

191—50.66(502) NASAA guidelines and statements of policy.

50.66(1) *Overview of national models.* In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory registrants, and enforcement of antifraud laws, and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by NASAA. This rule does not include any later amendments or editions of the incorporated matter.

The NASAA website allows access to statements of policy, comment letters, model rules, NASAA proposals published for comment, and state rule proposals and may be found at www.nasaa.org, under “regulatory & legal activity.”

50.66(2) *Registration of oil and gas programs.* All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; October 24, 1991; May 7, 2007; and May 6, 2012; and published in CCH NASAA Reports at paragraph 2621.

50.66(3) *Uniform disclosure guidelines—legend.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Cover Legends as adopted by the NASAA membership on October 2, 2004, and published in CCH NASAA Reports at paragraph 1351.

50.66(4) *Omnibus guidelines.* All registrations of limited or general partnerships, joint ventures, unincorporated associations, or similar organizations, other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity for which statements of policy have not been adopted by the NASAA membership, filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA membership on March 29, 1992, as amended on May 7, 2007; and published in CCH NASAA Reports at paragraph 2321.

50.66(5) *Registration of commodity pool programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, amended May 7, 2007, amended May 6, 2012, and published in CCH NASAA Reports at paragraph 1201.

50.66(6) *Registration of equipment programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, October 24, 1991, May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 1601.

50.66(7) *Registration of real estate programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership on September 29, 1993, last revised, May 7, 2007, and published in CCH NASAA Reports at paragraph 3601.

50.66(8) *Registration of mortgage programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, amended May 2007, and published in CCH NASAA Reports, paragraph 701.

50.66(9) *Real estate investment trusts.* The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts as revised and adopted by the NASAA membership on September 29, 1993, as revised on May 7, 2007, and published in CCH NASAA Reports at paragraph 3401.

50.66(10) *Corporate securities definitions.* For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3812.

50.66(11) *Impoundment of proceeds.* When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 2151.

50.66(12) *Loans and other material affiliated transactions.* When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and March 31, 2008, and published in CCH NASAA Reports at paragraph 374.

50.66(13) *Options and warrants.* The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as adopted by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 2801.

50.66(14) *Preferred stock.* A public offering of preferred stock may be allowed by the administrator if the administrator determines that the offering substantially complies with the NASAA Statement of Policy Regarding Preferred Stock as adopted by the NASAA membership on April 27, 1997, and as amended March 31, 2008, and September 11, 2016 (nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SOP-Regarding-Preferred-Stock-Amended0916.pdf).

50.66(15) *Promotional shares.* The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3201.

50.66(16) *Risk disclosure.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Risk Disclosure as adopted by the NASAA membership on September 8, 2001, and published in CCH NASAA Reports at paragraph 1362.

50.66(17) *Unsound financial condition.* An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3821.

50.66(18) *Use of proceeds.* The registration of a security may be disallowed if the administrator determines that the registration does not substantially comply with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as amended by the NASAA membership on April 27, 1997, September 28, 1999, March 31, 2008, and September 11, 2016 (nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SPECIFICITY_IN_USE_OF_PROCEEDS-Amended0916.pdf).

50.66(19) *Registration of asset-backed securities.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, amended May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 501.

50.66(20) *Promoters' equity investment.* The registration of a security may be disallowed by the administrator if the administrator determines that the registration does not substantially comply with the NASAA Statement of Policy Regarding Promoters' Equity Investment as amended by the NASAA membership on April 27, 1997, March 31, 2008, and September 11, 2016 (nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/PROMOTERS_EQUITY_INVESTMENT-revised0916.pdf).

50.66(21) *Unequal voting rights.* The registration of a security may be disallowed by the administrator if the administrator determines that the registration does not substantially comply with the NASAA Statement of Policy Regarding Unequal Voting Rights as adopted by the NASAA membership on October 24, 1991, and as amended March 31, 2008, and September 11, 2016 (nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/SOP_Unequal_Voting_Rights-Amended0916.pdf).

50.66(22) *Use of electronic offering documents and electronic signatures.*

a. Definitions. For purposes of this subrule, the following definitions apply.

“*Offering documents*” means documents that include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, bylaws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

“*Sales materials*” means materials that 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.

“*Security breach*” means 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 is introduced into a securities offering in order to implement the use of electronic offering documents or electronic signatures.

b. Use of electronic offering documents and subscription agreements.

(1) 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 all of the following requirements are met:

1. Each offering document:

- Is prepared, updated, and delivered in a manner consistent and in compliance with state and federal securities laws;

- Satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and is identical in content to the printed version (other than electronic instructions or procedures as may be displayed and nonsubstantive updates to daily net asset value which can be updated more efficiently in the electronic version);

- 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;

- Where the offering documents include a hyperlink to external documents or content, provides notice to investors or prospective investors that the document or content being accessed by the hyperlink is provided by an external source; and

- Is delivered in an electronic format that intrinsically enables the recipient to store, retrieve, and print the documents;

2. The issuer or agent acting on behalf of the issuer:

- Obtains informed consent from the investor or prospective investor to receive offering documents electronically;

- Ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic offering document has been delivered;

- 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

- 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.

(2) Subscription agreements may be provided electronically by an issuer or agent acting on behalf of the issuer for the prospective investor to review and complete, 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 shall 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 shall be established to ensure a prospective investor reviews all required disclosures and scrolls through the document in its entirety prior to initialing or signing; and

3. Unless otherwise allowed by the securities administrator, a single subscription agreement shall be used to subscribe a prospective investor in no more than one offering.

(3) Security breach.

1. In the event of discovery of a security breach at any time in any jurisdiction, the issuer or its agents, as appropriate, shall take prompt action to do all of the following:

- Identify and locate the breach.
- Secure the affected information.
- Suspend the use of the particular device or technology that has been compromised until information security has been restored.
- 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.

2. Compliance with subparagraph 50.66(22)“b”(3) 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.

(4) 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 numbered paragraph 50.66(22)“b”(1)“1.”

(5) 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.”**

(6) Informed consent to receive offering documents electronically pursuant to the first bulleted paragraph of numbered paragraph 50.66(22)“b”(1)“2” 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. 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. 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.

(7) Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.

(8) 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.

(9) Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, or other selling agents to maintain, written policies and procedures covering the use of electronic offering documents and subscription agreements.

(10) Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a nonrewriteable and nonerasable format.

(11) Subrule 50.66(22) does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

c. Use of electronic signatures.

(1) An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures if all of the following are true:

1. The process by which electronic signatures are obtained:

- Shall be implemented in compliance with the Electronic Signatures in Global and National Commerce Act and the Uniform Electronic Transactions Act, and, where applicable, shall include required federal disclosures;

- Shall include an appropriate level of security and assurances of accuracy;

- Shall employ an authentication process to establish signer credentials;

- Shall employ security features that protect signed records from alteration; and

- Shall provide that either the issuer or agent acting on behalf of the issuer retain, in compliance with applicable laws and regulations, electronically signed documents;

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.

(2) 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.

(3) Documentation of an investor's election to participate in an electronic signature initiative by following the requirements of numbered paragraph 50.66(22) "b"(1)"2" 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.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

[ARC 1076C, IAB 10/2/13, effective 11/6/13; ARC 2175C, IAB 9/30/15, effective 11/4/15; ARC 3391C, IAB 10/11/17, effective 11/15/17]