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**Re: Response to Request For Public Comments Regarding A  
Proposed Statement of Policy Regarding The Use of Electronic  
Offering Documents and Electronic Signatures**

Ladies and Gentlemen:

The Investment Program Association (“IPA”) submits the following comments with respect to the proposed Statement of Policy Regarding Use of Electronic Offering Documents and Electronic Signatures (“Proposed Statement of Policy”) by the North American Securities Administrators Association (“NASAA”) which provides for a methodology enabling issuers, broker-dealers, investment advisers, and investors to efficiently raise capital while protecting investors in the digital age. The IPA appreciates the opportunity to comment on this important regulatory action.

**HISTORY**

The Investment Program Association (IPA) was formed in 1985 to provide effective national leadership for the direct investment industry. The IPA supports individual investor access to a variety of asset classes not correlated to the traded markets and historically available only to institutional investors. These include public non-listed REITs (NL REITs), business development companies (BDCs), energy and equipment leasing programs, and private equity offerings. For 31 years the IPA has successfully championed the growth and improvement of such products, which have increased in popularity with financial professionals and investors alike. Today these investment products function as a critical component of effectively diversified investment portfolios and serve an essential capital formation function for the US economy.

## **EXECUTIVE SUMMARY**

The IPA is very much in favor of NASAA’s Proposed Statement of Policy and offers the following comments, not as criticism, but in the spirit of cooperation and collaboration. Obviously we read the Proposed Statement of Policy from a different perspective than that of NASAA (as well as other issuers of other investment products). Accordingly, the IPA’s primary comments fall into two broad categories: (i) the need for clarification and definitional guidance relating to certain terms within the Proposed Statement of Policy; and (ii) the need for clarification relating to whether the delegation to other parties of certain requirements of the Proposed Statement of Policy is permissible.

### **I. The Need For Clarification and Definitional Guidance**

Please note that the following is a brief list of the more important areas in which we respectfully request clarification and definitional guidance.

- a) Offering And Other Electronic Documents – There are many different documents that are used in the offering process of any financial product including a prospectus, subscription documents, and in some scenarios and jurisdictions, certain advertising materials; therefore, we request that the reference is to “offering and other electronic documents” in order to capture the entire universe of documents that may be distributed electronically.

We would like to confirm that NASAA’s intent in Part One A.1.c is that any offering document that is delivered electronically must be delivered in its entirety in a single file, rather than divided into multiple files. If, however, NASAA’s intent is that every offering and other electronic document produced by the issuer, including all advertising materials, should be combined into one massive PDF, then we have two concerns. First, when offering documents are delivered in paper format, the potential investor does not receive every offering document prepared by the issuer. Instead, the potential investor is typically provided with a prospectus, subscription document and, in some cases, a couple of pieces of advertising material. While we welcome the Proposed Statement of Policy, we believe that it should not create new obligations to provide materials to an investor that would not otherwise be provided; there ought to be consistency in the delivery of offering documents, whether

delivered in paper format or electronically. Second, since most prospectuses are approximately 200 pages long, combining the prospectus, subscription document and advertising materials into one massive PDF might be overwhelming for the investor to navigate and the size of such a PDF might be rejected by investors' email servers. We respectfully request that A.1 be revised to say, "1. **each** offering documents **delivered in this manner**" and that the first word of A.1.a-e be revised accordingly to reflect that the lead-in to those sections would now reference "each offering document" rather than the plural "offering documents".

- b) Links to External Documents – Part One A.1.d indicates that offering documents that are electronically delivered cannot link to other documents. We request that NASAA modify this section to except other offering documents from this prohibition, provided that an external offering document that is linked from within an offering document meets the other requirements of Part One A.1.
- c) Single Use Subscription Agreements – Part One B.3 requires "a single subscription document [be] used to subscribe a prospective investor in no more than one offering". This seems to override issuers' ability to use what is often referred to as a "multi-offering subscription agreement". Issuers generally have been permitted to use multi-offering subscription agreements in most states. To modify existing systems will require substantial lead-time and considerable expense. The IPA would like to understand the reason for this requirement as it may help us be more responsive and suggest a mutually satisfactory alternative.
- d) Security Breach– We request clarification as to how NASAA would define a security breach, as referenced in Part One B.4. As almost every state already has its own statute concerning data breaches and when notification to investors and state administrators is required in connection therewith, is this section intended to impose new or different obligations in those jurisdictions, or is NASAA's intent that data breaches would continue to be handled in accordance with applicable state law? Further, we request that the language be clarified to specify that a "security breach" means a personal identifiable information ("PII") breach that results in the unauthorized acquisition of or access to the PII contained in the subscription document.

## II. Clarification of Whether the Delegation to Other Parties of Certain Requirements Under the Proposed Statement of Policy Is Permissible.

- a) Parts One and Two impose certain requirements on the issuer with respect to the electronic delivery of various offering documents and the processing of subscriptions. Historically, the distribution of offering documents and the receipt and processing of subscription documents has not been exclusively done by the issuer, but rather is often done by a broker-dealer or investment adviser or some other third-party vendor. We respectfully request that Parts One and Two be revised to reflect that electronic delivery of documents is permitted to be made via parties other than the issuer, which is consistent with current practice as well as state and federal securities laws. Specifically, we would suggest the following revisions:
- i. beginning of Part One A: “An issuer of securities, **directly or through broker-dealers, investment advisers, or other agents or vendors (each, a “delivery agent”)**, may deliver offering documents, including subscription agreements, over the Internet or by other electronic means, or in machine-readable media, provided:”
  - ii. Part One A.2: “the issuer **directly or a delivery agent:**”
  - iii. Part One B: “Subscription agreements may be provided **by the issuer or a delivery agent** electronically for review and completion, provided:”
  - iv. Part Two A: “An issuer of securities, **directly or through a delivery agent,** may provide for the use of electronic signatures, provided:”
- b) Part Two A.1.c, provides that an issuer will provide for retention of electronically signed documents. Technology based “Networking Agreements” currently exist between the transfer agent community and certain broker-dealer firms, shifting the obligation to the broker-dealer firm to retain these records. We would like this section to be clarified to be consistent with current practices, such that it explicitly permits this

obligation to be met by the Issuer or the broker-dealer firm through which the subscription is submitted.

- c) Part One B.4 – We request that this section be revised to clarify which party is responsible for a security breach and is therefore required to suspend electronic processing and notify the impacted investors. For example, if a broker-dealer firm experiences a security breach, other parties involved in the offering should not be required to suspend electronic processing of all subscriptions with all other non-impacted broker-dealer firms. The broker-dealer firm that experienced the breach should suspend its electronic subscription process if the process caused the breach (and is repeatable), and notify the impacted investors in accordance with state rules and regulations relating to a PII breach. Additionally, we request that this section be revised to clarify that the party that experienced the breach may resume the electronic subscription process after: (i) the breach has been identified; (ii) any steps to remediate the process to prevent a similar breach have been taken; (iii) if required under the laws of the respective jurisdiction, the impacted investors have been notified and (iv) if required under the laws of the respective jurisdiction, the state administrator of each impacted jurisdiction has been notified.

## **Conclusion**

We applaud NASAA's efforts in promulgating the Proposed Statement of Policy and look forward to working in collaboration with NASAA to finalize this important legislation. We believe that the nature of our comments reflect how well thought-out the Proposed Statement of Policy is, as our comments involve fine-tuning and clarification based on current industry practices and existing law rather than disagreement over the substance of the Proposed Statement of Policy. Please note that the IPA stands ready to engage in meaningful dialogue with NASAA regarding our comments above and any other areas of mutual interest.

Respectfully submitted,



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