

## STATEMENT OF POLICY REGARDING PROMOTIONAL SHARES

Adopted November 18, 1997

- I. INTRODUCTION.** The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guidelines relating to PROMOTIONAL SHARES 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. In addition, nothing in this Statement of Policy restricts the ability of an Administrator to deny an offering which contains excessive promoters’ profits or is not fair, just or equitable under the circumstances.

Terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.

- II. ESCROW OF PROMOTIONAL SHARES.** The Administrator may require that some or all of the PROMOTERS deposit some or all of their PROMOTIONAL SHARES into an Escrow Account (“Escrow”) with an ESCROW AGENT, according to the terms of an Escrow Agreement (“Agreement”), as a condition to registering a public offering of EQUITY SECURITIES. The PROMOTERS, who are required to deposit some or all of their PROMOTIONAL SHARES into Escrow, are hereinafter collectively referred to as Depositors. The Administrator may, in his discretion, require a Lock-In Agreement on substantially the same terms and conditions as an Agreement.

- A. Except where a PROMOTER must comply with paragraph II.B., below, the following formula may be used to determine the number of PROMOTIONAL SHARES to be deposited in Escrow,

	<i>Shares</i>	<i>Total Price Per Share</i>
Shares Held by Promoters	100	\$ 1.00
Public Offering Price Per Share		\$10.00
Total Paid by Promoter	$\frac{\$100}{\$10 \times .85}$	= 11.77 Fully Paid Shares
Public Offering Price Per Share X .85		
Shares held by promoters	100	
Fully paid shares (rounded)	12	
Number of promotional shares to be escrowed	88	

- B. If the issuer’s latest audited financial statements contain an auditor’s report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, then all PROMOTIONAL SHARES shall be deposited

in Escrow.

- C. The number of PROMOTIONAL SHARES to be deposited into Escrow shall be determined on a pro rata basis among the PROMOTERS.

### **III. RELEASE OF PROMOTIONAL SHARES**

- A. The ESCROW AGENT shall release the PROMOTIONAL SHARES in the following manner as illustrated in Appendix A.
1. If the Issuer's AGGREGATE REVENUES are:
    - (i) \$500,000 or more; provided that neither the auditor's report nor any footnote to the issuer's latest audited financial statements contain an opinion or statement regarding the ability of the issuer to continue as a going concern:  
Beginning one year from the date of completion of the offering, two and one-half percent (2 1/2%) of PROMOTIONAL SHARES held in escrow may be released each quarter pro rata among the Depositors. All remaining PROMOTIONAL SHARES shall be released from escrow on the second anniversary from the date of completion of the offering; or
    - (ii) Less than \$500,000:  
Beginning two years from the date of completion of the offering, two and one-half percent (2 1/2%) of PROMOTIONAL SHARES held in escrow may be released each quarter pro rata among the Depositors. All remaining PROMOTIONAL SHARES shall be released from escrow on the fourth anniversary from the date of completion of the offering; or
  2. The public offering has been terminated, and no securities were sold pursuant thereto; or
  3. The public offering has been terminated, and all of the gross proceeds that were derived therefrom have been returned to the public investors.
  4. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a PERSON who is not a PROMOTER which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect, the Depositors agree that:
    - (i) All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share of EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration),

until the public shareholders have received, or had had irrevocably set aside for them, an amount that is equal to one-hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like;

- (ii) All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like; and
- (iii) A Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs III.A.4.(i) and (ii), above, if a majority of the EQUITY SECURITIES, that are not held by PROMOTERS, or their ASSOCIATES or AFFILIATES, vote, or consent by consent procedure, to approve the lesser terms and conditions at a special meeting called for that specific purpose.

- 5. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a PERSON who is a PROMOTER, which results in a Distribution while this Agreement remains in effect, the Depositors' PROMOTIONAL SHARES shall remain in Escrow subject to the terms of this Agreement.
- 6. In the event securities in the Escrow become "Covered Securities," as defined in Section 18(b)(1) of the Securities Act of 1933, all securities in the Escrow shall be released.

#### **IV. DOCUMENTATION REGARDING THE TERMINATION OF THE ESCROW AGREEMENT AND/OR THE RELEASE OF PROMOTIONAL SHARES**

- A. A request for the release of any of the PROMOTIONAL SHARES from Escrow shall be in writing and be forwarded to the ESCROW AGENT;
- B. The Issuer shall provide the documentation, showing that the requirements of paragraph III, above, have been met, to the ESCROW AGENT; and
- C. The ESCROW AGENT, shall terminate the Agreement and/or release some or all of the PROMOTIONAL SHARES from Escrow if all the applicable provisions of the Agreement have been satisfied. The ESCROW AGENT shall maintain all records relating to the Agreement for a period of three (3) years following the termination of the Agreement. Copies of all records retained by the ESCROW AGENT shall be forwarded to the Administrator promptly upon written request.

## **V. RESTRICTIONS ON THE TRANSFER, SALE OR DISPOSAL OF PROMOTIONAL SHARES**

- A. PROMOTIONAL SHARES may be transferred by will, the laws of descent and distribution, the operation of law, or by any court of competent jurisdiction and proper venue.
  - 1. The PROMOTIONAL SHARES of a deceased Depositor may be hypothecated to pay the expenses of the deceased Depositor's estate; provided that the hypothecated PROMOTIONAL SHARES shall remain subject to the terms of the Agreement.
  - 2. No PROMOTIONAL SHARES may be transferred, sold or disposed of ("transferred") until the ESCROW AGENT has received a written statement signed by the proposed transferee ("transferee") which states that the transferee has full knowledge of the terms of the Agreement, the transferee accepts the PROMOTIONAL SHARES subject to the terms of the Agreement and the transferee realizes that the PROMOTIONAL SHARES shall remain in Escrow until they are released pursuant to paragraph III., above.
- B. With the exception of paragraph V.A.1., above, PROMOTIONAL SHARES may not be pledged to secure a debt.
- C. PROMOTIONAL SHARES may be transferred by gift to the Depositor's family members, provided that the PROMOTIONAL SHARES shall remain subject to the terms of the Agreement.
- D. With the exception of paragraph V.A., above, no PROMOTIONAL SHARES, any interest therein or any right or title thereto, may be transferred.
- E. Notwithstanding the provisions of paragraph II.A., above, PROMOTERs shall be prohibited from selling any of their PROMOTIONAL SHARES that are not subject to escrow during the time that the issuer is offering its securities to the public in the case of a self-underwritten offering.

## **VI. TERMS OF THE ESCROW**

- A. Except as noted in paragraph III.A.4.(iii), above, Depositors shall have the same voting rights as shareholders who purchased EQUITY SECURITIES pursuant to the public offering ("Public Shareholders").
- B. All certificates representing stock dividends and shares resulting from stock splits of escrowed shares, recapitalizations and the like, that are granted to or received

by Depositors while their PROMOTIONAL SHARES are held in Escrow shall be deposited with and held by the ESCROW AGENT subject to the terms of the Agreement. Any cash dividends that are granted to or received by Depositors while their PROMOTIONAL SHARES are held in Escrow, shall be deposited with and be held by the ESCROW AGENT subject to the terms of the Agreement unless such cash dividends are approved by a majority of the INDEPENDENT DIRECTORS of the Issuer. The ESCROW AGENT shall invest such cash dividends as directed by the Depositors. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from the Escrow.

- C. EQUITY SECURITIES that are received by Depositors as the result of the conversion or exercise of convertible securities, warrants, options or rights to purchase common stock or similar securities, while their PROMOTIONAL SHARES are in Escrow, shall be deposited with and held by the ESCROW AGENT subject to the terms of the Escrow.
- D. A summary of the Agreement shall be included in the prospectus and subsequent amendments thereto, annual reports to shareholders, proxy statements and other disclosure materials that are used to make investment decisions until the public offering has been terminated.
- E. The ESCROW AGENT shall be entitled to reasonable compensation from the Issuer for its services as set forth in the Agreement. If the ESCROW AGENT is required to render additional services that are not expressly provided for therein, or if it is made a party to or intervenes in any action, suit or proceedings pertaining to the Agreement, it shall be entitled to receive reasonable compensation from the Issuer and the Depositors. If additional services are provided, the ESCROW AGENT, after giving written notice to the Depositors and Issuer, may deduct reasonable compensation from any cash dividends, interest and proceeds that are being held by it for distribution pursuant to the Agreement.
- F. The Issuer and the Depositors shall hold the ESCROW AGENT harmless from, and indemnify it for, any cost or liability regarding administrative proceeding, investigation, litigation, interpretation, implementation, or interpleading relating to the Agreement, including the release of PROMOTIONAL SHARES and the disbursement of dividends, interest or proceeds, unless the cost or the liability arises from the ESCROW AGENT's failure to abide by the terms of the Agreement.
- G. The Agreement shall be binding upon the Depositors, their heirs and assignees, and upon the Issuer and ESCROW AGENT and their successors.

- H. Except for the ESCROW AGENT's compensation and indemnification provisions, which shall survive until they are satisfied, the Agreement will be terminated when all of the PROMOTIONAL SHARES have been released or the Issuer's EQUITY SECURITIES and/or the assets have been distributed pursuant to the Agreement.

**APPENDIX A**  
**SCHEDULE OF ESCROW OR LOCK-IN REQUIREMENTS**

<u>Class of Offering</u>	<u>Aggregate Revenues</u>	<u>Other Requirements</u>	<u>Terms of Required Escrow or Lock-in</u>
Class A	AGGREGATE REVENUES of \$500,000 or more	Neither the auditor's opinion nor any footnote to the issuer's latest audited financial statement contain an opinion or statement regarding the ability of the issuer to continue as a going concern.	Year 1 - all Year 2 - 2 1/2% pro rata per quarter Year 3 - none
Class B	AGGREGATE REVENUES of less than \$500,000	None	Year 1 - all Year 2 - all Year 3 - 2 1/2% pro rata per quarter Year 4 - 2 1/2% pro rata per quarter Year 5 - none