



**SUBJECT:** Commission Guidelines for Staff Analysis and Review Pursuant to §207(g) and §208(a)(v) of the 1972 Act for Registration Statements Filed under §205 and §206 of the 1972 Act for Equity Securities of Corporations which are not Eligible for or do not Request Review under the Coordinated Equity Review Program

**RELEASE NO.:** 07-CF-3

**DATE OF RELEASE:** August 28, 2007

**TYPE:** Staff Position

**PRIOR REFERENCE:** 97-CF-3

### **Background**

The Pennsylvania Securities Commission participates with other jurisdictions in a nationwide coordinated equity review program (CR-Equity) developed by state securities regulators through the North American Securities Administrators Association (NASAA) which allows an issuer conducting a multi-state public offering of corporate equity securities to opt for coordinated equity review of corporate offerings to be registered under Section 5 of the Securities Act of 1933. Offerings under CR-Equity are reviewed according to the standards set forth in the following Statements of Policy adopted by NASAA on April 27, 1997, as amended on November 18, 1997 and September 28, 1999 (NASAA SOPS):

**Statement of Policy Regarding Corporate Equity Securities Definitions**  
**Statement of Policy Regarding Loans and Other Material Affiliated Transactions**  
**Statement of Policy Regarding Preferred Stock**  
**Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders**  
**Statement of Policy Regarding Options and Warrants**  
**Statement of Policy Regarding Promoter's Equity Investment**  
**Statement of Policy Regarding Promotional Shares**  
**Statement of Policy Regarding Impoundment of Proceeds**  
**Statement of Policy Regarding Unsound Financial Condition**  
**Statement of Policy Regarding Unequal Voting Rights**  
**Statement of Policy Regarding Specificity in Use of Proceeds**

The text of NASAA SOPs can be found at [www.coordinatedreview.org](http://www.coordinatedreview.org).

At its September 24, 1997 meeting, the Commission had authorized staff generally to utilize criteria contained in the above-referenced NASAA SOPs in its analysis and review under §207(g) and §208(a)(v) of the Pennsylvania Securities Act of 1972 (1972 Act) of registration statements filed pursuant to §205 and §206 of the 1972 Act for registration of equity securities of corporations that do not request review under the CR-Equity Program. This Release supersedes Release 97-CF-3 in amending the criteria to be utilized in reviewing Non-CR-Equity offerings.

### **Staff Position**

At its September 10, 2007 meeting, the Commission re-authorized staff to recommend registration of the equity securities of Non-CR-Equity issuers that file a registration statement that satisfies all the requirements of the NASAA SOPs, and permitted staff to utilize the following criteria with respect to Non-CR-Equity issuers that file a registration statement with the Commission that does not satisfy certain requirements of the NASAA SOPs:

1. Where an issuer does not have two independent directors, it will not be deemed a basis for denial of registration.
2. If the underwriting expenses exceed the amount set forth in the NASAA SOP, it will not be deemed a basis for denial of registration, provided that the underwriting compensation has been approved by the National Association of Securities Dealers, Inc. (NASD).
3. While failure to meet the above standards will not be deemed an automatic basis for denial of registration, it will be deemed a basis for locking in all the promoter's promotional equity securities.
4. Failure to comply with the standard for Promoter's Equity Investment will not be deemed an automatic basis for denial of registration; however, the lock-in agreement may exceed the time periods set forth in the NASAA SOP. In order to determine the length of time the shares will be required to remain subject to the lock-in agreement (which may exceed the time periods set forth in the NASAA SOP), staff will consider such factors as the amount of promoter's equity investment in the corporation, the financial condition of the company, and any other factor relating to amounts of promoters' profits or participation.
5. Staff will require that all loans by the company to promoters, officers, directors, its affiliates, or their controlling persons be repaid by the close of the offering, except where such loans were made for bona fide business purposes. Additionally, staff will require a representation in the offering disclosure document that all future loans made by the company to promoters, officers, directors, its affiliates, or their controlling persons will be for bona fide business purposes.

Furthermore, the Commission will utilize all amendments to the NASAA SOPs subsequently adopted by NASAA unless (1) the Commission makes an affirmative

statement to the contrary or (2) the amendment relates to a Statement of Policy or section thereof which the Commission previously indicated it would not utilize.

This Release, however, does not exhaust the possible indices that staff may deem relevant in its review of registration statements of corporate equity offerings. The guidelines contained in this Release are not necessarily standards that the Commission itself would apply in making a final determination on the effectiveness of a registration statement but constitute procedures to be followed by staff on its review of corporation equity offerings filed under Section 205 and 206 of the 1972 Act.

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