

**NASAA STATEMENT OF POLICY REGARDING THE
IMPOUNDMENT OF PROCEEDS**

*As Adopted and Amended on April 27, 1997, September 28, 1999, March
31, 2008, and September 12, 2023.*

- 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
Associate
Disclosure Document
Impoundment Agent
Person
Promoter
Underwriter

- III. REQUIREMENT FOR IMPOUNDMENT OF SECURITIES.** If an Underwriter has not firmly underwritten the offering, the Administrator may require the issuer to impound the proceeds as a condition of registration.

IV. DEPOSIT OF PROCEEDS.

- A. If the Administrator requires the impoundment of proceeds, the issuer or other Person that receives the proceeds from the sale of the securities must deposit the proceeds in an interest bearing escrow or trust account with an Impoundment Agent.
- B. The issuer must submit the name of the Impoundment Agent to the Administrator and a description of their relationship to the Impoundment Agent. The following are not eligible to act as an Impoundment Agent:
1. the issuer;

2. the issuer's officers or directors;
3. the Underwriter;
4. any Promoter; or
5. an Affiliate of any of the above.

V. The Impoundment Agreement.

- A. If the Administrator requires the impoundment of proceeds, the issuer must enter into a written Impoundment Agreement with the Impound Agent.
1. The Impoundment Agreement must provide that, until the Impoundment Agent releases the proceeds to the issuer under the terms of the Impoundment Agreement, the following persons do not have any claims to the impounded proceeds:
 - a. creditors of the issuer;
 - b. Affiliates;
 - c. Associates; or
 - d. Underwriters.
 2. The Impoundment Agreement must provide that:
 - a. The Impoundment Agent must notify the Administrator in writing when the Impoundment Agent releases the proceeds to the issuer or other person entitled to the proceeds; and
 - b. If the proceeds do not meet the minimum requirements within the time set out in the agreement, the Impoundment Agent:
 - i. must release and return the proceeds directly to the investors,
 - ii. when returning proceeds to investors, must also pay to the investors, on a pro rata basis, all interest earned on the proceeds, and
 - iii. must not deduct any expenses, including fees of the Impoundment Agent, commissions, underwriting fees or salaries.

3. The term of the Impoundment Agreement shall not exceed one year unless extended with the consent of the Administrator.
 4. If the Impoundment Agreement is extended to more than 1 year, the investor shall have the right to cancel the investment and have their money returned to include all interest earned on the proceeds.
- B. An officer from each of the issuer, Underwriter (if applicable), and Impoundment Agent must sign the Impoundment Agreement on behalf of the entity they represent.
 - C. The Disclosure Document must include a summary of the principal terms of the Impoundment Agreement.
 - D. The issuer or other Person offering securities under the Disclosure Document must file a signed copy of the Impoundment Agreement with the Administrator. On filing, the Impoundment Agreement becomes part of the Disclosure Document.

VI. PURCHASES BY UNDERWRITERS AND PERSONS CONNECTED TO THE ISSUER. If an Underwriter, officer, director, Promoter, Affiliate, or Associate of the issuer purchases shares in the public offering:

- A. The Underwriter, officer, director, Promoter, Affiliate, or Associate must purchase the securities on the same terms as unaffiliated public investors; and
- B. The Disclosure Document must disclose that an Underwriter, officer, director, Promoter, Affiliate, or Associate may purchase securities of the issuer for purposes of meeting the minimum requirements for disbursement under the Agreement.