

# **STATEMENT OF POLICY REGARDING LOANS AND OTHER MATERIAL TRANSACTIONS**

*Adopted April 27, 1997; Amended March 31, 2008; and May 6, 2018*

## **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

Disclosure Document

Independent Director

Promoter

## **III. REGISTRATION OF OFFERINGS WITH LOANS AND LOAN GUARANTEES**

The issuer or its Affiliates are allowed to have the following types of loans or loan guarantees outstanding after the offering:

- A. Advances to officers, directors, and employees for travel, business expenses, and similar ordinary operating expenditures.
- B. Loans or loan guarantees to allow the issuer's officers, directors, and employees to purchase the issuer's securities, and loans for relocation of officers, directors, and employees, if the loan is approved under Section IV.
- C. Loans the issuer or its Affiliates make to its Promoters if the issuer or its Affiliates are in the primary business of making loans provided:
  1. The loans are evidenced by promissory notes naming the lender as payee;
  2. The loans bear interest at rates comparable to those that other commercial lenders normally charge for similar loans made in the lender's locale;
  3. The loans require Promoters to repay the loans under appropriate amortization schedules;
  4. The loans are supported by credit reports and financial statements that show the issuer or its Affiliates can collect the loans and that the borrowers are satisfactory credit risks, in light of the nature and terms of the loans and other circumstances;
  5. The loans meet loan policies that other commercial lenders normally use for similar loans made in the lender's locale;
  6. The issuer will review the purposes of the loans and monitor the

disbursements of proceeds in a manner that other commercial lenders normally use for similar loans made in the lender's locale;

7. The loans will not violate the requirements of any banking or other financial institution's regulatory authority; and
8. The loans contain default provisions comparable to those other commercial lenders normally use for similar loans made in the lender's locale.

D. Loans to Promoters that exist at the time of the application for registration must be repaid by Promoters in full:

1. From the proceeds of the offering, if a portion of the offering is made on behalf of a Promoter;
2. Before the offering; or
3. After the offering using appropriate amortization schedules, if the Administrator permits.

E. The Administrator may deny the offer or sale of securities if loans or loan guarantees not allowed by this Section will be outstanding after the offering.

#### **IV INDEPENDENT DIRECTORS**

- A. Any future loans or other material affiliated transaction between the issuer or its Affiliates and its Promoters must be approved by a majority of the issuer's Independent Directors that do not have an interest in the transaction.
- B. If the issuer has only two Independent Directors on its board of directors, both Independent Directors must be disinterested in and approve loans and other material affiliated transactions.
- C. A majority of the issuer's Independent Directors that do not have an interest in the transaction must approve any loan or other material affiliated transaction involving its Promoters.

#### **V. REGISTRATION OF OFFERINGS WITH MATERIAL TRANSACTIONS WITH PROMOTERS**

The following types of affiliated transactions are allowed:

- A. A material transaction approved in accordance with Section IV, if the Disclosure Document discloses the terms of the transactions and indicates whether the terms are as favorable to the issuer or its Affiliates as those generally available from unaffiliated third parties.

- B. A transaction entered into at a time when the issuer had less than two disinterested Independent Directors, if the Disclosure Document:
  - 1. Discloses the terms of the transactions;
  - 2. Indicates whether the terms are as favorable to the issuer or its Affiliates as those generally available from unaffiliated third parties; and
  - 3. Discloses that the issuer lacked sufficient disinterested Independent Directors to approve the transaction.
  
- C. The Administrator may deny the offer or sale of securities if the issuer or its Affiliates have engaged in any material transactions with Promoters that are not allowed by this Section.

## **VI. DISCLOSURE DOCUMENT REQUIREMENTS**

- A. The Disclosure Document must disclose whether:
  - 1. The issuer or its Affiliates have engaged or will engage in material transactions with Promoters and the relevant terms and conditions; and
  - 2. The issuer or its Affiliates have made or will make loans to Promoters, or have made or will make loan guarantees on behalf of Promoters, and the relevant terms and conditions.
  
- B. If the issuer or its Affiliates have engaged in loans and other material transactions with Promoters, or if the issuer or its Affiliates are not prohibited under their organizational documents or operating agreements from entering into such transactions, the Administrator may require the Disclosure Document to contain the following:
  - 1. A statement that the issuer or its Affiliates will make all future material affiliated transactions and enter into all future loans on terms that are no less favorable to the issuer than those that can be obtained from unaffiliated third parties;
  - 2. A representation that the issuer will appoint at least two Independent Directors on its board of directors to approve any future material transactions and loans and any forgiveness of loans in accordance with Section IV prior to engaging in such transactions;
  - 3. A statement that the issuer's officers and directors will:
    - a. Consider their due diligence and assure that there is a

- reasonable basis for these representations; and
- b. Consider whether to embody the representations in the issuer's charter or bylaws.