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November 2, 2016

VIA Email to: nasaacomments@nasaa.org

North American Securities Administrators Association
Attention: Mark Stewart, Counsel
NASAA Legal Department
750 First Street NE, Suite 1140
Washington, DC 20002

Re: Proposed Statement of Policy on the Use of Electronic Offering Documents and Electronic Signatures

Dear Mr. Stewart:

The Corporate Finance Section of the North American Securities Administrators Association ("NASAA"), has issued a proposed Statement of Policy Regarding the Use of Electronic Offering Documents and Electronic Signatures ("Statement of Policy" or "SOP"), dated October 3, 2016. On behalf of the Alternative & Direct Investment Securities Association ("ADISA"),[1] we are submitting comments on the recently proposed SOP. ADISA previously submitted comments on NASAA's so-named Electronic Initiatives proposal from May of 2016, and appreciates the opportunity to provide comments on the newly proposed SOP on behalf of its members.

We are pleased that the SOP incorporates a number of changes that ADISA, along with others, recommended in our prior comment letter. For example, the SOP would permit (with state administrator approval), the use of a multiple offering subscription document. In addition, the SOP would expressly allow certain "approved" sales materials to be delivered electronically. There are other aspects in which the SOP reflects input on the Electronic Initiative from ADISA and others, and ADISA is pleased that such changes or edits were incorporated into the new, proposed SOP.

At the same time, the proposed SOP incorporates broad and significant changes from the prior proposal, and introduces new provisions and approaches that are, in a word, problematic . On behalf of

[1] ADISA (Alternative & Direct Investment Securities Association), is the nation's largest trade association for the non-traded alternative investment space. ADISA represents over 4,000 financial industry members, reaching over 220,000 finance professionals, with sponsor members having raised in excess of $200 billion in equity in serving more than 1 million investors. ADISA is a non-profit organization (501c6) with the ability to lobby and also has a related 501c3 charitable non-profit (ADISA Foundation) assisting with scholarships and educational efforts.

ADISA, we set forth below the major elements of the SOP that we view as presenting issues or difficulties, along with the basis for our objection and possible remedial steps, where applicable.

A. Review of Documents with the Prospective Investor:

The SOP would require, prior to completion, that the issuer (or its agent – presumably, the selling dealer), review "all documentation" with the prospective investor, discuss investment options "dependent upon suitability," and review the documents and instructions for completing the relevant subscription documents.

In our view, this element would not advance investor understanding or education about the offering, but only serve as a trap for the unwary. It would allow a disgruntled investor to claim that the requirements had not been met and that the electronic delivery component was invalid. That claim alone might serve as a basis for rescission. Our members do so now and will in the future continue to go over all pertinent information with their clients and prospective investors; putting a detailed and substantive requirement in a provision designed to merely foster electronic dissemination of documents is bad policy and introduces a new and uncertain element into the offering process that may have negative effects far beyond the benefits of permitting electronic delivery. What is written in the documents and what the client reads before making an investment decision has and will not change; only the surface, which carries the same text as before, will be different.

Furthermore, the requirement that a prospective investor review all required disclosures and scroll through the document "in its entirety prior to initialing and/or signing" also differentiates the requirements for electronic delivery from the requirements for paper delivery in a way that is both burdensome as well as contrary to the current REIT Guidelines. NASAA's REIT Guidelines prohibit a representation from a shareholder that "he has read the Prospectus," Section III.D.5. A requirement to have scrolled through the documents in their entirety in our view runs counter to the requirements of the Guidelines, and should be excised from the SOP.

B. Security Breach:

The SOP would require that the issuer or any agent (again, presumably, the selling dealer), take certain actions in the event of a "Security Breach" discovered to have occurred "at any time" and "in any jurisdiction." A Security Breach is defined as the "unauthorized accessing, viewing, acquisition or disclosure" of any data that "compromises the security or confidentiality" of "confidential personal information," provided that the breach system, technology or process is one that is "used in connection with or introduced into a securities offering," so as to "implement the use of electronic offering documents and/or electronic signatures."

The actions to be taken promptly by the issuer or its agent under the proposed are the following: (a) identify and locate the breach, (b) secure the affected information, (c) suspend the use of the particular device or technology that has been compromised until information security has been restored, and (d) provide notice of the security breach to any investor whose confidential personal information has been improperly accessed in connection with the security breach and to the securities administrator of each state in which an affected investor resides. The SOP notes in this regard that compliance with these requirements after the discovery of a Security Breach (or "any other breach of personal information"), shall not substitute or in any way affect other requirements or obligations,

including notification, imposed on an issuer or its agents pursuant to applicable laws, regulations, or standards.

The SOP in many respects is a welcome improvement over the prior proposal, particularly as it would no longer require that the entire offering be shut down in the event of a breach. And the reach of the definition of "Security Breach" is limited to unauthorized access, etc., involving those systems that are employed in the electronic delivery and electronic signature processes, and not all systems containing information that might rise to the level of "confidential personal information." However, in our view, there are some problematic aspects of the proposed SOP that warrant attention and remediation. Specifically, as drafted the SOP would effectively impose a requirement on issuers and their agents to build and maintain a full scale cybersecurity monitoring and reporting procedure simply in order to be allowed to transmit documents via the Internet or other electronic means. This is above and beyond what most businesses are required to do to conduct business over the Internet. In addition, one important phrase-- "confidential personal information"- - is not defined, and could be interpreted to mean any information that might tie to an investor's identity. Because the phrase "unauthorized accessing, viewing, acquisition or disclosure" is extremely broad, the language could pick up any number of incidents or events that would not generally rise to the level of a "security breach," as that term is generally understood.[2]

As we look at the proposed SOP, the entire review and response apparatus required by the security breach provision - including but not limited to the requirement to self-report at the state level AND provide notice to investors-- could be triggered by relatively innocuous behavior and/or an incident that does not present any meaningful likelihood of harm, simply because an issuer or its agent wanted to deliver documents over the Internet. Certainly, if there is an actual breach or genuine unauthorized access to the types of investor data that could easily foster or lead to cybercrime or identity theft (or other unfortunate outcomes), issuers and their agents can and will respond appropriately and with full regard for their legal and regulatory duties. That said, it is important to ensure that, in the process of providing issuers with the ability to use the Internet or other electronic means of delivery to communicate with prospective investors and their advisers in an efficient and timely manner, NASAA does not so laden this delivery option with such burdensome and vague requirements as to actually discourage its widespread use.

C. Informed Consent:

The SOP uses a notion of "informed consent" for the receipt by the prospective investor of electronic offering documents and for participation by said investor in an electronic signature process that appears to require express action by the investor. In addition, while it permits selling dealers and other agents to obtain the requisite consent and suggests in doing so that such parties may utilize a form of blanket consent to electronic delivery, it is vague on the specifics of the blanket consent option and continues to suggest that prospective investors must consent to electronic delivery and/or electronic signature processes in connection with each offering.

ADISA applauds NASAA's willingness to foster the use of electronic means for delivering and executing offering documents (including sales materials) and subscription agreements; it is important that the approach taken comport fully with Federal law, as established by Congress and as interpreted in

[2] For example, it could include the unauthorized viewing of a list of client names and addresses by a contractor working with a selling agent.

the realm of securities offerings and securities holdings, generally, by the Securities and Exchange Commission. By creating a concept of consent that is particular to real estate investment trusts and (potentially) other direct participation programs, NASAA runs the risk of creating inconsistencies that will only trip up ADISA members and increase complexity for investors for no discernible benefit.

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ADISA appreciates very much the work of the NASAA Corporate Finance Section in its careful and thoughtful consideration of this issue. Much progress has been made, and we ask that you give our further comments consideration. We stand ready to assist further in any way we can and to discuss our comments in person or by phone at your convenience.

Sincerely,

Mike Bendix
President

ADISA Drafting Committee:
John H. Grady (Chair)
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cc:
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