3 AAC 08.600. GENERAL PROVISIONS RELATING TO SMALL CORPORATE OFFERINGS. (a) As an alternative to a registration procedure under this chapter, a corporation or limited liability company issuing securities that are exempt from registration with the SEC under either 17 C.F.R. 230.251 – 17 C.F.R. 230.263 (Regulation A) or 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), may use the NASAA registration Form U-7, or its successor, as the disclosure document for the offering.

(b) The administrator will, in the administrator's discretion, for good cause shown, waive or modify a requirement of 3 AAC 08.600 – 3 AAC 08.650.

(c) The administrator will, in the administrator's discretion, apply a provision of 3 AAC 08.080 – 3 AAC 08.230 to offerings under 3 AAC 08.600 – 3 AAC 08.650, if the administrator determines that application of that provision is necessary for the protection of investors. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.610. QUALIFICATIONS FOR SMALL CORPORATE OFFERINGS. (a) An applicant may use NASAA Form U-7, or its successor if

(1) the corporation or limited liability company relies upon and meets the requirements of either 17 C.F.R. 230.251 – 17 C.F.R. 230.263 (Regulation A), or 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), and engages in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industry;

(2) the offering describes the specific business, properties and use of all proceeds; blind pool offerings are ineligible;

(3) the securities are offered and sold only on behalf of the issuer; however, a selling security-holder, including a purchasing underwriter in a firm commitment underwriting or an affiliate of the issuer, may use NASAA Form U-7, or its successor, to register the securities for resale, if

(A) for an offering or sale made in reliance upon

(i) 17 C.F.R. 230.251 – 17 C.F.R. 230.262 (Regulation A), those regulations permit resale by the selling security-holder; or

(ii) 17 C.F.R. 230.501 – 17 C.F.R. 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D), those regulations permit resale by the selling security-holder;

(B) the issuer specifically requests that the administrator waive the restriction in this paragraph; and

(C) the administrator grants the waiver request made under (B) of this paragraph;

(4) the offering price for common stock, the exercise price for options, warrants or rights for common stock, or the conversion price for securities that are convertible into common stock is equal to or greater than $1 per share;

(5) the issuer does not split the issuer's common stock or declare a stock dividend for two years after the effective date of the registration without the written consent of the administrator;

(6) commissions, fees, or other remuneration for soliciting a prospective purchaser in this state in connection with an offering made under 3 AAC 08.600 – 3 AAC 08.650

are paid only to persons who the issuer reasonably believes are registered under AS 45.55.030, if required;

(7) the aggregate offering price of the securities within or outside this state does not exceed the greater of

(A) $1,000,000;

(B) the amount allowed under 17 C.F.R. 230.251(b), for an offering or sale made in reliance upon 17 C.F.R. 230.251 – 230.263 (Regulation A); or

(C) the amount allowed under 17 C.F.R. 230.504(b)(2), for an offering or sale made in reliance upon 17 C.F.R. 230.501 - 230.504 and 17 C.F.R. 230.507 (Rule 504 of Regulation D); however, NASAA Form U-7, or its successor, is not available to an issuer that is subject to the reporting requirements of 15 U.S.C. 78m and 15 U.S.C. 78o-5 (secs. 13 and 15C of the Securities Act of 1934);

(8) the issuer files with the

(A) SEC an

(i) SEC Form 1-A, or its successor, claiming exemption of the offering from registration under 17 C.F.R. 230.251, and also files other documents that the SEC requires to be filed under 17 C.F.R. 230.252; or

(ii) SEC Form D, or its successor, claiming exemption of the offering from registration under 17 C.F.R. 230.504; and

(B) administrator a copy of the materials filed under (A) of this paragraph, with appropriate state signature pages, at the same time that those materials are filed with the SEC; and

(9) for registration of debt offerings, the issuer demonstrates a reasonable ability to service its debt.

(b) For purposes of this section, 17 C.F.R. 230.251(b) and 17 C.F.R. 230.504(b)(2), as revised as of October 1, 1999, are adopted by reference.

(c) In this section, "aggregate offering price" has the meaning given in 17 C.F.R. 230.501(c). For purposes of this section, 17 C.F.R. 230.501(c), as revised as of October 1, 1999, is adopted by reference. (Eff. 9/18/91, Register 119; am 10/1/99, Register 151; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.620. DISQUALIFICATION OF SMALL CORPORATE OFFERINGS.

(a) An issuer may not use NASAA Form U-7, or its successor, if the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, an officer, director, or promoter of the issuer, a selling agent of the securities to be offered, or an officer, director, or partner of that selling agent

(1) files a registration statement that is the subject of a currently effective registration stop order entered under a federal or state securities law within the five years before the filing of the registration application;

(2) was convicted, within five years before the filing of the application for registration, of

(A) a misdemeanor in connection with the offer, purchase, or sale of a security; or

(B) a felony;

(3) is currently subject to a federal or state administrative enforcement order or judgment, entered within five years before the filing of the application for registration, and

(A) entered by a state's securities administrator or the SEC; or

(B) in which fraud or deceit was found; for purposes of this subparagraph, fraud and deceit include the making of untrue statements of material facts or omitting to state material facts;

(4) is subject to a state administrative enforcement order or judgment that prohibits, denies, or revokes the use of an exemption for registration in connection with the offer, purchase, or sale of securities;

(5) is currently subject to a court order, judgment, or decree, entered within five years before the filing of the application for registration, and

(A) temporarily, preliminarily, or permanently restraining or enjoining that person from engaging in or continuing a conduct or practice in connection with the purchase or sale of a security; or

(B) involving the making of a false filing with a state or with the SEC, entered within five years before the filing of the application for registration.

(b) The disqualifications under (a)(1)-(3) and (a)(5) of this section do not apply if

(1) the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered, or if the broker-dealer employing that person is licensed or registered in this state and the SEC Form BD, or its successor, filed with the administrator discloses the order, conviction, judgment, or decree; and

(2) the person acts only in the capacity for which the person is licensed or registered.

(c) A disqualification under (a) of this section does not apply if the agency that created the basis for the disqualification determines upon a showing of good cause that, within the agency's jurisdiction, a prohibition on the use of NASAA Form U-7, or its successor, is not necessary.

(d) If any of the circumstances set out in (a)(1)-(3) or (a)(5) of this section occurred more than five years before the date of the application for registration, the circumstances must be described on NASAA Form U-7, or its successor, as a miscellaneous factor. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.630. FILING REQUIREMENTS FOR SMALL CORPORATE OFFERINGS. In addition to filing a properly completed and signed NASAA Form U-7, or its successor, an issuer who seeks registration under 3 AAC 08.600 – 3 AAC 08.650 must file with the administrator a NASAA Form U-1, Uniform Application to Register Securities, or its successor. References in the NASAA Form U-1, or its successor, to SEC registration and effectiveness and Questions 6 and 8(a) of the form are inapplicable. The following documents must be filed as exhibits to the NASAA Form U-1, or its successor:

(1) a representative form of the selling agency agreements;

(2) a copy of

(A) the issuer's

(i) articles of incorporation, if the issuer is a corporation; or

(ii) other charter documents, for an issuer other than a corporation; and

(B) any amendment to a document listed in (A) of this paragraph;

(3) a copy of the issuer's bylaws, as most recently amended;

(4) a copy of any resolutions by directors setting out the terms and provisions of capital stock or ownership interests to be issued;

(5) a copy of any indenture, note, or other contractual provision for debt, or of any options, warrants, or rights to be offered;

(6) a specimen of the security to be offered, including any legend restricting resale;

(7) a NASAA Form U-2 (Consent to Service of Process), and an appropriate NASAA Form U-2A (Corporate Resolution), or successors to those forms;

(8) copies of all advertising or other materials directed at or to be furnished to investors in the offering;

(9) a form of escrow agreement for the escrow of proceeds of the offering;

(10) a consent to inclusion in the disclosure document of an accountant's report;

(11) a consent to inclusion in the disclosure document of a tax advisor's opinion or description of tax consequences;

(12) a consent to inclusion in the disclosure document of an evaluation by an attorney of litigation or administrative action;

(13) a copy of any subscription agreement forms for the purchase of securities in the offering;

(14) an opinion of an attorney, licensed to practice in a state or territory of the United States, that the securities to be sold in the offering have been authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid, and nonassessable and binding on the issuer in accordance with their terms;

(15) a list of the resident street addresses of promoters of the issuer;

(16) a copy of any work sheet showing computations for responses to Questions 5, 6, 7(a), 8(a), 8(b), 17(a), 37, 38, 41(a), and 41(b) of NASAA Form U-7, or its successor. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950

3 AAC 08.640. REGISTRATION AND REPORTING FOR SMALL CORPORATE OFFERINGS. (a) The issuer shall pay a registration and filing fee as provided in 3 AAC 08.920(a)(5) for the registration of the offering under NASAA Form U-7.

(b) An issuer may register up to five salespersons as agents of the issuer who are exempt from the examination requirement of 3 AAC 08.011(h)(2). To register an agent, the issuer must file an application for registration in accordance with 3 AAC 08.011(h)(1) and pay a fee in accordance with 3 AAC 08.015(a)(1)(B). A salesperson may not be registered to more than one issuer at a time without compliance with the dual registration provisions of 3 AAC 08.010(e)-(f).

(c) For three years after the close of the offering, the issuer shall maintain and keep open for inspection by the administrator all

(1) offering materials;

(2) records relating to purchasers; and

(3) records relating to securities sales following the close of the offering that are considered as part of the offering. (Eff. 9/18/91, Register 119; am 10/1/99, Register 151)

Authority: AS 45.55.110 AS 45.55.915 AS 45.55.950

3 AAC 08.650. ESCROW, LOCK-IN, AND IMPOUND PROVISIONS. (a) Promotional shares in an offering under 3 AAC 08.600 – 3 AAC 08.640 are subject to the escrow and lock-in requirements of 3 AAC 08.180 – 3 AAC 08.186.

(b) If the proposed business of the issuer requires a minimum amount of proceeds to commence or continue the business in the manner proposed, impoundment of the sale proceeds are subject to the requirements of 3 AAC 08.190. (Eff. 9/18/91, Register 119; am 4/19/2000, Register 154)

Authority: AS 45.55.110 AS 45.55.950