

STATEMENT OF POLICY REGARDING PREFERRED STOCK

Adopted April 27, 1997; Amended March 31, 2008 and September 11, 2016

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*:

Adjusted Net Earnings
Administrator
Cash Analysis
Disclosure Document
Equity Securities
Independent Director
Promoter

III. GROUNDS FOR DENIAL OF SECURITIES REGISTRATION RELATING TO PAYMENT ABILITY

- A. The Administrator may deny the offer or sale of preferred stock if either:
1. The issuer's Adjusted Net Earnings for its last fiscal year or the issuer's Adjusted Net Earnings for its last three fiscal years were insufficient to pay:
 - a. Fixed charges;
 - b. Preferred stock dividends, whether or not accrued; and
 - c. Any redemption requirement of the preferred stock being offered to investors; or
 2. The issuer's Statement of Cash Flows fails to demonstrate either a positive "Net Cash Provided by Operating Activities" for the last fiscal year, or an average positive "Net Cash Provided by Operating Activities" for the last three fiscal years. Under a Cash Analysis, the issuer must have sufficient cash flow to indicate that it can pay any dividend on the preferred stock being offered whether or not declared or cumulated.

B. This Section does not apply to public offerings of:

1. Convertible preferred stock that ranks ahead of any convertible debt relating to payment of dividends, interest, and liquidation proceeds; or
2. Preferred stock that is or may be legally or beneficially, directly or indirectly, owned by Promoters.

IV. GROUNDS FOR DENIAL OF SECURITIES REGISTRATION RELATING TO SHAREHOLDER APPROVAL

A. The Administrator may deny the offer or sale of Equity Securities if the issuer's articles of incorporation authorize the board of directors to issue preferred stock without a vote by the common shareholders.

B. This Section does not apply if:

1. The Disclosure Document states that the issuer will not offer preferred stock to Promoters except on the same terms as it is offered to all other existing or new shareholders; or
2. A majority of the issuer's Independent Directors that do not have an interest in the transaction:
 - a. Approve any offering of preferred stock; and
 - b. Have access, at the issuer's expense, to the issuer's legal counsel or independent legal counsel.

V. GROUNDS FOR DENIAL OF SECURITIES REGISTRATION RELATING TO DISCLOSURE REQUIREMENTS

The Administrator may deny the offer or sale of preferred stock if the Disclosure Document does not disclose:

- A. Whether dividends on the preferred stock are cumulative;
- B. The risks of failure to declare or pay dividends on the preferred stock; and
- C. The equity characteristics of any convertible preferred stock being offered to investors.