



**STATE OF NEW MEXICO  
REGULATION AND LICENSING DEPARTMENT  
SECURITIES DIVISION**

**IN THE MATTER OF:** )  
 )  
**Electronic Offering Documents and** )  
**Electronic Signatures** )

**ADOPTION OF NASAA STATEMENT OF POLICY REGARDING USE OF  
ELECTRONIC OFFERING DOCUMENTS AND ELECTRONIC SIGNATURES,  
ADOPTED MAY 8, 2017**

**WHEREAS**, § 58-13C-605(A)(1), NMSA 1978, of the New Mexico Uniform Securities Act (the “Act”), allows the Director of the New Mexico Securities Division (the “Director”) to issue orders necessary or appropriate to carry out the Act.

**WHEREAS**, § 58-13C-605(B), NMSA 1978, provides that the Director must first find that an order is necessary or appropriate in the public interest, or for the protection of investors, and such an order must also be consistent with the purposes of the Act.

**WHEREAS**, Rule 12.11.9.8, NMAC, provides that the Director shall adopt statements of policy adopted by the North American Securities Administrators Association (NASAA), in order to promote uniform regulation, regarding the types of securities offerings listed in subsections A – I of that section.

**WHEREAS**, on May 8, 2017, NASAA adopted the Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures (“Policy”).

**THE DIRECTOR HEREBY FINDS:**

1. That this order is appropriate: in the public interest; furthers the imperative of investor protection; and is consistent with the Act.

2. That the Policy issued by NASAA on May 8, 2017 doesn't make specific reference to the types of securities offerings to which it should be applied, necessitating the issuance of this Order.

**IT IS THEREFORE ORDERED THAT:**

Effective immediately, any offerings identified in Rule 12.11.9.8A – 12.11.9.8I that are being registered in New Mexico pursuant to §§ 58-13C-303 or 304, NMSA 1978 must comply with the NASAA Policy issued on May 8, 2017, incorporated herein by reference.

SIGNED ON THIS 6 day of November, 2017, in Santa Fe, New Mexico



  
\_\_\_\_\_  
Benjamin R. Schroepe, Acting Director  
New Mexico Securities Division

NASAA STATEMENT OF POLICY REGARDING  
USE OF ELECTRONIC OFFERING DOCUMENTS  
AND ELECTRONIC SIGNATURES

*Adopted on May 8, 2017<sup>1</sup>*

- I. POLICY REGARDING USE OF ELECTRONIC OFFERING DOCUMENTS AND SUBSCRIPTION AGREEMENTS
- A. An issuer of securities or agent acting on behalf of the issuer may deliver Offering Documents over the Internet or by other electronic means, or in machine-readable format, provided:
1. each Offering Document:
    - a. is prepared, updated, and delivered in a manner consistent and in compliance with state and federal securities laws;
    - b. satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printed version (other than electronic instructions and/or procedures as may be displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);
    - c. is delivered as a single, integrated document or file; when delivering multiple Offering Documents, the documents must be delivered together as a single package or list;
    - d. where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source; and
    - e. is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents;
  - AND
  2. the issuer or agent acting on behalf of the issuer:
    - a. obtains informed consent from the investor or prospective investor to receive Offering Documents electronically;
    - b. ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic Offering Document has been delivered;
    - c. employs safeguards to ensure that delivery of Offering Documents occurred at or before the time required by law in relation to the time of sale; and

---

<sup>1</sup> Adopted by the NASAA Membership at the 2017 NASAA Spring Conference in Washington, D.C.

- d. maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the securities administrator.
- B. Subscription agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreements in paper form, as follows:
  - 1. before completion of any subscription agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including documents and instructions on how to complete the subscription agreement;
  - 2. mechanisms are established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing and/or signing; and
  - 3. unless otherwise allowed by the securities administrator, a single subscription agreement is used to subscribe a prospective investor in no more than one offering.
- C. In the event of discovery of a Security Breach at any time in any jurisdiction, the issuer or its agents, as appropriate, will take prompt action to (i) identify and locate the breach, (ii) secure the affected information, (iii) suspend the use of the particular device or technology that has been compromised until information security has been restored, and (iv) 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. Compliance with this section 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.
- D. Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (A)(1).
- E. Each electronic document shall be preceded by or presented concurrently with the following notice: **“Clarity of text in this document may be affected by the size of the screen on which it is displayed.”**
- F. Informed consent to receive offering documents electronically pursuant to (A)(2)(a) in this section may be obtained in connection with each new offering or globally, either by the issuer or by an agent acting on behalf of the issuer.<sup>2</sup> The investor may revoke this

---

<sup>2</sup> SEC Release No. 34-42728 provides the following guidance with respect to informed consent: “Generally, a consent is considered to be informed when an investor is apprised that the document to be provided will be available through a specific electronic medium or source . . . and that there may be costs associated with delivery . . . . In addition, for a consent to be informed an investor must be apprised of the time and scope parameters of the consent.”

consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

- G. Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.
- H. Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs—other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements—as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.
- I. Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, and/or other selling agents to maintain, written policies and procedures covering the use of electronic offering documents and subscription agreements.
- J. Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a non-rewriteable and non-erasable format.
- K. This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

## II. POLICY REGARDING USE OF ELECTRONIC SIGNATURES

- A. An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:
  - 1. The process by which electronic signatures are obtained:
    - a. will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act (“Federal E-Sign”) and the Uniform Electronic Transactions Act, including an appropriate level of security and assurances of accuracy, and where applicable, required federal disclosures;
    - b. will employ an authentication process to establish signer credentials;
    - c. will employ security features that protect signed records from alteration; and
    - d. will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer;
  - 2. An investor or prospective investor shall expressly opt-in to the electronic signature initiative, and participation may be terminated at any time; and
  - 3. Investment opportunities shall not be conditioned on participation in the electronic signature initiative.
- B. Entities that participate in an electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other

selling agents to maintain, written policies and procedures covering the use of electronic signatures.

- C. An election to participate in an electronic signature initiative pursuant to (A)(2) in this section may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was given, or, if such party is no longer available, the issuer.

### III. DEFINITIONS OF TERMS USED IN POLICY REGARDING USE OF ELECTRONIC OFFERING DOCUMENTS AND ELECTRONIC SIGNATURES

- A. The following terms are defined for purposes of this Statement of Policy:
  - 1. “Offering documents” include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.
  - 2. “Sales materials” include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the States, as applicable.
  - 3. “Security Breach” shall mean the unauthorized accessing, acquisition, or disclosure of any data that compromises the security or confidentiality of confidential personal information maintained by the person or business; provided, however, that for this purpose a “security breach” shall relate only to a system, technology, or process that is used in connection with or introduced into a securities offering in order to implement the use of electronic offering documents and/or electronic signatures.