

## NASAA STATEMENT OF POLICY REGARDING OPTIONS AND WARRANTS

*As Adopted and Amended November 17, 1997, September 28, 1999,  
March 31, 2008, and September 12, 2023.*

**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.