https://www.nasaa.org/wp-content/uploads/2011/07/17-PROMOTIONAL_SHARES.pdf.

2008. The Project Group identified the attached four SOPs as warranting amendment. These amendments focus on the following areas:

- a) Conformity to Plain English standards and incorporation of streamlined introductory language;
- b) Maintaining consistency between the Uniform Securities Acts;
- c) Removal of definitions from the SOPs and incorporation of definitions into the *NASAA Statement of Policy Regarding Corporate Securities Definitions* (the “Definitions SOP”); and
- d) Improved clarity and ease of use.

OVERVIEW OF THE PROPOSED AMENDMENTS TO THE SOPS

I. Summary of Proposed Changes to the *NASAA Statement of Policy Regarding Debt Securities*

This SOP was last amended in 1993. The Project Group is seeking to modernize the SOP and to update its format for consistency with other NASAA statements of policy.

The formal introduction was replaced with a statement regarding the applicability of the SOP. The Project Group amended Section II to incorporate by reference definitions used in the Definitions SOP, though undefined terms retain their definitions.

Section III was revised to require that an issuer demonstrate a reasonable ability to service its debt securities. The Project Group polled a number of states that have their own debt security laws or regulations to find a formula that can be easily applied by the issuer to demonstrate its ability to service the debt as required by this provision. Section III was amended to include a ratio of earnings to fixed charges to accomplish this purpose.

Sections III-VII were revised for consistency with other NASAA statements of policy. Revisions include various formatting changes as well as changing “shall” to “must” throughout the document for Plain English readability.

II. Summary of Proposed Changes to the *NASAA Statement of Policy Regarding Impoundment of Proceeds*

This SOP was last amended in 2008. The Project Group proposes to amend the SOP as described herein.

Section III would be amended to give the Administrator discretion to require the impoundment of

proceeds for securities offerings that are not made through a firm underwriting. The Project Group added a requirement to Section IV that an issuer must identify the selected impoundment agent.

Section V would be revised to make it explicit that the issuer must enter into a written impoundment agreement. In Section V.A.3, the Project Group recommended a time limit for the impoundment agreement of one (1) year, to be extended only with the consent of the Administrator. If the term is extended beyond one year, investors would have the option to cancel their investments and have their principal returned with interest.

Finally, the Project Group proposed deleting provisions that would require the impoundment agreement authorize the Administrator to inspect and copy the impoundment agent's records, or to suspend registration of the offering if the impoundment agent is not abiding by the terms of the impoundment agreement. Since the Administrator is not a party to the impoundment agreement and the Administrator possesses the authority to do these things regardless of the impoundment agreement's contents, the Project Group concluded deleting these provisions is reasonable.

III. Summary of Proposed Changes to the NASAA Statement of Policy Regarding Options and Warrants

This SOP was last amended in 2008. The Project Group proposes minimal amendments to this SOP for clarity.

The order of topics in Sections III and IV of the SOP would be changed to create a more logical structure. Section III as revised would details the prohibitions that apply to the issuance of options and warrants while Section IV would detail the conditions for the permissible issuance of options and warrants.

IV. Summary of Proposed Changes to the NASAA Statement of Policy Regarding Promotional Shares

This SOP was last amended in 2008. The Project Group proposes several revisions.

The Project Group proposes to update the definitions in Section II to remove extraneous terms.

Section III of the SOP would be amended to note that an issuer's escrow of promotional shares, if required, would be performed pursuant to a deposit agreement. This change specifies a vehicle for deposit requirements and allows the parties to have rights in that agreement after registration review is concluded by an examiner or analyst. Additionally, the Project Group reinstated the ability of an Administrator to require lock-in agreements instead of the deposit agreement. The proposal includes several model lock-in agreements for this purpose.

Section IV would be revised to add an introduction describing the process for submitting a written

request for a release of promotional shares. The Project Group removed Section IV(B) of the SOP, which had required conduct by an issuer in a post-approval scenario but which lacked an enforcement mechanism for the Administrator. Finally, Section VI was updated to reflect the revisions being made in Section III.

CONCLUSION

The Section and the Project Group request public comment on these proposed revisions to the four SOPs. Clean copies of each SOP as it would be revised, plus redlines showing these proposed revisions against the current text of each SOP, are attached hereto.

ATTACHMENTS:

- **Revised *NASAA Statement of Policy Regarding Debt Securities*** (Clean and Redline)
- **Revised *NASAA Statement of Policy Regarding the Impoundment of Proceeds*** (Clean and Redline)
- **Revised *NASAA Statement of Policy Regarding Options and Warrants*** (Clean and Redline)
- **Revised *NASAA Statement of Policy Regarding Promotional Shares*** (Clean and Redline)

- Revised *NASAA Statement of Policy Regarding Debt Securities* -

(Clean and Redline)

NASAA STATEMENT OF POLICY REGARDING DEBT SECURITIES

Adopted April 25, 1993; Amended [____]

- I. INTRODUCTION.** This statement of policy applies to all applications to register debt securities with the Administrator by qualification or by coordination.
- II. DEFINITIONS.** This statement of policy uses the following terms defined in the *NASAA Statement of Policy Regarding Corporate Securities Definitions*:
- Administrator
 - Affiliate
 - Associate
 - Person
 - Promoter
- III. DEBT SECURITIES.** The issuer must demonstrate a reasonable ability to service the debt. For purposes of this policy statement, a “reasonable ability to service the debt” can be demonstrated by providing a ratio of earnings to fixed charges or a ratio of earnings to combined fixed charges of at least 1.00 for the three most recent fiscal years and the latest interim period preceding the date of effectiveness of such public offering.
- IV. DEBT SECURITIES WITH LIQUIDATION PRIORITY OVER PROMOTER OWNED DEBT.** The Administrator, in his or her discretion, may choose to not apply III., above, to public offerings of convertible debt securities that are superior in right of payment of interest and liquidation proceeds to any convertible debt that is or may be legally or beneficially, directly or indirectly, owned by Promoters. The risks of failure to meet debt service obligations and the equity characteristics of such securities must be disclosed in the prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.
- V. TRUST INDENTURE FOR DEBT SECURITIES.** Unless the Administrator permits otherwise, public offerings of debt securities shall be offered and sold pursuant to a Trust Indenture (“Indenture”) which adequately protects the rights of the purchasers. Some of these protections are:
- A. The Indenture must comply with the provisions of the Trust Indenture Act of 1939. This must be disclosed in the offering document.
 - B. The events of default of the Indenture shall be disclosed in the offering document.

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- C. The trustee must be provided with adequate reports, including any compliance reports from independent auditors, to allow the trustee to ensure compliance with the Indenture.
- D. Neither the trustee nor the issuer's Promoters may be major creditors of the issuer or its Affiliates.
- E. The Indenture must provide that upon any consolidation, merger, recapitalization, reorganization, pledge foreclosure, equity or share exchange, conveyance or transfer of the properties and assets of the issuer substantially as an entirety, or any other transaction having a substantially equivalent effect, the successor Person must expressly assume the payment obligations on the debt securities and the performance of the covenants of the Indenture.
- F. The Indenture must provide that interest will accrue and be paid until the date(s) of redemption or conversion of the debt securities.

VI. REDEMPTION REQUIREMENT. If the Administrator deems it necessary for investor protection, the Administrator may require that the issuer establish a sinking fund or redemption requirements.

NASAA STATEMENT OF POLICY REGARDING DEBT SECURITIES

Adopted April 25, 1993; Amended [___]

I. INTRODUCTION. ~~The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guideline relating to debt securities is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (“Administrator”) from applying different standards than those contained in this Statement of Policy. This statement of policy applies to all applications to register debt securities with the Administrator by qualification or by coordination.~~

H. DEFINITIONS. ~~The following definitions shall apply to this Statement of Policy.~~

A. ADJUSTED CASH FLOW ~~is the Issuer's CASH FLOW adjusted on a pro forma basis to reflect:~~

- ~~1. The elimination of interest and fees on debt or debt securities and of cash dividends on preferred stock that are to be retired with the proceeds derived from the offering;~~
- ~~2. The effect of any acquisitions or capital expenditures that were made by the Issuer after its last fiscal year, or which are proposed or required for the current fiscal year, which materially affect the Issuer's CASH FLOW;~~
- ~~3. The effect of interest and fees on debt w debt securities or cash dividends paid after the Issuer's last fiscal year;~~
- ~~4. The effect of any interest and fees on debt or debt securities and of cash dividends on preferred stock or common stock that were issued during the Issuer's last fiscal year, but which were outstanding for only a portion of such fiscal year, as if such debt, debt securities, preferred stock or common stock had been outstanding for the entire fiscal year;~~
- ~~5. The effect of imputed or deferred charges of zero coupon debt or debt securities for the Issuer's last fiscal year and any additional charges on such debt or debt securities issued after the Issuer's last fiscal year;~~
- ~~6. The effect of accrued dividends on preferred stock for the Issuer's last fiscal year and any additional dividends on such preferred stock issued after the Issuer's last fiscal year; and~~
- ~~7. The effect of any other material changes to the Issuer's future CASH FLOW.~~

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- ~~B. An AFFILIATE is a PERSON who, directly or indirectly, CONTROLS, is CONTROLLED by, or is under common CONTROL with the PERSON specified herein.~~
- ~~C. An ASSOCIATE, when used to indicate a relationship with a PERSON, includes:~~
- ~~1. Corporations or legal entities, other than the Issuer or majority-owned subsidiaries of the Issuer, of which a PERSON is an officer, director, partner,

or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of EQUITY SECURITIES;~~
 - ~~2. Trusts or other estates in which a PERSON has a substantial beneficial interest or for which a PERSON serves as a trustee or in a similar capacity; and~~
 - ~~3. A PERSON'S spouse and relatives, by blood or by marriage, if the PERSON is a PROMOTER of the Issuer, its subsidiaries, its AFFILIATES, or its parent.~~
- ~~D. CASH FLOW is the Issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, less interest and dividends, plus certain noncash charges against earnings such as depreciation, depletion and amortization, determined according to generally accepted accounting principles, consistently applied.~~
- ~~E. CONTROL is the power to direct or influence the direction of the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract or otherwise.~~
- ~~F. EQUITY SECURITIES include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into or exercised to purchase, shares of common stock or similar securities.~~
- ~~G. A PERSON is an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government, or any other legal entity.~~
- ~~H. A PROMOTER may include:~~
- ~~1. A PERSON who, alone or in conjunction with one or more PERSONS, directly or indirectly, look the initiative in founding or organizing the Issuer or CONTROLS the Issuer;~~
 - ~~2. A PERSON who, directly or indirectly, receives, as consideration for~~

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~~services and/or property rendered, five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or five percent (5%) or more of the proceeds from the sale of any class of the Issuer's EQUITY SECURITIES. A PERSON, who receives securities or proceeds solely as underwriting compensation, is excluded from the definition of PROMOTER if that PERSON falls outside of the definitions of II.H.1., above, or II.H.3., 4., or 5., below.~~

- ~~3. A PERSON who is an officer or director of the Issuer;~~
- ~~4. A PERSON who legally or beneficially, directly or indirectly, owns five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES ("5% shareholder") if that PERSON was in CONTROL of the Issuer at the time of acquiring five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or if that PERSON is in CONTROL of the Issuer at the time of the public offering of the Issuer's EQUITY SECURITIES; or~~
- ~~5. A PERSON who is an AFFILIATE or an ASSOCIATE of a PERSON specified in II.H.1., 2., 3., or 4., above.~~

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

Administrator
Affiliate
Associate
Person
Promoter

III. DEBT SECURITIES. The issuer must demonstrate a reasonable ability to service the debt. For purposes of this policy statement, a “reasonable ability to service the debt” can be demonstrated by providing a ratio of earnings to fixed charges or a ratio of earnings to combined fixed charges of at least 1.00 for the three most recent fiscal years and the latest interim period preceding the date of effectiveness of such public offering. ~~A public offering of debt securities may be disallowed by the Administrator if the Issuer's ADJUSTED CASH FLOW for the last fiscal year or its average ADJUSTED CASH FLOW for the last three (3) fiscal years prior to the public offering was insufficient to cover its fixed charges, meet its debt obligations as they became due, and service the debt securities being offered.~~

IV. ~~Notwithstanding II.A.6., above, accrued dividends of cumulative preferred stock having a stated interest rate may be excluded from ADJUSTED CASH FLOW at the discretion of the Administrator.~~

IV. DEBT SECURITIES WITH LIQUIDATION PRIORITY OVER

PROMOTER OWNED DEBT. The Administrator, in his or her discretion, may choose to not apply III., above, to public offerings of convertible debt securities that are superior in right of payment of interest and liquidation proceeds to any convertible debt that is or may be legally or beneficially, directly or indirectly, owned by ~~Promoters~~**PROMOTERS**. The risks of failure to meet debt service obligations and the equity characteristics of such securities must be disclosed in the prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.

VI.V. TRUST INDENTURE FOR DEBT SECURITIES. Unless the Administrator permits otherwise, public offerings of debt securities shall be offered and sold pursuant to a Trust Indenture (“Indenture”) which adequately protects the rights of the purchasers. Some of these protections are:

- A. The Indenture ~~shall~~**must** comply with the provisions of the Trust Indenture Act of 1939. This ~~shall~~**must** be disclosed in the offering document.
- B. The events of default of the Indenture shall be disclosed in the offering document.
- C. The trustee ~~shall~~**must** be provided with adequate reports, including any compliance reports from independent auditors, to allow the trustee to ensure compliance with the Indenture.
- D. Neither the trustee nor ~~its~~**the issuer’s Promoters** ~~PROMOTERS~~ may be major creditors of the ~~i~~ssuer or its ~~Affiliates~~**AFFILIATES**.
- E. The Indenture ~~shall~~**must** provide that upon any consolidation, merger, recapitalization, reorganization, pledge foreclosure, equity or share exchange, conveyance or transfer of the properties and assets of the ~~i~~ssuer substantially as an entirety, or any other transaction having a substantially equivalent effect, the successor ~~Person must~~ **PERSON** ~~shall~~ expressly assume the payment obligations on the debt securities and the performance of the covenants of the Indenture.
- F. The Indenture ~~shall~~**must** provide that interest will accrue and be paid ~~to~~ **until** the date(s) of redemption or conversion of the debt securities.

VII.VI. REDEMPTION REQUIREMENT. ~~If the Administrator deems it necessary for investor protection, the Administrator may require that the issuer establish a sinking fund or redemption requirements. If the Issuer’s CASH FLOW is subject to cyclical fluctuations or if the Administrator deems it necessary for investor protection, the Administrator may require that the Issuer establish a sinking fund or redemption requirements.~~

- **Revised *NASAA Statement of Policy Regarding the
Impoundment of Proceeds*** -

(Clean and Redline)

**NASAA STATEMENT OF POLICY REGARDING THE
IMPOUNDMENT OF PROCEEDS**

*As Adopted and Amended on April 27, 1997, September 28, 1999, March
31, 2008, and [____]*

- 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
Associate
Disclosure Document
Impoundment Agent
Person
Promoter
Underwriter

- III. REQUIREMENT FOR IMPOUNDMENT OF SECURITIES.** If an Underwriter has not firmly underwritten the offering, the Administrator may require the issuer to impound the proceeds as a condition of registration.
- IV. DEPOSIT OF PROCEEDS.**
- A. If the Administrator requires the impoundment of proceeds, the issuer or other Person that receives the proceeds from the sale of the securities must deposit the proceeds in an interest bearing escrow or trust account with an Impoundment Agent.
- B. The issuer must submit the name of the Impoundment Agent to the Administrator and a description of their relationship to the Impoundment Agent. The following are not eligible to act as an Impoundment Agent:
1. the issuer;

2. the issuer's officers or directors;
3. the Underwriter;
4. any Promoter; or
5. an Affiliate of any of the above.

V. The Impoundment Agreement.

- A. If the Administrator requires the impoundment of proceeds, the issuer must enter into a written Impoundment Agreement with the Impound Agent.
1. The Impoundment Agreement must provide that, until the Impoundment Agent releases the proceeds to the issuer under the terms of the Impoundment Agreement, the following persons do not have any claims to the impounded proceeds:
 - a. creditors of the issuer;
 - b. Affiliates;
 - c. Associates; or
 - d. Underwriters.
 2. The Impoundment Agreement must provide that:
 - a. The Impoundment Agent must notify the Administrator in writing when the Impoundment Agent releases the proceeds to the issuer or other person entitled to the proceeds; and
 - b. If the proceeds do not meet the minimum requirements within the time set out in the agreement, the Impoundment Agent:
 - i. must release and return the proceeds directly to the investors,
 - ii. when returning proceeds to investors, must also pay to the investors, on a pro rata basis, all interest earned on the proceeds, and
 - iii. must not deduct any expenses, including fees of the Impoundment Agent, commissions, underwriting fees or salaries.

3. The term of the Impoundment Agreement shall not exceed one year unless extended with the consent of the Administrator.
 4. If the Impoundment Agreement is extended to more than 1 year, the investor shall have the right to cancel the investment and have their money returned to include all interest earned on the proceeds.
- B. An officer from each of the issuer, Underwriter (if applicable), and Impoundment Agent must sign the Impoundment Agreement on behalf of the entity they represent.
 - C. The Disclosure Document must include a summary of the principal terms of the Impoundment Agreement.
 - D. The issuer or other Person offering securities under the Disclosure Document must file a signed copy of the Impoundment Agreement with the Administrator. On filing, the Impoundment Agreement becomes part of the Disclosure Document.

VI. PURCHASES BY UNDERWRITERS AND PERSONS CONNECTED TO THE ISSUER. If an Underwriter, officer, director, Promoter, Affiliate, or Associate of the issuer purchases shares in the public offering:

- A. The Underwriter, officer, director, Promoter, Affiliate, or Associate must purchase the securities on the same terms as unaffiliated public investors; and
- B. The Disclosure Document must disclose that an Underwriter, officer, director, Promoter, Affiliate, or Associate may purchase securities of the issuer for purposes of meeting the minimum requirements for disbursement under the Agreement.

NASAA STATEMENT OF POLICY REGARDING THE IMPOUNDMENT
OF PROCEEDS

*As Adopted and Amended on April 27, 1997, September 28, 1999, March 31,
2008, and [____]*

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

Associate

Disclosure Document

Impoundment Agent

Person

Promoter

Underwriter

III. **REQUIREMENT FOR IMPOUNDMENT OF SECURITIES.** ~~If an Underwriter has not firmly underwritten the offering, the Administrator may require the issuer to impound the proceeds as a condition of registration.~~ **DENIAL OF SECURITIES REGISTRATION**

~~If an Underwriter has not firmly underwritten the offering, the Administrator may deny the registration unless the issuer has impounded the proceeds.~~

IV. DEPOSIT OF PROCEEDS.

~~1-A.~~ If an the Administrator ~~has denied~~ requires the ~~registration under Section~~ H ~~impoundment of proceeds~~, the issuer or other ~~person~~ Person that receives the proceeds from the sale of the securities must deposit the proceeds in an interest bearing escrow or trust account with an Impoundment Agent.

~~2.~~B. The issuer must submit the name of the Impoundment Agent to the Administrator and a description of their relationship to the Impoundment Agent. The following are not eligible to act as an Impoundment Agent:

1. ~~the issuer;~~
2. ~~the issuer’s officers or directors;~~
- ~~1.~~ the Underwriter;
3. _____;
- ~~3.~~4. any Promoter; or
- ~~4.~~5. an Affiliate of any of the above.

V. The Impoundment Agreement.

A. ~~An~~ If the Administrator requires the impoundment of proceeds, the issuer must enter into a written Impoundment Agreement with the Impound Agent.

~~A.~~ The Impoundment Agreement must provide that, until the Impoundment
1. _____ Agent releases the proceeds to the issuer under the terms of the
Impoundment Agreement, the following persons do not have any claims to
the impounded proceeds:

~~1.a.~~ _____ creditors of the issuer;

~~2.b.~~ _____ Affiliates;

~~1.~~ _____ Associates; or

c. _____

~~3.d.~~ _____ Underwriters.

~~3.2.~~ The Impoundment Agreement must provide that:

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~~1.a.~~ 1.a. ~~the~~The Impoundment Agent must notify the Administrator in writing when the Impoundment Agent releases the proceeds to the issuer or other person entitled to the proceeds; and

~~2.b.~~ 2.b. ~~if~~If the proceeds do not meet the minimum requirements within the time set out in the ~~Agreement~~agreement, the Impoundment Agent:

~~a.~~ a. ~~—~~ must release and return the proceeds directly to the

~~i.~~ i. investors,

~~1.ii.~~ 1.ii. when returning proceeds to investors, must also pay to the investors, on a pro rata basis, all interest earned on the proceeds, and

~~2.iii.~~ 2.iii. must not deduct any expenses, including fees of the Impoundment Agent, commissions, underwriting fees or salaries.

~~4.3.~~ 4.3. The term of the Impoundment Agreement must provide that the shall not exceed one year unless extended with the consent of the Administrator ~~may~~.

~~2.~~ 2. ~~inspect the records of the Impoundment Agent at any reasonable time and where the records are located, and~~

~~3.~~ 3. ~~copy any record that is inspected.~~

4. If the Impoundment Agreement is extended to more than 1 year, the investor shall have the right to cancel the investment and have their money returned to include all interest earned on the proceeds.

~~5.B.~~ 5.B. An officer from each of the issuer, Underwriter (if applicable), and Impoundment Agent must sign the Impoundment Agreement on behalf of the entity they represent.

~~6.C.~~ 6.C. The Disclosure Document must include a summary of the principal terms of the Impoundment Agreement.

~~7.D.~~ 7.D. The issuer or other ~~person~~Person offering securities under the Disclosure Document must file a signed copy of the Impoundment Agreement with the Administrator. ~~On filing, the~~ Impoundment Agreement becomes part of the Disclosure Document.

IV.—PURCHASES BY UNDERWRITERS AND PERSONS CONNECTED TO THE ISSUER

~~. If the issuer receives proceeds of the public offering sold under a Disclosure~~
VI. ~~Statement from~~ an Underwriter ~~or an~~, officer, director, Promoter, Affiliate, or Associate of the ~~Issuer~~issuer purchases shares in the public offering:

~~1.A.~~ 1.A. The Underwriter ~~or other Person,~~ officer, director, Promoter, Affiliate, or Associate must purchase the securities on the same terms as unaffiliated public investors; and

~~1.B.~~ 1.B. The Disclosure Document must disclose that ~~a Person referred to in this section~~an Underwriter, officer, director, Promoter, Affiliate, or Associate may purchase securities of the ~~Issuer~~issuer for purposes of ~~completing~~meeting the ~~impoundment~~minimum requirements ~~imposed~~for disbursement under ~~this Statement of Policy~~the Agreement.

- Revised *NASAA Statement of Policy Regarding Options and Warrants* -

(Clean and Redline)

NASAA STATEMENT OF POLICY REGARDING OPTIONS AND WARRANTS

*As Adopted and Amended November 17, 1997, September 28, 1999,
March 31, 2008, and [____]*

I. INTRODUCTION. This statement of policy applies to all applications to register securities 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

Disclosure Document

Lock-In Agreement

Person

Promoter

Unaffiliated Institutional Investors

Underwriters

III. GENERAL PROHIBITIONS.

A. ***Limitation on Exercise Price.*** An issuer must provide in its charter documents that it may not grant options or warrants at an exercise price that is less than 85% of the fair market value of the issuer's underlying shares of common stock or similar securities on the date of grant. The issuer must demonstrate the underlying shares' fair market value to the Administrator's satisfaction. The Administrator may require the issuer to provide a concurrent appraisal of the shares' fair market value from a qualified independent appraiser.

B. ***Limitations on the Total Number of Options or Warrants.***

1. ***Fifteen Percent Limitation.*** For one year following the effective date of the public offering, the total number of options and warrants that the issuer may issue or reserve for issuance may not exceed 15% of the sum of the issuer's common stock outstanding at the date of the public offering plus: the number of firmly underwritten shares being offered, or the number of shares required to meet the minimum offering amount, if not firmly underwritten.

2. **Exclusions.** The calculation in paragraph 1 excludes options and warrants that:
 - a. The issuer issued or reserved for issuance under Section III.B.1, above;
 - b. The issuer issued or reserved for issuance to employees or consultants who are not Promoters under an incentive stock option plan under Section 422 of the Internal Revenue Code; or
 - c. A person may exercise at or above the offering price for public investors.
- C. **Excess Options.** If any options or warrants exceed the 15% limit established in Section III.B.1 (“Excess Options”), then the Administrator may require the issuer to:
 1. Cancel the Excess Options, or
 2. Subject the Excess Options to a Lock-in Agreement consistent with the terms specified in Section VI of the *Statement of Policy Regarding Promotional Shares*.

IV. GRANTS OF OPTIONS OR WARRANTS SUBJECT TO LIMITATION.

The charter documents of an issuer conducting a registered offering must limit the issuer’s ability to issue options and warrants to Unaffiliated Institutional Investors, Underwriters, or in connection with acquisitions, reorganizations, consolidations, or mergers as follows:

- A. An issuer may issue options or warrants to Unaffiliated Institutional Investors in connection with a loan if:
 1. the options or warrants are issued at the same time as the loan;
 2. the options or warrants are issued as the result of negotiations between the issuer and the Unaffiliated Institutional Investor;
 3. the exercise price of the options or warrants is not less than the fair market value of the issuer’s common stock or similar securities underlying the options or warrants on the date the loan was approved; and

4. the number of shares that can be issued on exercise of the options or warrants multiplied by the options or warrants' exercise price does not exceed the face amount of the loan.
- B. An issuer may issue options or warrants to Underwriters as compensation in connection with a public offering if those options or warrants comply with the requirements of the *NASAA Statement of Policy Regarding Underwriting and Selling Expenses, Underwriter's Warrants, and Selling Security Holders*.
- C. An issuer may issue options or warrants in connection with acquisitions, reorganizations, consolidations, or mergers, if:
1. the options or warrants are issued to Persons that are unaffiliated with the issuer; and
 2. exercising the options or warrants will not materially dilute the issuer's earnings:
 - a. At the time of grant, and
 - b. After giving effect to the acquisition, reorganization, consolidation, or merger.
- V. **DISCLOSURE REQUIREMENTS.** The issuer's Disclosure Document must disclose the potential dilution to public investors as a result of the issuer's outstanding and reserved options and warrants.

NASAA STATEMENT OF POLICY REGARDING OPTIONS AND
WARRANTS

*As Adopted and Amended November 17, 1997, September 28, 1999,
March 31, 2008, and [_____]*

I. **INTRODUCTION.** This statement of policy applies to all applications to register securities 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

Disclosure Document

Lock-In Agreement

Person

Promoter

Unaffiliated Institutional Investors

Underwriters

III. **GENERAL PROHIBITIONS**

~~A.~~ ***Limitation on Exercise Price.*** -An issuer must provide in its charter documents that it may not grant options or warrants at an exercise price that is less than 85% of the fair market value of the issuer's underlying shares of common stock or similar securities on the date of grant. -The issuer must demonstrate the underlying shares' fair market value to the

A. Administrator's satisfaction. The Administrator may require the issuer to provide a concurrent appraisal of the shares' fair market value from a qualified independent appraiser.

B. ***Limitations on the Total Number of Options or Warrants.***

1. ***Fifteen Percent Limitation.*** -For one year following the effective date of the public offering, the total number of options and warrants that the issuer may issue or reserve for issuance may not exceed 15% of the sum of the issuer's common stock outstanding at the date of the public offering plus: the number of firmly underwritten shares being offered, or the number of shares required to meet the minimum offering amount, if not firmly underwritten.

- ~~a. the number of firmly underwritten shares being offered, or~~
- ~~b. the number of shares required to meet the minimum offering amount, if not firmly underwritten.~~

2. **Exclusions.** -The calculation in paragraph 1 excludes options and warrants that:

- a. ~~the~~The issuer issued or reserved for issuance under ~~section~~Section III.B.1, above;²
- b. ~~the~~The issuer issued or reserved for issuance to employees or consultants who are not Promoters under an incentive stock option plan under Section 422 of the Internal Revenue Code;² or
- c. ~~a~~A person may exercise at or above the offering price for public investors.

~~3.C.~~ **Excess Options.** -If any options or warrants exceed the 15% limit established in ~~paragraph~~Section III.B.1 (“Excess Options”), then the Administrator may require the issuer to:

- ~~a.1.~~ ~~cancel~~Cancel the Excess Options, or
- ~~b.2.~~ ~~subject~~Subject the Excess Options to a Lock-in Agreement consistent with the terms specified in ~~section~~Section VI of the *Statement of Policy Regarding Promotional Shares*.

IV. ~~PERMISSIBLE~~ GRANTS OF OPTIONS OR WARRANTS SUBJECT TO LIMITATION. The charter documents of an issuer conducting a registered offering must limit the issuer’s ability to issue options and warrants to Unaffiliated Institutional Investors, Underwriters, or in connection with acquisitions, reorganizations, consolidations, or mergers as follows:

An issuer may issue options or warrants:

~~A. To~~ to Unaffiliated Institutional Investors in connection with a loan if:

A.

- 1. the options or warrants are issued at the same time as the loan;
- 2. the options or warrants are issued as the result of negotiations between the issuer and the Unaffiliated Institutional Investor;

3. the exercise price of the options or warrants is not less than the fair market value of the issuer's common stock or similar securities underlying the options or warrants on the date the loan was approved; and
 4. the number of shares that can be issued on exercise of the options or warrants multiplied by the options or warrants' exercise price does not exceed the face amount of the loan.
- B. ~~To~~An issuer may issue options or warrants to Underwriters as compensation in connection with a public offering if those options or warrants comply with the requirements of the *NASAA Statement of Policy Regarding Underwriting and Selling Expenses, Underwriter's Warrants, ~~Selling Expenses~~, and Selling Security Holders.*
- C. ~~In~~An issuer may issue options or warrants in connection with acquisitions, reorganizations, consolidations, or mergers, if:
1. the options or warrants are issued to Persons that are unaffiliated with the issuer; and
 2. exercising the options or warrants will not materially dilute the issuer's earnings:
 - a. ~~at~~At the time of grant, and
 - b. ~~after~~After giving effect to the acquisition, reorganization, consolidation, or merger.

~~V. DISCLOSURE REQUIREMENTS. The issuer's Disclosure Document must disclose the potential dilution to public investors as a result of the issuer's outstanding and reserved options and warrants. If the number of options and warrants that the issuer has issued and that remain outstanding or that the issuer has reserved for issuance is material, the issuer's Disclosure Document must disclose the potential dilution of the options and warrants. The issuer's Disclosure Document must present this disclosure in accordance with Item 506 of Regulation S-K.~~

- Revised *NASAA Statement of Policy Regarding Promotional Shares* -

(Clean and Redline)

NASAA STATEMENT OF POLICY REGARDING PROMOTIONAL SHARES

*As Adopted and Amended November 17, 1997, September 28, 1999,
March 31, 2008, and [____]*

- I. INTRODUCTION.** This statement of policy applies to all applications to register securities 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
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 the issuer enter into a deposit agreement (“Deposit Agreement”) that requires 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.” Alternatively, the Administrator may require a Lock-In Agreement on substantially the same terms and conditions as a Deposit Agreement. (See Appendix A for Model Lock-In Agreements).

- 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. Upon written request as described in Section VI, the Escrow Agent must release the Promotional Shares held in escrow in the manner set out below. If the issuer’s Aggregate Revenues are:

1. \$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:
 - a. Year 1 – none
 - b. Year 2 – 2 ½% pro rata per quarter
 - c. Year 3 – all
 2. Less than \$500,000 (class B offering), then the required release of escrow or lock-in shares are as follows:
 - a. Year 1 – none
 - b. Year 2 – none
 - c. Year 3 – 2 ½% pro rata per quarter
 - d. Year 4 – 2 ½% pro rata per quarter
 - e. Year 5 – all
- B. If the public offering is terminated, and no securities were sold, the Escrow Agent must release all securities in escrow.
- C. 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 Deposit Agreement must provide 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 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. The Deposit Agreement must provide that:

- 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.

– APPENDIX A –

MODEL PROMOTIONAL SHARES LOCK-IN AGREEMENT

Class A Issuer

I. This Promotional Shares Lock-In Agreement ("Agreement"), which was entered into on the __ day of _____, 20 __, by and between ____ ("Issuer"), whose principal place of business is located in _____, and __ ("Security Holder") witnesses that:

- A. The Issuer has filed an application with the Securities Administrator of the States of _ ("Administrators") to register certain of its Equity Securities for sale to public investors who are residents of those states ("Registration");
- B. The Security Holder is the owner of the shares of common stock or similar securities and/or possesses convertible securities, warrants, options or rights which may be converted into, or exercised to purchase shares of common stock or similar securities of Issuer.
- C. As a condition to Registration, the Issuer and Security Holder ("Signatories") agree to be bound by the terms of this Agreement.

II. THEREFORE, the Security Holder agrees not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, PROMOTIONAL SHARES as defined in the North American Securities Administrators Association ("NASAA") Statement of Policy on Corporate Securities Definitions and all certificates representing stock dividends, stock splits, recapitalizations, and the like, that are granted to, or received by, the Security Holder while the PROMOTIONAL SHARES are subject to this Agreement ("Restricted Securities").

Beginning one year from the completion date of the public offering, two and one-half percent (2 1/2%) of the Restricted Securities may be released each quarter pro rata among the Security Holders. All remaining Restricted Securities shall be released from this Agreement on the anniversary of the second year from the completion date of the public offering.

III. THEREFORE, the Signatories agree and will cause the following:

- A. In the event of a dissolution, liquidation, merger, consolidation,

– APPENDIX A –

reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is not a Promoter, which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect that:

1. All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share for their EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration), until the shareholders who purchased the Issuer's EQUITY SECURITIES pursuant to the public offering ("Public Shareholders") have received, or have had irrevocably set aside for them, an amount that is equal to one hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends recapitalizations and the like; and
 2. All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like.
 3. The Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs 1 and 2 above if a majority of the EQUITY SECURITIES that are not held by Security Holders, officers, directors, or Promoters of the Issuer, or their associates or affiliates vote, or consent by consent procedure, to approve the lesser terms and conditions.
- B. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is a Promoter, which results in a Distribution while this Agreement remains in effect, the Restricted Securities shall remain subject to the terms of this Agreement.
- C. Restricted Securities may be transferred by will, the laws of

– APPENDIX A –

descent and distribution, the operation of law, or by order of any court of competent jurisdiction and proper venue.

- D. Restricted Securities of a deceased Security Holder may be hypothecated to pay the expenses of the deceased Security Holder's estate. The hypothecated Restricted Securities shall remain subject to the terms of this Agreement. Restricted Securities may not be pledged to secure any other debt.
- E. Restricted Securities may be transferred by gift to the Security Holder's family members, provided that the Restricted Securities shall remain subject to the terms of this Agreement.
- F. With the exception of paragraph A.3 above, the Restricted Securities shall have the same voting rights as similar EQUITY SECURITIES not subject to the Agreement.
- G. A notice shall be placed on the face of each stock certificate of the Restricted Securities covered by the terms of the Agreement stating that the transfer of the stock evidenced by the certificate is restricted in accordance with the conditions set forth on the reverse side of the certificate; and
- H. A typed legend shall be placed on the reverse side of each stock certificate of the Restricted Securities representing stock covered by the Agreement which states that the sale or transfer of the shares evidenced by the certificate is subject to certain restrictions until _ (insert date of termination of the Agreement) pursuant to an agreement between the Security Holder (whether beneficial or of record) and the Issuer, which agreement is on file with the Issuer and the stock transfer agent from which a copy is available upon request and without charge.
- I. The term of this Agreement shall begin on the date that the Registration is declared effective by the Administrators ("Effective Date") and shall terminate:
 - 1. On the anniversary of the second year from the completion date of the public offering; or
 - 2. On the date the Registration has been terminated if no securities were sold pursuant thereto; or

– APPENDIX A –

3. If the Registration has been terminated, the date that checks representing all of the gross proceeds that were derived therefrom and addressed to the public investors have been placed in the U.S. Postal Service with first class postage affixed; or

4. On the date the securities subject to this Agreement become "Covered Securities," as defined under the National Securities Markets Improvement Act of 1996.

J. This Agreement to be modified only with the written approval of the Administrators.

IV. THEREFORE, the Issuer will cause the following:

- A. A manually signed copy of the Agreement signed by the Signatories to be filed with the Administrators prior to the Effective Date;
- B. Copies of the Agreement and a statement of the per share initial public offering price to be provided to the Issuer's stock transfer agent;
- C. Appropriate stock transfer orders to be placed with the Issuer's stock transfer agent against the sale or transfer of the shares covered by the Agreement prior to its expiration, except as may otherwise be provided in this Agreement;
- D. The above stock restriction legends to be placed on the periodic statement sent to the registered owner if the securities subject to this Agreement are uncertificated securities.

Pursuant to the requirements of this Agreement, the Signatories have entered into this Agreement, which may be written in multiple counterparts and each of which shall be considered an original. The Signatories have signed the Agreement in the capacities, and on the dates, indicated.

IN WITNESS WHEREOF, the Signatories have executed this Agreement.

(ISSUERS NAME)

[DRAFT – CLEAN]

– APPENDIX A –

By _____
President

Signature

Printed Name of Security Holder

Title, if applicable

– APPENDIX A –

MODEL PROMOTIONAL SHARES LOCK-IN AGREEMENT

Class B Issuer

- I. This Promotional Shares Lock-In Agreement ("Agreement"), which was entered into on the __ day of _____, 20___, by and between ____ ("Issuer"), whose principal place of business is located in _____, and __ ("Security Holder") witnesses that:
- A. The Issuer has filed an application with the Securities Administrator of the States of _ ("Administrators") to register certain of its Equity Securities for sale to public investors who are residents of those states ("Registration");
 - B. The Security Holder is the owner of the shares of common stock or similar securities and/or possesses convertible securities, warrants, options or rights which may be converted into, or exercised to purchase shares of common stock or similar securities of Issuer.
 - C. As a condition to Registration, the Issuer and Security Holder ("Signatories") agree to be bound by the terms of this Agreement.
- II. THEREFORE, the Security Holder agrees not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, PROMOTIONAL SHARES as defined in the North American Securities Administrators Association ("NASAA") Statement of Policy on Corporate Securities Definitions and all certificates representing stock dividends, stock splits, recapitalizations, and the like, that are granted to, or received by, the Security Holder while the PROMOTIONAL SHARES are subject to this Agreement ("Restricted Securities").
- Beginning two years from the completion date of the public offering, two and one-half percent (2 1/2%) of the Restricted Securities may be released each quarter pro rata among the Security Holders. All remaining Restricted Securities shall be released from this Agreement on the anniversary of the fourth year from the completion date of the public offering.
- III. THEREFORE, the Signatories agree and will cause the following:
- A. In the event of a dissolution, liquidation, merger, consolidation,

– APPENDIX A –

reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is not a Promoter, which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect that:

1. All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share for their EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration), until the shareholders who purchased the Issuer's EQUITY SECURITIES pursuant to the public offering ("Public Shareholders") have received, or have had irrevocably set aside for them, an amount that is equal to one hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends recapitalizations and the like; and
 2. All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like.
 3. The Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs 1 and 2 above if a majority of the EQUITY SECURITIES that are not held by Security Holders, officers, directors, or Promoters of the Issuer, or their associates or affiliates vote, or consent by consent procedure, to approve the lesser terms and conditions.
- B. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is a Promoter, which results in a Distribution while this Agreement remains in effect, the Restricted Securities shall remain subject to the terms of this Agreement.
- C. Restricted Securities may be transferred by will, the laws of

– APPENDIX A –

descent and distribution, the operation of law, or by order of any court of competent jurisdiction and proper venue.

- D. Restricted Securities of a deceased Security Holder may be hypothecated to pay the expenses of the deceased Security Holder's estate. The hypothecated Restricted Securities shall remain subject to the terms of this Agreement. Restricted Securities may not be pledged to secure any other debt.
- E. Restricted Securities may be transferred by gift to the Security Holder's family members, provided that the Restricted Securities shall remain subject to the terms of this Agreement.
- F. With the exception of paragraph A.3 above, the Restricted Securities shall have the same voting rights as similar EQUITY SECURITIES not subject to the Agreement.
- G. A notice shall be placed on the face of each stock certificate of the Restricted Securities covered by the terms of the Agreement stating that the transfer of the stock evidenced by the certificate is restricted in accordance with the conditions set forth on the reverse side of the certificate; and
- H. A typed legend shall be placed on the reverse side of each stock certificate of the Restricted Securities representing stock covered by the Agreement which states that the sale or transfer of the shares evidenced by the certificate is subject to certain restrictions until _ (insert date of termination of the Agreement) pursuant to an agreement between the Security Holder (whether beneficial or of record) and the Issuer, which agreement is on file with the Issuer and the stock transfer agent from which a copy is available upon request and without charge.
- I. The term of this Agreement shall begin on the date that the Registration is declared effective by the Administrators ("Effective Date") and shall terminate:
 - 1. On the anniversary of the fourth year from the completion date of the public offering; or
 - 2. On the date the Registration has been terminated if no securities were sold pursuant thereto; or

– APPENDIX A –

3. If the Registration has been terminated, the date that checks representing all of the gross proceeds that were derived therefrom and addressed to the public investors have been placed in the U.S. Postal Service with first class postage affixed; or

4. On the date the securities subject to this Agreement become "Covered Securities," as defined under the National Securities Markets Improvement Act of 1996.

J. This Agreement to be modified only with the written approval of the Administrators.

IV. THEREFORE, the Issuer will cause the following:

- A. A manually signed copy of the Agreement signed by the Signatories to be filed with the Administrators prior to the Effective Date;
- B. Copies of the Agreement and a statement of the per share initial public offering price to be provided to the Issuer's stock transfer agent;
- C. Appropriate stock transfer orders to be placed with the Issuer's stock transfer agent against the sale or transfer of the shares covered by the Agreement prior to its expiration, except as may otherwise be provided in this Agreement;
- D. The above stock restriction legends to be placed on the periodic statement sent to the registered owner if the securities subject to this Agreement are uncertificated securities.

Pursuant to the requirements of this Agreement, the Signatories have entered into this Agreement, which may be written in multiple counterparts and each of which shall be considered an original. The Signatories have signed the Agreement in the capacities, and on the dates, indicated.

IN WITNESS WHEREOF, the Signatories have executed this Agreement.

(ISSUERS NAME)

[DRAFT – CLEAN]

– APPENDIX A –

By _____
President

Signature

Printed Name of Security Holder

Title, if applicable

**NASAA STATEMENT OF POLICY REGARDING
PROMOTIONAL SHARES**

*As Adopted and Amended November 17, 1997, September 28, 1999, and
March 31, 2008-, and []*

- I. INTRODUCTION.** This statement of policy applies to all applications to register securities 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 the issuer enter into a deposit agreement (“Deposit Agreement”) that requires 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”~~”.~~” Alternatively, the Administrator may require a Lock-In Agreement on substantially the same terms and conditions as a Deposit Agreement. (See Appendix A for Model Lock-In Agreements).

- 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~~ 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~~ Upon written request as described in Section VI, the Escrow Agent must release the Promotional Shares held in escrow in the manner set out ~~in the table~~ below:

A. . If the issuer's Aggregate Revenues are:

~~a.~~ 1. \$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:

a. ~~i.~~ Year 1 – none ~~ii.~~

b. Year 2 – 2 ½% pro rata per quarter ~~iii.~~

Year 3 – all

c.

~~b.~~ 2. 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~~

a. Year 1 – none

b. Year 2 – none ~~iii.~~

c. Year 3 – 2 ½% pro rata per quarter ~~iv.~~

d. 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.~~

e.

~~C.~~ If the public offering is terminated, and no securities were sold, the Escrow Agent must release all securities in escrow.

B.

~~D.~~ C. 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~~ Deposit Agreement must provide 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~~ Person that -is not a Promoter~~;~~:

1. Holders of the issuer’s Equity Securities initially share in the distribution on a pro ~~rat~~abasis~~rat~~ 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 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. The Deposit Agreement must provide that:

- 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.

-- APPENDIX A --

MODEL PROMOTIONAL SHARES LOCK-IN AGREEMENT

Class A Issuer

I. This Promotional Shares Lock-In Agreement ("Agreement"), which was entered into on the day of , 20 , by and between ("Issuer"), whose principal place of business is located in , and ("Security Holder") witnesses that:

A. The Issuer has filed an application with the Securities Administrator of the States of ("Administrators") to register certain of its Equity Securities for sale to public investors who are residents of those states ("Registration");

B. The Security Holder is the owner of the shares of common stock or similar securities and/or possesses convertible securities, warrants, options or rights which may be converted into, or exercised to purchase shares of common stock or similar securities of Issuer.

C. As a condition to Registration, the Issuer and Security Holder ("Signatories") agree to be bound by the terms of this Agreement.

II. THEREFORE, the Security Holder agrees not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, PROMOTIONAL SHARES as defined in the North American Securities Administrators Association ("NASAA") Statement of Policy on Corporate Securities Definitions and all certificates representing stock dividends, stock splits, recapitalizations, and the like, that are granted to, or received by, the Security Holder while the PROMOTIONAL SHARES are subject to this Agreement ("Restricted Securities").

Beginning one year from the completion date of the public offering, two and one-half percent (2 1/2%) of the Restricted Securities may be released each quarter pro rata among the Security Holders. All remaining Restricted Securities shall be released from this Agreement on the anniversary of the second year from the completion date of the public offering.

III. THEREFORE, the Signatories agree and will cause the following:

A. In the event of a dissolution, liquidation, merger, consolidation,

-- APPENDIX A --

reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is not a Promoter, which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect that:

1. All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share for their EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration), until the shareholders who purchased the Issuer's EQUITY SECURITIES pursuant to the public offering ("Public Shareholders") have received, or have had irrevocably set aside for them, an amount that is equal to one hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends recapitalizations and the like; and

2. All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like.

3. The Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs 1 and 2 above if a majority of the EQUITY SECURITIES that are not held by Security Holders, officers, directors, or Promoters of the Issuer, or their associates or affiliates vote, or consent by consent procedure, to approve the lesser terms and conditions.

B. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is a Promoter, which results in a Distribution while this Agreement remains in effect, the Restricted Securities shall remain subject to the terms of this Agreement.

C. Restricted Securities may be transferred by will, the laws of

-- APPENDIX A --

descent and distribution, the operation of law, or by order of any court of competent jurisdiction and proper venue.

- D. Restricted Securities of a deceased Security Holder may be hypothecated to pay the expenses of the deceased Security Holder's estate. The hypothecated Restricted Securities shall remain subject to the terms of this Agreement. Restricted Securities may not be pledged to secure any other debt.
- E. Restricted Securities may be transferred by gift to the Security Holder's family members, provided that the Restricted Securities shall remain subject to the terms of this Agreement.
- F. With the exception of paragraph A.3 above, the Restricted Securities shall have the same voting rights as similar EQUITY SECURITIES not subject to the Agreement.
- G. A notice shall be placed on the face of each stock certificate of the Restricted Securities covered by the terms of the Agreement stating that the transfer of the stock evidenced by the certificate is restricted in accordance with the conditions set forth on the reverse side of the certificate; and
- H. A typed legend shall be placed on the reverse side of each stock certificate of the Restricted Securities representing stock covered by the Agreement which states that the sale or transfer of the shares evidenced by the certificate is subject to certain restrictions until (insert date of termination of the Agreement) pursuant to an agreement between the Security Holder (whether beneficial or of record) and the Issuer, which agreement is on file with the Issuer and the stock transfer agent from which a copy is available upon request and without charge.
- I. The term of this Agreement shall begin on the date that the Registration is declared effective by the Administrators ("Effective Date") and shall terminate:
1. On the anniversary of the second year from the completion date of the public offering; or
 2. On the date the Registration has been terminated if no securities were sold pursuant thereto; or

-- APPENDIX A --

3. If the Registration has been terminated, the date that checks representing all of the gross proceeds that were derived therefrom and addressed to the public investors have been placed in the U.S. Postal Service with first class postage affixed; or

4. On the date the securities subject to this Agreement become "Covered Securities," as defined under the National Securities Markets Improvement Act of 1996.

J. This Agreement to be modified only with the written approval of the Administrators.

IV. THEREFORE, the Issuer will cause the following:

A. A manually signed copy of the Agreement signed by the Signatories to be filed with the Administrators prior to the Effective Date;

B. Copies of the Agreement and a statement of the per share initial public offering price to be provided to the Issuer's stock transfer agent;

C. Appropriate stock transfer orders to be placed with the Issuer's stock transfer agent against the sale or transfer of the shares covered by the Agreement prior to its expiration, except as may otherwise be provided in this Agreement;

D. The above stock restriction legends to be placed on the periodic statement sent to the registered owner if the securities subject to this Agreement are uncertificated securities.

Pursuant to the requirements of this Agreement, the Signatories have entered into this Agreement, which may be written in multiple counterparts and each of which shall be considered an original. The Signatories have signed the Agreement in the capacities, and on the dates, indicated.

IN WITNESS WHEREOF, the Signatories have executed this Agreement.

(ISSUERS NAME)

-- APPENDIX A --

By _____
President

Signature

Printed Name of Security Holder

Title, if applicable

-- APPENDIX A --

MODEL PROMOTIONAL SHARES LOCK-IN AGREEMENT

Class B Issuer

I. This Promotional Shares Lock-In Agreement ("Agreement"), which was entered into on the day of , 20 , by and between ("Issuer"), whose principal place of business is located in , and ("Security Holder") witnesses that:

A. The Issuer has filed an application with the Securities Administrator of the States of ("Administrators") to register certain of its Equity Securities for sale to public investors who are residents of those states ("Registration");

B. The Security Holder is the owner of the shares of common stock or similar securities and/or possesses convertible securities, warrants, options or rights which may be converted into, or exercised to purchase shares of common stock or similar securities of Issuer.

C. As a condition to Registration, the Issuer and Security Holder ("Signatories") agree to be bound by the terms of this Agreement.

II. THEREFORE, the Security Holder agrees not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, PROMOTIONAL SHARES as defined in the North American Securities Administrators Association ("NASAA") Statement of Policy on Corporate Securities Definitions and all certificates representing stock dividends, stock splits, recapitalizations, and the like, that are granted to, or received by, the Security Holder while the PROMOTIONAL SHARES are subject to this Agreement ("Restricted Securities").

Beginning two years from the completion date of the public offering, two and one-half percent (2 1/2%) of the Restricted Securities may be released each quarter pro rata among the Security Holders. All remaining Restricted Securities shall be released from this Agreement on the anniversary of the fourth year from the completion date of the public offering.

III. THEREFORE, the Signatories agree and will cause the following:

A. In the event of a dissolution, liquidation, merger, consolidation,

-- APPENDIX A --

reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is not a Promoter, which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect that:

1. All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share for their EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration), until the shareholders who purchased the Issuer's EQUITY SECURITIES pursuant to the public offering ("Public Shareholders") have received, or have had irrevocably set aside for them, an amount that is equal to one hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends recapitalizations and the like; and

2. All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like.

3. The Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs 1 and 2 above if a majority of the EQUITY SECURITIES that are not held by Security Holders, officers, directors, or Promoters of the Issuer, or their associates or affiliates vote, or consent by consent procedure, to approve the lesser terms and conditions.

B. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a person who is a Promoter, which results in a Distribution while this Agreement remains in effect, the Restricted Securities shall remain subject to the terms of this Agreement.

C. Restricted Securities may be transferred by will, the laws of

-- APPENDIX A --

descent and distribution, the operation of law, or by order of any court of competent jurisdiction and proper venue.

- D. Restricted Securities of a deceased Security Holder may be hypothecated to pay the expenses of the deceased Security Holder's estate. The hypothecated Restricted Securities shall remain subject to the terms of this Agreement. Restricted Securities may not be pledged to secure any other debt.
- E. Restricted Securities may be transferred by gift to the Security Holder's family members, provided that the Restricted Securities shall remain subject to the terms of this Agreement.
- F. With the exception of paragraph A.3 above, the Restricted Securities shall have the same voting rights as similar EQUITY SECURITIES not subject to the Agreement.
- G. A notice shall be placed on the face of each stock certificate of the Restricted Securities covered by the terms of the Agreement stating that the transfer of the stock evidenced by the certificate is restricted in accordance with the conditions set forth on the reverse side of the certificate; and
- H. A typed legend shall be placed on the reverse side of each stock certificate of the Restricted Securities representing stock covered by the Agreement which states that the sale or transfer of the shares evidenced by the certificate is subject to certain restrictions until (insert date of termination of the Agreement) pursuant to an agreement between the Security Holder (whether beneficial or of record) and the Issuer, which agreement is on file with the Issuer and the stock transfer agent from which a copy is available upon request and without charge.
- I. The term of this Agreement shall begin on the date that the Registration is declared effective by the Administrators ("Effective Date") and shall terminate:
1. On the anniversary of the fourth year from the completion date of the public offering; or
 2. On the date the Registration has been terminated if no securities were sold pursuant thereto; or

-- APPENDIX A --

3. If the Registration has been terminated, the date that checks representing all of the gross proceeds that were derived therefrom and addressed to the public investors have been placed in the U.S. Postal Service with first class postage affixed; or

4. On the date the securities subject to this Agreement become "Covered Securities," as defined under the National Securities Markets Improvement Act of 1996.

J. This Agreement to be modified only with the written approval of the Administrators.

IV. THEREFORE, the Issuer will cause the following:

A. A manually signed copy of the Agreement signed by the Signatories to be filed with the Administrators prior to the Effective Date;

B. Copies of the Agreement and a statement of the per share initial public offering price to be provided to the Issuer's stock transfer agent;

C. Appropriate stock transfer orders to be placed with the Issuer's stock transfer agent against the sale or transfer of the shares covered by the Agreement prior to its expiration, except as may otherwise be provided in this Agreement;

D. The above stock restriction legends to be placed on the periodic statement sent to the registered owner if the securities subject to this Agreement are uncertificated securities.

Pursuant to the requirements of this Agreement, the Signatories have entered into this Agreement, which may be written in multiple counterparts and each of which shall be considered an original. The Signatories have signed the Agreement in the capacities, and on the dates, indicated.

IN WITNESS WHEREOF, the Signatories have executed this Agreement.

(ISSUERS NAME)

[DRAFT- REDLINE]

-- APPENDIX A --

By _____
President

Signature

Printed Name of Security Holder

Title, if applicable