

**NOTICE OF REQUEST FOR PUBLIC COMMENTS REGARDING  
A PROPOSED STATEMENT OF POLICY REGARDING  
THE USE OF ELECTRONIC OFFERING DOCUMENTS  
AND ELECTRONIC SIGNATURES**

**May 2, 2016**

The Corporation Finance Section of the North American Securities Administrators Association (“NASAA”) is requesting public comments on a proposed Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures (“Statement of Policy”).

Comments are due by June 1, 2016. To facilitate consideration of comments, please send comments to Michael Pieciak (Michael.Pieciak@vermont.gov), Chair of the Corporation Finance Section; Dan Matthews (Dan.Matthews@dfi.wa.gov), Chair of Business Organizations and Accounting Project Group; and Mark Stewart (nasaacomment@nasaa.org) at the NASAA Corporate Office. We encourage, but do not require, comments to be submitted by e-mail. Hard copy comments may be submitted at the address below.

NASAA Legal Department  
Mark Stewart, Counsel  
NASAA  
750 First Street, NE, Suite 1140  
Washington, DC 20002

**Note:** After the comment period has closed, NASAA will post to its website the comments it receives as submitted by the authors. Parties should therefore only submit information that they wish to make publicly available. Further, the following notice will appear on NASAA’s website where comments are posted: NASAA, its agents, and employees accept no responsibility for the content of the comments posted on this Web page. The views, expressions, and opinions expressed in the comments are solely those of the author(s).

**Discussion and Analysis**

The NASAA Corporation Finance Section Committee has drafted a proposed Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures.

As technology continues to progress and permeate through more aspects of the securities industry, it has become increasingly important for state regulators to address the appropriate use of technology when conducting a securities offering. Several issuers have begun implementing technologies that allow prospective investors to receive electronic offering documents and electronic subscription agreements, as well as the ability to execute these documents using an electronic signature. These issuers have requested relief through no-action letters among other methods in order to gain state approval of these initiatives. As more issuers seek to implement

similar programs, the Section is proposing this Statement of Policy to provide a tool that allows NASAA jurisdictions to establish uniform guidelines to govern these initiatives and to streamline the process for industry participants.

This proposed Electronic Initiatives Statement of Policy addresses the requirements and restrictions to which an issuer is subject to should they choose to engage in an electronic initiative, such as providing offering documents and/or subscription agreements electronically, as well as allowing these documents to be executed using an electronic signature.

As part of drafting the Statement of Policy, several sources were considered, including Securities and Exchange Commission Release No. 34-51982<sup>1</sup>; Securities Act Releases 7233,<sup>2</sup> 7288,<sup>3</sup> and 7856;<sup>4</sup> FINRA Interpretive Letter to Jeffrey W. Kilduff, Esq., O'Melveny & Myers, LLP (July 5, 2001);<sup>5</sup> NASAA Statement of Policy Regarding Electronic Delivery of Franchise Disclosure Documents;<sup>6</sup> no action requests and other correspondence from a variety of law firms representing securities issuers; and input from several NASAA jurisdictions.

The proposed Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures is attached as Exhibit A.

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<sup>1</sup> SEC Securities Exchange Act of 1934 Release No. 51982 (July 7, 2005), *Available at*: <https://www.sec.gov/litigation/suspensions/34-51982.pdf>

<sup>2</sup> 60 Fed. Reg. 53467 (October 6, 1995), *Available at*: <https://www.sec.gov/rules/concept/33-7233.txt>

<sup>3</sup> 61 Fed. Reg. 24651 (May 15, 1996), *Available at*: <https://www.sec.gov/rules/concept/33-7288.txt>

<sup>4</sup> 65 Fed. Reg. 25843 (April 28, 2000), *Available at*: <http://www.sec.gov/rules/concept/34-42728.htm>

<sup>5</sup> FINRA Interpretive Letter to Jeffrey W. Kilduff, Esq., O'Melveny & Meyers, LLP, dated July 5, 2001, from Nancy Libin, FINRA Assistant General Counsel (regarding electronic signatures: request for interpretive letter NASD Rules 3010(d) and 3110(c)(1)(C)), *Available at*: <https://www.finra.org/industry/interpretive-letters/july-5-2001-1200am>

<sup>6</sup> NASAA Statement of Policy Regarding Electronic Delivery of Franchise Disclosure Documents (September 14, 2003), *Available at*: [http://www.nasaa.org/wp-content/uploads/2011/07/34-Electronic\\_Delivery\\_Franchise\\_Disclosure.pdf](http://www.nasaa.org/wp-content/uploads/2011/07/34-Electronic_Delivery_Franchise_Disclosure.pdf)

# Exhibit A

NASAA STATEMENT OF POLICY REGARDING  
USE OF ELECTRONIC OFFERING DOCUMENTS  
AND ELECTRONIC SIGNATURES

Part One:

TEXT OF PROPOSED POLICY REGARDING USE OF ELECTRONIC OFFERING  
DOCUMENTS AND SUBSCRIPTION AGREEMENTS

- A. An issuer of securities may deliver offering documents, including subscription agreements, over the Internet or by other electronic means, or in machine-readable media, provided:
1. the offering documents:
    - a. are prepared, updated, and delivered in a manner consistent with state and federal securities laws;
    - b. satisfy the formatting requirements applicable to printed documents, such as font size and typeface;
    - c. are delivered as a single, integrated document or file;
    - d. have no links to or from external documents or content; and
    - e. are delivered in a form that intrinsically enables the recipient to store, retrieve, and print the documents;
- AND
2. the issuer:
    - a. obtains informed consent from the investor or prospective investor to receive offering documents electronically;
    - b. ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic document has been delivered;
    - c. employs safeguards to ensure that delivery occurred at or before the time required by law in relation to the time of sale; and
    - d. maintains evidence of delivery by keeping records of its electronic delivery of offering documents and makes those records available on demand by the Administrator.
- B. Subscription agreements may be provided electronically for review and completion, provided:
1. the subscription process is administered in a manner that is equivalent to the administration of subscription agreements in paper form;
  2. mechanisms are established to ensure a prospective investor scrolls through the document in its entirety prior to initialing and/or signing;
  3. a single subscription agreement is used to subscribe a prospective investor in no more than one offering; and

4. in the event of discovery of a security breach at any time in any jurisdiction, the electronic subscription process will be suspended and notification will be made to the Administrator and all investors.
- C. Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (A)(1).
- D. Each electronic document shall be preceded by or presented concurrently with the following notice: “Clarity of text in this document may be affected by the size of the screen on which it is displayed.”
- E. Informed consent to receive offering documents electronically pursuant to (A)(2)(a) in this section shall be obtained in connection with each new offering. The investor may revoke this consent at any time.
- F. Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.
- G. Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements—as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.
- H. Entities participating in an electronic initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic offering documents and subscription agreements.
- I. Entities and their contractors and agents having custody and possession of all documents, including subscription agreements, shall store them in a non-rewriteable and non-erasable format, and maintain secure offsite backups of such documents.
- J. This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

Part Two:

TEXT OF PROPOSED POLICY REGARDING USE OF ELECTRONIC  
SIGNATURES

- A. An issuer of securities may provide for the use of electronic signatures provided:
  1. The process by which electronic signatures are obtained:
    - a. will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act (“Federal E-Sign”) the Uniform Electronic Transactions Act, including an appropriate level of security and assurances of accuracy;

- b. will employ an authentication process to establish signer credentials and security features that protect signed records from alteration; and
    - c. will provide for retention of electronically signed documents in compliance with applicable laws and regulations;
  - 2. An investor or prospective investor shall expressly opt-in to the electronic signature initiative, and participation may be terminated at any time; and
  - 3. Investment opportunities shall not be conditioned on participation in the electronic signature initiative.
- B. Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures.
- C. An election to participate in an electronic signature initiative pursuant to (A)(2) in this section shall be obtained in connection with each new offering