

STATEMENT OF POLICY REGARDING DEBT SECURITIES

Adopted April 25, 1993

- I. INTRODUCTION.** The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to debt securities is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.
- II. DEFINITIONS.** The following definitions shall apply to this Statement of Policy.
- A. **ADJUSTED CASH FLOW** is the Issuer's CASH FLOW adjusted on a pro forma basis to reflect:
1. The elimination of interest and fees on debt or debt securities and of cash dividends on preferred stock that are to be retired with the proceeds derived from the offering;
 2. The effect of any acquisitions or capital expenditures that were made by the Issuer after its last fiscal year, or which are proposed or required for the current fiscal year, which materially affect the Issuer's CASH FLOW;
 3. The effect of interest and fees on debt or debt securities or cash dividends paid after the Issuer's last fiscal year;
 4. The effect of any interest and fees on debt or debt securities and of cash dividends on preferred stock or common stock that were issued during the Issuer's last fiscal year, but which were outstanding for only a portion of such fiscal year, as if such debt, debt securities, preferred stock or common stock had been outstanding for the entire fiscal year;
 5. The effect of imputed or deferred charges of zero coupon debt or debt securities for the Issuer's last fiscal year and any additional charges on such debt or debt securities issued after the Issuer's last fiscal year;
 6. The effect of accrued dividends on preferred stock for the Issuer's last fiscal year and any additional dividends on such preferred stock issued after the Issuer's last fiscal year; and
 7. The effect of any other material changes to the Issuer's future CASH FLOW.
- B. An **AFFILIATE** is a **PERSON** who, directly or indirectly, **CONTROLS**, is **CONTROLLED** by, or is under common **CONTROL** with the **PERSON** specified herein.
- C. An **ASSOCIATE**, when used to indicate a relationship with a **PERSON**, includes:
1. Corporations or legal entities, other than the Issuer or majority-owned subsidiaries of the Issuer, of which a **PERSON** is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of **EQUITY SECURITIES**;
 2. Trusts or other estates in which a **PERSON** has a substantial beneficial interest or for which a **PERSON** serves as a trustee or in a similar capacity; and
 3. A **PERSON'S** spouse and relatives, by blood or by marriage, if the **PERSON** is a **PROMOTER** of the Issuer, its subsidiaries, its **AFFILIATES**, or its parent.

- D. CASH FLOW is the Issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, less interest and dividends, plus certain noncash charges against earnings such as depreciation, depletion and amortization, determined according to generally accepted accounting principles, consistently applied.
- E. CONTROL is the power to direct or influence the direction of the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract or otherwise.
- F. EQUITY SECURITIES include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into or exercised to purchase, shares of common stock or similar securities.
- G. A PERSON is an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government, or any other legal entity.
- H. A PROMOTER may include:
1. A PERSON who, alone or in conjunction with one or more PERSONS, directly or indirectly, took the initiative in founding or organizing the Issuer or CONTROLS the Issuer;
 2. A PERSON who, directly or indirectly, receives, as consideration for services and/or property rendered, five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or five percent (5%) or more of the proceeds from the sale of any class of the Issuer's EQUITY SECURITIES. A PERSON, who receives securities or proceeds solely as underwriting compensation, is excluded from the definition of PROMOTER if that PERSON falls outside of the definitions of II.H.1., above, or II.H.3., 4., or 5., below.
 3. A PERSON who is an officer or director of the Issuer;
 4. A PERSON who legally or beneficially, directly or indirectly, owns five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES ("5% shareholder") if that PERSON was in CONTROL of the Issuer at the time of acquiring five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or if that PERSON is in CONTROL of the Issuer at the time of the public offering of the Issuer's EQUITY SECURITIES; or
 5. A PERSON who is an AFFILIATE or an ASSOCIATE of a PERSON specified in II.H.1., 2., 3., or 4., above.

III. A public offering of debt securities may be disallowed by the Administrator if the Issuer's ADJUSTED CASH FLOW for the last fiscal year or its average ADJUSTED CASH FLOW for the last three (3) fiscal years prior to the public offering was insufficient to cover its fixed charges, meet its debt obligations as they became due, and service the debt securities being offered.

IV. Notwithstanding II.A.6., above, accrued dividends of cumulative preferred stock having a stated interest rate may be excluded from ADJUSTED CASH FLOW at the discretion of the Administrator.

V. The Administrator, in his or her discretion, may choose to not apply III., above, to public offerings of convertible debt securities that are superior in right of payment of interest and liquidation proceeds to any convertible debt that is or may be legally or beneficially, directly or indirectly, owned by PROMOTERS. The risks of failure to meet debt service obligations and the equity characteristics of such securities must be disclosed in the prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.

VI. Unless the Administrator permits otherwise, public offerings of debt securities shall be offered and sold pursuant to a Trust Indenture ("Indenture") which adequately protects the rights of the purchasers. Some of these protections are:

- A. The Indenture shall comply with the provisions of the Trust Indenture Act of 1939. This shall be disclosed in the offering document.
- B. The events of default of the Indenture shall be disclosed in the offering document.
- C. The trustee shall be provided with adequate reports, including any compliance reports from independent auditors, to allow the trustee to ensure compliance with the Indenture.
- D. Neither the trustee nor its PROMOTERS may be major creditors of the Issuer or its AFFILIATES.
- E. The Indenture shall provide that upon any consolidation, merger, recapitalization, reorganization, pledge foreclosure, equity or share exchange, conveyance or transfer of the properties and assets of the Issuer substantially as an entirety, or any other transaction having a substantially equivalent effect, the successor PERSON shall expressly assume the payment obligations on the debt securities and the performance of the covenants of the Indenture.
- F. The Indenture shall provide that interest will accrue and be paid to the date(s) of redemption or conversion of the debt securities.

VII. If the Issuer's CASH FLOW is subject to cyclical fluctuations or if the Administrator deems it necessary for investor protection, the Administrator may require that the Issuer establish a sinking fund or redemption requirements.