

**STATEMENT OF POLICY REGARDING
OPTIONS AND WARRANTS**

Amended November 17, 1997, September 28, 1999, and March 31, 2008

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
Disclosure Document
Lock-In Agreement
Person
Promoter
Unaffiliated Institutional Investors
Underwriters

III. PERMISSIBLE GRANTS OF OPTIONS OR WARRANTS

An issuer may issue options or warrants:

- A. 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. 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 Expenses, Underwriter's Warrants, Selling Expenses, and Selling Security Holders*.

- C. 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.

IV. GENERAL PROHIBITIONS

- A. ***Limitation on Exercise Price.*** An issuer 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 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:
 - 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 issuer issued or reserved for issuance under section III. 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.
 - 3. ***Excess Options.*** If any options or warrants exceed the 15% limit established in paragraph 1 ("Excess Options"), then the Administrator may require the issuer to:
 - a. cancel the Excess Options, or
 - b. 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.*

V. DISCLOSURE REQUIREMENTS

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.