

Statement of Policy Regarding Preferred Stock

Amended April 27, 1997

- I. INTRODUCTION.** The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to preferred stock 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 terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.
- III.** A public offering of preferred stock may be disallowed by the Administrator if the Issuer's ADJUSTED NET EARNINGS for the last fiscal year or its average ADJUSTED NET EARNINGS for the last three (3) fiscal years prior to the public offering were insufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.
- IV.** As an alternative to III. above, the Administrator may choose to apply a CASH ANALYSIS. The Administrator may consider the Statement of Cash Flows if the statement demonstrates that the issuer has had positive "Net Cash Provided by Operating Activities" for its last fiscal year. The Administrator may request that the issuer submit a financial statement demonstrating an average positive "Net Cash Provided by Operating Activities" for the last three (3) fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.
- V.** Section III. and IV. above shall not apply to public offerings of convertible preferred stock that are superior in right to payment of dividends, interest and liquidation proceeds to any convertible debt and preferred stock that are or may be legally or beneficially, directly or indirectly, owned by PROMOTERS. The risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock must be disclosed in the offering prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.
- VI.** If the Issuer's NET EARNINGS are subject to cyclical fluctuations or if the Administrator deems it necessary for investor protection, the Administrator may require that the Issuer establish redemption requirements.
- VII.** A public offering of EQUITY SECURITIES may be disallowed by the Administrator if the Issuer's articles of incorporation authorize its board of directors to issue preferred stock in the future without a vote of the common shareholders unless:

 - A.** The issuer represents in its prospectus or offering document that it will not offer preferred stock to PROMOTERS except on the same terms as it is

offered to all other existing shareholders or to new shareholders; or

- B.** The issuance of preferred stock is approved by a majority of the Issuer's INDEPENDENT DIRECTORS who do not have an interest in the transaction and who have access, at the issuer's expense, to issuer's or independent legal counsel.