

June 30, 1999

Jonathan G. Katz

Secretary

U.S. Securities and Exchange Commission

450 Fifth Street, N.W.

Washington, D.C. 20549

RE: The Regulation of Securities Offerings

Release No. 33-7606A

File No. S7-30-98

Dear Secretary Katz:

Please accept this comment letter on behalf of the North American Securities Administrators Association, Inc. ("NASAA") in response to the release by the Securities and Exchange Commission (the "Commission") of its proposal (the "Proposal") to modernize and clarify the regulatory structure for offerings under the Securities Act of 1933 (the "1933 Act") while maintaining investor protection. NASAA welcomes the opportunity to provide input on this very important subject.

I. INTRODUCTION

NASAA commends the Commission on its proposed revisions to the 1933 Act regulatory structure. NASAA agrees with the Commission that the new rules and amendments should modernize and improve the regulatory system for securities offerings, while enhancing communications between public companies and shareholders, and promoting investor protection. In particular, NASAA believes that those aspects of the Proposal that require delivery of information to investors before they commit to purchasing securities will further the goal of investor protection. In addition to accelerating the delivery of written information in appropriate circumstances, the Proposal enhances the timeliness, uniformity and quality of disclosure under the Securities Exchange Act of 1934 (the "Exchange Act"), and improves access to information by broadening the scope and circumstances of permissible pre-effectiveness disclosure. It is these aspects of the Proposal -- which, overall, increase the amount of information provided to investors on a timely basis, while maintaining appropriate constraints to insure the quality and uniformity of that information -- that have led NASAA to conclude that the Proposal will further investor protection, and that its adoption will benefit investors and issuers alike.

Significantly, the provisions of the National Securities Markets Improvement Act of 1996 ("NSMIA") that expanded the Commission's exemptive authority to permit many of the regulatory changes contemplated by the Proposal specifically limit that authority to exemptions "necessary or appropriate in the public interest, and . . . consistent with the protection of investors." NASAA believes that, taken as a whole, the Proposal is consistent with this Congressional mandate and that, with the few suggested clarifications, changes and additions set forth in this comment letter, the Proposal will provide a sound regulatory framework for securities offerings into the next century.

II. PROPOSALS ALTERING THE SECURITIES ACT

REGISTRATION PROCESS

A. Form B Offerings

Part I of the General Instructions to proposed Form B sets forth the eligibility requirements for the use of that form. Under the Proposal, issuers eligible for Form B include those that have filed all periodic Exchange Act reports on a timely basis for at least one year and have filed at least one annual report and have either a public float of \$250 million, or a public float of \$75 million and an average daily trading volume ("ADTV") of \$1 million.

The Proposal also contemplates that Form B would be available in certain offerings by issuers that do not meet the public float/ADTV criteria described above, including certain offerings to Rule 144A qualified institutional buyers ("QIBs"); offerings to existing shareholders; offerings of non-convertible investment grade securities; and market-making transactions by affiliated broker-dealers. The Proposal includes a number of disqualifications preventing an otherwise eligible issuer from using Form B. In addition to providing Form B issuers more flexibility in disclosure, the Proposal would permit offerings to become effective on the date of the issuer's choice without prior staff review.

NASAA believes that overall the Form B proposals strike the appropriate balance between investor protection and the affected issuers' interest in efficiency, and endorse those proposed changes to the registration process, with the suggested revisions noted below.

1. Transactional Disclosure

The Commission has requested comments on two alternative proposals relating to Form B transactional disclosure. One proposed alternative would permit issuer discretion on transactional disclosure, mandating the inclusion of certain "offering information" as defined in the proposal. The other alternative would mandate the disclosure of all Regulation S-K transactional disclosure items currently required in Form S-3 and/or Form F-3.

NASAA endorses the first alternative, which limits the amount of mandatory line-item disclosure while requiring all material information regarding the transaction be disclosed. NASAA believes the increased flexibility afforded by this alternative will result in a more relevant and informative selling document, with disclosure tailored to the particular offering. The requirement that all material offering information be included in the prospectus in the effective Form B will insure that investors receive relevant transactional disclosure.

2. Free Writing Materials

Used by Form B Issuers

Proposed Rules 166 and 425 require the filing of written information (with certain exceptions) disclosed during the "offering period," which is the period beginning 15 days before the first offer and ending at the completion of the offering. This proposed filing requirement is significant for investor protection purposes because filed materials are available to all investors.

The Commission has solicited comment as to whether (i) it should require the registrant to state on the front cover page of the registration statement the date of the first offer in connection with the offering being registered and/or whether (ii) it should require free writing materials to be filed at the time of their first use. In light of the significance of the offering period, NASAA believes registrants should be required to state on the front cover page of the registration statement the date of the first offer in connection with the offering being registered. NASAA also believes free writing materials should be required to be filed at the time of their first use, to allow all investors access to those materials prior to making their investment decisions.

3. Eligibility Standards

(a) Reporting History Requirement

The Proposal contemplates affording Form B registration privileges to all issuers that are otherwise eligible and that have been Exchange Act reporting companies for at least one year, have filed all Exchange Act reports in a timely manner, and have filed at least one annual report. NASAA is concerned that the one year reporting history requirement may be insufficient to provide adequate investor protection in this context. As the 1996 Advisory Committee Report stated: "[I]t often takes at least two years following an IPO for a company and its management to become fully comfortable with the disclosure obligations of a public company and to have all their mechanisms for gathering and disseminating information in place and properly functioning." The Committee proposed limiting eligibility for the pilot program to those companies with a two-year reporting history, \$75 million public float, a completed IPO and an outstanding class of NYSE/AMEX/NASDAQ NMS listed securities (i.e., federal covered securities).

In light of the 1996 Advisory Committee Report's conclusion, NASAA supports limiting Form B eligibility, at least initially, to those issuers with a two-year reporting history, to insure that the streamlined disclosure and registration benefits accorded by this regulatory change will not be extended to issuers that do not have adequate mechanisms in place for gathering and disseminating information to investors.

(b) Offerings to Existing Shareholders

NASAA also supports the extension of Form B to small issuers for registration of offerings to certain existing shareholders, provided a two-year reporting history, as noted above, is required, and provided that the other limitations noted in the Proposal are adopted. In particular, NASAA agrees with the Commission that Form B should be extended to dividend or interest reinvestment plans ("DRIPs") and to direct stock purchase plans ("DSPPs"), only in cases where (i) the dollar amount of the Form B-registered securities represents no more than 15% of the issuer's public float; (ii) a shareholder's purchases in any 12-month period are limited to an amount equal to the total amount of securities owned by the shareholder at the start of that period or five percent of the total dollar amount of securities in the offering; and (iii) the Form B-registered securities are offered only to existing shareholders that have held the issuer's securities for at least two months.

NASAA believes that the proposed restrictions on the use of Form B in these offerings are appropriate, especially in light of abuses regarding the use of Form S-3 in DRIP offerings. NASAA, however, urges that the Commission consider expanding the restrictions on the shareholders eligible to receive Form B-registered securities through DRIP or DSPP offerings, by imposing a minimum ownership requirement and/or by extending the length of time a shareholder must have held the issuer's stock up to six months. NASAA believes a minimum ownership requirement in these situations would provide some assurance that the affected investors have reason to keep informed about the company. Extending the length of time a shareholder must have held the issuer's stock will insure that investors have sufficient time to familiarize themselves with the issuer, and will increase the likelihood that any given offering is truly one to existing shareholders and not simply an offering to the public at large.

The Proposal would extend the availability of proposed Form B to smaller reporting issuers that make offerings to existing shareholders of securities pursuant to rights offerings, conversion of outstanding convertible securities and exercise of transferable warrants, as well as securities issuable upon exercise of outstanding transferable options. This extension of Form B eligibility raises a number of concerns. We note, for example, that in the case of transferable warrants and options, the shareholder who exercises the warrant or option may not be the original shareholder and may not have the vested interest that the original equity interest holder had to closely follow the issuer. In addition, warrants and options often play a role in microcap stock fraud, and may be misused for the purpose of indirect distributions of common stock to the public. In this regard, the Commission solicits comment as to whether it should preclude Form B registration for exercises of options by dealers to avoid the possibility of issuers entering into options with underwriters as a means to effect a delayed distribution by issuers that would be ineligible for delayed shelf registration. NASAA believes Form B registration

for exercises of options by dealers in such cases should not be allowed in order to avoid potential abuses.

(c) Non-Convertible Investment Grade Securities

The Proposal would permit non-convertible investment grade securities offerings to be registered on Form B by issuers that meet the Form's reporting history requirements. The Commission proposes this expansion of Form B eligibility based on "the historical precedent of using investment grade rating as an eligibility criterion for Form S-3 registration. . ." The Commission solicits comment on whether Form B eligibility in these instances should turn solely on credit rating, noting that that rating is no more than "one organization's judgment about the likelihood of default." NASAA shares the Commission's concern regarding the propriety of Form B registration in this context, particularly in light of the broad range of securities that may be deemed "investment grade." Typically, the four highest rating categories signify investment grade, which means, e.g., BBB-rated securities (as rated by one statistical rating organization) would qualify for Form B under the Proposal. In light of the potential relative risk of such investments, NASAA urges the Commission to consider requiring registration of these securities on Form A rather than Form B.

(d) Form B Disqualifications

NASAA agrees that the events and circumstances identified in Section I.B.6. of the General Instructions to proposed Form B -- disqualifying, inter alia, blank check companies; issuers offering penny stock; companies with significant liquidity problems; and registrants that have violated (or that have officers, directors or general partners that have violated) securities law antifraud provisions in the prior five years -- justify disqualification of otherwise eligible offerings from registration on Form B. In the case of those disqualified issuers, additional and stricter disclosure requirements and greater Commission control over the offering is appropriate and necessary for investor protection.

In addition to the disqualifications enumerated in the Proposal, NASAA believes it is important that issuers more likely to engage in microcap fraud be disqualified from using Form B. At the same time, NASAA believes it is important that any such disqualification be framed in such a way as to avoid improperly stigmatizing smaller issuers that are not involved in fraud.

The microcap market with which NASAA is concerned includes penny stocks and consists primarily of low-priced securities of small companies with market capitalizations of less than \$300 million. The stocks of these microcap issuers are thinly-traded, risky stocks issued by start-up companies with little or no earnings. The vast majority trade on the Nasdaq Small-Cap Market, the Over-the-Counter Bulletin Board, or in the "Pink Sheets" (a weekly publication of a company called the National Quotation Bureau). Microcap fraud stems in part from unscrupulous brokerage firms which underwrite and sell the stocks of these companies, often marketing the securities to unwitting investors through abusive and high-pressure sales practices.

The recent report Fraudulent Financial Reporting: 1987-1997 provides some important insights on issues relating to fraud by microcap issuers. The report identifies and analyzes instances of alleged fraudulent financial reporting by companies investigated by the Commission in the ten-year period following the issuance of the 1987 Treadway Commission Report on Fraudulent Financial Reporting. The new report verifies that most companies committing financial statement fraud are relatively small (with total assets "well below \$100 million") and are usually not listed on the New York or American Stock Exchanges. The report also notes that the majority of the companies committing financial statement fraud had an inadequate internal control environment, with boards of directors dominated by insiders and "gray" directors (i.e., outside directors with "special ties to the company or management") and either no audit committee or an audit committee that was inexperienced and that met infrequently. In addition, The report found that the frauds in most cases were not isolated to a single fiscal period, stating:

The multi-period aspect of financial statement fraud, often beginning with the misstatement of interim financial statements, suggests the importance of interim reviews of quarterly financial statements and the related controls surrounding interim financial statement preparation, as well as the benefits of continuous auditing strategies.

NASAA believes the report Fraudulent Financial Reporting: 1987-1997 highlights important concerns relating to fraud by microcap issuers. In particular, the enhanced Exchange Act reporting requirements in the Proposal may provide a significant check on microcap issuer fraud. (See Section II.F. below.) NASAA also strongly supports the inclusion of the provisions in Section I.B.6 of the General Instructions to Form B, disqualifying registrants whose underwriters have incurred securities law violations in the five years before the date of filing. This important disqualification can provide an essential check to prevent abuse of the streamlined registration and disclosure provisions of Form B. NASAA further believes that requiring a two-year reporting history for Form B eligibility will provide an important safeguard in the microcap fraud area. Although mandating a longer track-record will not eliminate the possibility of abuse, it should reduce the likelihood that Form B will be used improperly in offerings by issuers motivated to commit fraud.

B. Form A Offerings and Small Business Issuers

1. Form A Offerings by Seasoned Issuers

The Proposal defines a Form A seasoned issuer as an issuer that (1) has been reporting under the Exchange Act for at least 24 months; (2) has timely filed all Exchange Act reports over the preceding 12 months; (3) is not otherwise disqualified; and (4) either has (a) a public float of at least \$75 million or (b) filed at least two annual reports. A Form A seasoned issuer would be permitted to incorporate by reference previously filed Exchange Act reports, in the manner described in the Proposal. In addition, proposed revisions to Rule 462 would permit a seasoned Form A issuer to determine the date of effectiveness, without prior SEC review of its registration statement, if the issuer's public float as of the date of filing equals or exceeds \$75 million or the Exchange Act annual report incorporated into the Form A has been fully reviewed by staff and is responsive to staff comments.

NASAA supports the goal of reducing registration burdens on smaller seasoned issuers by eliminating the need for reproducing previously reported information. It appears that the Commission's proposals relating to Form A seasoned issuers promote efficiency without unduly compromising investor protection. Exchange Act reports are viewed as a reliable source of information because they are subject to the regulatory and antifraud provisions of the federal securities laws and are subject to review by Commission staff. NASAA agrees with the Commission that investor protection should not be compromised by the Form A seasoned issuer provisions in light of the required two year reporting history, and the requirement that the issuer deliver the Exchange Act reports with the prospectus while updating financial information and describing any material changes.

The Proposal solicits comment on the incorporation by reference provisions contemplated for Form A filers, particularly with regard to their effect on investors. Under the Proposal, information incorporated by reference must be delivered with the prospectus. Even with that delivery requirement, however, incorporation by reference increases the analytical burden on investors by requiring review of more than one document to obtain all material information. Thus, NASAA believes it would be better for investors if incorporation by reference was limited to the most recent annual report with all subsequent information included in the prospectus.

The Proposal also solicits comment as to whether the seasoning test for incorporation by reference on Form A should be shortened, e.g., to qualify as seasoned those issuers with a 12-month Exchange Act reporting history and one annual report. NASAA strongly believes that the seasoning test should not be reduced below the currently contemplated 24-month reporting history requirement. As noted above, the 1996 Advisory Committee Report specifically concluded that "it often takes two years" to insure an issuer's disclosure mechanisms are fully operational and functioning properly. Moreover, the proposed

24-month reporting period is one full year less than the current 36-month reporting history required by Forms S-2 and F-2. Accordingly, NASAA urges the Commission not to reduce the seasoning test to less than a 24-month reporting history requirement.

NASAA also supports the concept of permitting a seasoned Form A issuer to designate its effective date in cases where the issuer's most recent annual report, incorporated by reference in its Form A, has been reviewed by the staff and amended in response to staff comments. Permitting these issuers to designate the effective date of their offerings underscores the importance of the proposed requirement for timely delivery of preliminary prospectus information. Seasoned Form A issuers will be able to deliver that information up to three calendar days prior to pricing or signing of the subscription agreement. Absent that minimal waiting period, NASAA believes it would not be appropriate to permit seasoned Form A issuers to choose when it wants its registration statement on Form A to be effective.

NASAA agrees with the Commission that certain events and circumstances justify disqualification of otherwise eligible issuers from taking advantage of the benefits proposed for Form A seasoned issuers, and supports the disqualification of those issuers deemed ineligible in General Instruction II.B. of proposed Form A. For the reasons set forth in Section II.A.3.d. above, NASAA also believes that issuers more likely to engage in microcap fraud be disqualified from the benefits accorded to seasoned Form A issuers.

2. Offerings by Small Business Issuers

NASAA agrees with the Commission that the small business issuer registration and reporting systems have been a success, facilitating capital-raising by small businesses and reducing their costs in complying with the securities laws. In light of the economic and market changes cited in the Proposal, NASAA endorses the proposed revised definition of small business issuer, whereby the revenues test would be raised to \$50 million and the public float would be eliminated.

The Proposal also seeks to ease capital formation for small business issuers by revising Rule 504 of Regulation D to accommodate those issuers that become reporting companies after having made previous exempt offerings under that rule. Currently, Rule 504 may not be used by reporting companies. Thus, a company that has issued convertible securities or warrants under Rule 504, and that subsequently becomes a reporting company, may face a significant registration issue if those convertible securities or warrants remain outstanding: the Rule 504 exemption is no longer available for the underlying securities, and registration is not possible because of the previous offer of those securities. The proposed revision to Rule 504 resolves this issue by providing that the status of the issuer as a reporting company will not prevent it from relying on the Rule for the issuance of securities underlying convertible securities and warrants that it previously offered in compliance with the Rule when it was not a reporting company.

NASAA supports this proposed revision to Rule 504. NASAA believes the proposed change to Rule 504 will assist issuers in raising seed capital without detracting from investor protection.

C. Communications During the Offering Process

NASAA supports the Commission's proposed liberalization of the regulations governing communications during the offering process. Overall, the Proposal strikes the proper balance in permitting greater communication with investors during the pre-filing and waiting periods, while requiring issuers to assume appropriate statutory liability for those communications.

1. Issuer Communications Relating to a Registered Offering

(a) Communications by Form B

Issuers During the Pre-Filing Period

Proposed Rules 166 and 167 would permit large, seasoned issuers to make any communication, including offers, during the pre-filing period. Any prospectus used during the offering period -- that period beginning 15 days before the first offer and ending with completion of the offering -- would have to be filed pursuant to Rule 425. As noted above, NASAA is concerned that the proposed one year reporting history requirement for Form B issuers may be insufficient to provide adequate investor protection in this context. NASAA recommends that Form B eligibility be limited, at least initially, to those issuers with a two year reporting history, to insure that the streamlined disclosure and registration benefits accorded by this regulatory change will not be improperly extended to issuers that do not have adequate mechanisms in place for gathering and disseminating information to investors.

(b) Communications by Issuers other than Form

B and C Issuers During the Pre-Filing Period

Bright Line 30 Day Safe Harbor

Proposed Rule 167 provides a bright-line communications safe harbor in all offerings (other than those registered on Form B or Form C) for communications made by an issuer, underwriter or participating dealer more than 30 days before the date of filing of the registration statement. Distribution or re-publication of those communications in the 30-day pre-filing period is prohibited. The Release solicits comments as to whether, *inter alia*, 30 days is a sufficient "cooling off" period. NASAA urges that close consideration be given as to whether the proposed 30 days would provide a sufficient "cooling off" period.

(c) Communications During the Waiting Period

Proposed Rule 165 would allow companies to use free writing during the waiting period (*i.e.*, post-filing, pre-effectiveness) without compliance with Section 10. The free-writing materials would have to be filed pursuant to proposed Rule 425 and a legend urging investors to read other documents filed with the Commission would be required. NASAA strongly believes that, should the Commission permit the unlimited use of free-writing during the waiting period as contemplated by proposed Rule 165, it is important to retain investor protections by requiring that the materials be filed under proposed Rule 425. The filing requirement will level the playing field for all investors by insuring equal access to issuer information for all those weighing an investment decision during the waiting period.

NASAA endorses proposed Rule 421(e), which requires that free writing disseminated during the waiting period, or any prospectus not subject to the informational requirements of Section 10, contain a prominent legend in plain English that urges investors to read filed documents because they contain important information. As information is continuously provided to investors under the proposed offering process, such cautions will serve as significant reminders that the governing legal documents should be reviewed prior to a final investment decision.

2. Research Reports

Proposed Revisions to Rule 139

Rule 139 provides a safe harbor for certain research reports by brokers or dealers participating in the distribution of securities by large, seasoned issuers or certain large foreign issuers, if the research is in a publication distributed with reasonable regularity in the normal course of the broker's or dealer's business. The Release proposes to expand this safe harbor for reporting companies to allow focused issuer reports in offerings of any type of securities by any size issuer that has a one-year reporting history and to eliminate the requirement that such reports be distributed with "reasonable regularity" by the broker or dealer.

NASAA is not convinced such changes to Rule 139 are necessary or appropriate. As Professors Loss and Seligman have noted, the Commission, in amending Rule 139 in 1984, "did not address the possibility that participating underwriters or dealers might employ research reports in an attempt to 'condition the market.'" Professors Loss and Seligman also noted that it is "far from self-evident" that a "widespread market following" of issuers eligible for current Rule 139 "greatly lessens the potential for the abuses Section 5 was intended to prevent."

Expanding the availability of the Rule 139 safe harbor exacerbates these concerns. Accordingly, NASAA recommends that the "reasonable regularity" condition of present Rule 139 be retained; that eligibility be restricted to those companies with a two-year reporting history; that the broker or dealer be required to have a specified history of following the company (e.g., two years); and that filing be required for all Rule 139 focused reports.

D. Prospectus Delivery Requirements

1. Delivery of Preliminary Prospectus Information

NASAA supports the Commission's proposed Securities Act Rule 172 and the proposed revisions to Exchange Act Rule 15c2-8, which are intended to insure that relevant disclosure is delivered to investors before they make their investment decisions. We share the Commission's belief that if a prospectus reaches an investor only after the investment decision is made, its benefits are severely diminished. NASAA echoes the Commission in concurring with Professor Loss that "[a] prospectus that comes with the security does not tell the investor whether or not he should buy. It tells him whether he has acquired a security or a lawsuit."

(a) Form B Offerings

The Proposal offers two alternative methods of delivering transactional information to investors in a timely fashion: use of a securities term sheet, or use of a prospectus containing all transactional disclosure currently required in Form S-3/F-3. Regarding these two disclosure proposals, NASAA favors the former, whereby a securities term sheet would be mandated prior to the investment decision. We strongly support the Commission's requirement that the term sheet be drafted using plain English. In addition to those items identified in proposed Securities Act Rule 172(a)(2), NASAA urges the Commission to require that the term sheet include "offering information" as defined in Form B. NASAA believes that a term sheet incorporating offering information -- which would include material transactional disclosure -- would provide investors with the material information needed to make an informed investment decision. Moreover, the use of a securities term sheet will grant issuers a degree of latitude when determining the materiality of information. An issuer under this proposal will be forced to examine and address issues and factors directly applicable to the transaction. Issuers would, therefore, include in the term sheet material factors based on the given offering. This should result in more meaningful disclosure than a litany of boilerplate disclosure which, unfortunately, is seen all too often in today's prospectuses.

Since an issuer's Exchange Act filings will become a crucial tool in an investor's decision making process, NASAA is concerned that the securities term sheet be delivered in a manner that will grant investors sufficient time to request and read these documents before making an investment decision. Proposed Securities Act Rule 172 and the proposed revisions to Exchange Act Rule 15c2-8 mandate that the "term sheet prospectus . . . be sent in a manner reasonably designed to arrive before the date an investor makes a binding investment decision." NASAA suggests that a specific time frame be adopted (e.g., three calendar days before pricing or a signed subscription agreement), to allow investors an opportunity to read and review the issuer's Exchange Act filings prior to making an investment.

NASAA also believes that the interests of investor protection would be served by requiring Form B issuers to disclose in a timely manner any and all material changes to the company or transaction not

otherwise disclosed in the securities term sheet or Exchange Act filings. As with the Commission's proposal for Form A issuers, this disclosure should be provided to investors at least 24 hours before pricing or signing of the subscription agreement.

(b) Offerings by Small or Unseasoned Issuers

Timely receipt of investment information is very important to an investor considering purchasing shares in a small or unseasoned company, because a small or unseasoned company in most cases will not have plentiful well-scrutinized information available for investors to review. Thus, an investor considering purchasing shares of a small or unseasoned company must look to the issuer's prospectus disclosure to obtain the information necessary to make an informed investment decision. NASAA agrees that full disclosure in these circumstances requires delivery of a complete Section 10 prospectus. Clearly, the proposal to make this information available to the investor at an earlier time can only lead to a more educated investment decision.

Proposed Securities Act Rule 172 and the proposed revisions to Exchange Act Rule 15c2-8 require that a small or unseasoned issuer making an initial public offering (or an offering within one year of that initial public offering) deliver its Section 10 prospectus "in a manner reasonably designed to arrive" at least seven calendar days before either (i) the date of pricing (in a firm commitment underwritten offering) or (ii) the investor signs the subscription agreement or otherwise commits to purchase (in a best efforts or direct public offering). For those issuers that have issued securities in an initial public offering over one year prior to the effective date of the current offering, the Section 10 prospectus delivery date would be shortened to three days prior to pricing or signing of the commitment document.

NASAA strongly supports these prospectus delivery requirements, and believes the Commission has drawn the correct balance between the potential burdens on issuers and the informational benefits to investors. NASAA agrees that issuers that have not previously filed Exchange Act reports should be required to make their prospectuses available so as to grant meaningful time for review. We, therefore, wholeheartedly endorse the seven-day delivery period for these new issuers. It is particularly important in these cases, where there is little public information available about an issuer, that the market and individual investors have sufficient time to digest the company's disclosure before making an investment decision. We also agree that a seven-day delivery period may not be necessary in the case of a more seasoned small issuer that has been filing reports with the Commission. In these cases, a three-day delivery requirement should be sufficient for investors to familiarize themselves with the prospectus and Exchange Act reports that will accompany the prospectus.

In light of the various definitions of Form A seasoned issuers in the Proposal, and in the interests of investor protection, NASAA believes that the availability of a three-day delivery period should be limited to those issuers that meet the definition of Form A seasoned issuer as set forth in Section II of the General Instructions of Proposed Form A, *i.e.*, an issuer that has been reporting under the Exchange Act for at least 24 months, has timely filed its Exchange Act reports over the previous year, and meets the \$75 million float test or has filed at least two annual reports. The two-year reporting period and other provisions will provide greater investor protection by permitting only those issuers with a proven track-record the benefit of a shortened prospectus delivery period.

NASAA agrees that material changes to the transaction or company information that occur after the delivery date should be disclosed to investors at least 24 hours before the pricing or signing. Proposed Securities Act Rule 172(e) and proposed Exchange Act Rule 15c2-8(b)(5) provide that written notice of such material changes must be sent to investors "[i]f [those changes were] not previously disclosed by any other means" This provision would permit brokers to orally notify investors of such changes. While we understand that in today's electronic age there are many means of delivery, we do not agree that an issuer's obligation to deliver this information should be shifted to brokers in the form of oral disclosure. Accordingly, NASAA believes written disclosure of material changes should be required.

2. Aftermarket Prospectus Delivery

Requirements and Final

Prospectus Delivery Exemption

The proposed revisions to Securities Act Rule 174 would permit a dealer to satisfy its aftermarket prospectus delivery obligation if the Section 10(a) prospectus (other than pricing information) is on file with the Commission and the dealer notifies each investor, at or before the time the confirmation is received, where the investor may promptly obtain that prospectus free of charge. NASAA supports this proposal, and agrees with the Commission that it effectively maintains the Securities Act's goals of informing investors and preserving investor remedies throughout the stream of distribution.

Proposed Securities Act Rule 173 creates an exemption from the Securities Act final prospectus delivery requirement, provided that prospectus information is delivered in accordance with proposed Rules 172 and 174, and provided that investors are informed, at or before the time they receive their confirmation, where they can promptly acquire the Section 10(a) prospectus free of charge. NASAA supports this proposal and agrees with the Commission that an issuer's cost associated with the delivery of a final prospectus that is otherwise readily available to investors may exceed any marginal benefit to investors. NASAA believes the rules, as drafted, should require issuers to provide a final prospectus upon request and free of charge, as current Rule 15c2-8 requires brokers and dealers to do.

E. Integration of Registered and Unregistered Offerings

NASAA supports the Commission's proposals regarding integration of registered and unregistered offerings. The proposed revisions to Securities Act Rule 152 would clarify and expand the current integration safe harbor. Among other things, the revised rule would (i) address the circumstances under which a completed unregistered private offering would not be integrated with a subsequent registered offering; (ii) set out the conditions under which an abandoned private offering may be followed by a registered offering; and (iii) provide a safe harbor for issuers abandoning a registered offering in order to pursue an unregistered private offering.

First, NASAA endorses the safe harbor for abandoned public offerings followed by private offerings as provided in revised Rule 152(c). NASAA believes it is important to allow small businesses the flexibility to switch from a public offering to a private offering once they discover there is insufficient public interest in their shares. NASAA has found that it is not unusual for a small business issuer to have very high, but perhaps misguided, hopes about the likelihood of success of an offering. Small business issuers that have little or no market for their securities prior to their initial public offering may be unable to accurately predict the success or failure of the offering. Thus, once a small business makes the choice to issue securities, and to do so through a registered offering, it may find itself unable to proceed yet in need of capital. In many cases these issuers cannot afford to wait six months to proceed with a private offering, as current law requires. Under these circumstances, the safe harbor of revised Rule 152 strikes an appropriate balance. As long as investors are adequately informed of the changes, we believe there will be no reduction in investor protection.

NASAA also supports the proposed revisions set forth in Securities Act Rule 152(b) pursuant to which a Form A issuer could abandon a private offering in favor of a public offering, so long as certain conditions are met. Although the proposed process of switching from private to public offerings would appear to adequately protect investors, we note that one of the proposed conditions would impose a requirement that the issuer either file any selling materials used in the private offering or inform all private offerees that the filed prospectus replaces the prior selling materials and that any prior indications of interest are rescinded. In order to insure that offerees in the private offering receive the same treatment as offerees and purchasers in the registered offering, we suggest that the issuer be

required to file the private selling materials with the registration statement and inform the offerees that the prospectus replaces the prior materials.

The requirement that in order to switch to a public offering, the issuer may not have offered the securities in the private offering by any form of general solicitation, raises an issue with respect to state exemptions for sales limited to accredited investors. In adopting the Model Accredited Investor Exemption, NASAA indicated its support for the concept that as long as no sales are made to non-accredited investors, general solicitation may take place in small private offerings. Although states' accredited investor exemptions are not adopted under the states' equivalent to Section 4(2) of the Securities Act of 1933, the general policy would still seem to apply. NASAA is concerned that small businesses that may have taken advantage of the state accredited investor exemptions will be denied the benefits of Rule 152(b).

The Commission requests comments on whether the proposed process should be extended to offerings under Section 4(6) and Rule 506. NASAA supports that expansion of the rule. With respect to extending it to Rule 505, because Rule 505 includes non-accredited investors and unsophisticated investors, we do not believe there are sufficient protections to warrant an extension to include that rule.

F. Proposals Relating to Exchange Act Disclosure

The Proposal allows for increased incorporation by reference by all types of filers and automatic effectiveness for some. As a result, investors will rely more heavily on Exchange Act filings. Accordingly, NASAA agrees with those provisions of the Proposal requiring that Exchange Act filings be more timely and that more time sensitive information be included. In particular, NASAA supports the attempt to provide more information to the marketplace in order to ensure retail and less sophisticated investors receive the advantage of disclosures that are currently afforded only to the institutional and more sophisticated investors. We applaud the Commission's attempt to minimize the information gap between all investors. NASAA also strongly supports the inclusion of risk factors in the annual and quarterly filings. Because risks are "company information" it is appropriate to include them in the periodic filings. We agree with the Commission that risk factor disclosure is equally valuable information whether investors are purchasing securities in a registered offering or trading in the secondary market.

NASAA supports the acceleration of reports in order to prevent uneven disclosure and gaps of information between investors. We also agree that the longer the period of time between a material event and its public reporting, the greater the likelihood certain investors will be selectively informed and therefore selectively benefit from that information. We also support acceleration of disclosure about the material modification to the rights of security holders, the departure of the CEO, CFO, COO or President or any other person considered "key" to the company's success, material defaults of senior securities, the notification by the independent auditor that the company can no longer rely on the previous audit and requiring issuers to promptly report name changes.

As noted above, the recent report Fraudulent Financial Reporting: 1987-1997 underscores the significance of periodic reports in its finding that many financial accounting frauds are initiated in Form 10-Qs. (See Section II.A.3.d. above). In light of the increased dependence on periodic reports created by the Proposal, NASAA strongly believes that it is vitally important that the quality of those reports be enhanced. NASAA therefore agrees with the Commission's proposal to revise its rules to treat the financial statements and M D & A disclosure in Forms 10-Q and 10-QSB as filed. NASAA also agrees with the Commission that requiring principal executive officers and a majority of board members to sign periodic reports will increase the quality of both periodic reports and Securities Act filings. For the same reason, NASAA strongly supports the need to introduce plain English to Exchange Act filings.

The changes contemplated by the Proposal increase the need for all investors to be able to read and understand these reports.

G. Staff Review Policy

The Commission has requested comment on its proposed revisions to staff review policy. Historically, states have relied on the Commission to review registration statements filed by large issuers. Corporation finance staff in the states have concentrated their reviews on offerings filed on Forms SB-1 and SB-2, Regulation A offerings, offerings made in reliance on Regulation D, Rule 504, and intra-state offerings. These are the offerings that represent the highest level of risk to retail investors in each state. Over the past several years, the states have developed coordinated review programs (including the Coordinated Equity Review and Regional Review programs) that facilitate the registration process for state registered offerings. To the extent that states are reviewing these offerings, NASAA believes that Commission resources would be best utilized by relying on state review and emphasizing the review of Exchange Act reports.

III. CONCLUSION

NASAA urges the Commission to review the comments included in this letter and incorporate them into the Proposal, and to adopt the Proposal as expeditiously as possible. If the Commission has any questions regarding this letter, please call me at

(603) 271-1463, or Deborah Bortner, Chair of the Corporation Finance Section, at (360) 902-8797 or Karen O'Brien, NASAA General Counsel, at (202) 737-0900.

Very truly yours,

Peter C. Hildreth

President

NASAA