

# **NASAA Coordinated Equity Review Program**

## **I. Overview of the Coordinated Equity Review Program**

Coordinated Equity Review (CER) provides a uniform state registration procedure designed to coordinate the blue-sky registration process in all of the states in which the issuer seeks to sell its equity securities. In addition to creating uniformity in the review standards, the program is designed to expedite the registration process, saving the issuer time and money. Of the states that register offerings eligible to use CER, all but four (4) currently are participating in CER. CER is designed to target offerings of securities that are not “Covered Securities” as defined in Section 18(b)(1) of the Securities Act of 1933.

CER offers issuers registration efficiencies by creating a uniform scheme of review. CER utilizes established NASAA Statements of Policy for substantive (merit) comments. This provides a predictable standard of review for issuers with respect to merit issues. The review regarding disclosure issues is contingent on the nature of each individual offering although many of the NASAA Statements of Policy contain disclosure requirements.

Additionally, CER simplifies the blue-sky registration process for issuers by simplifying the process for resolution of comments. Under CER a lead disclosure state and a lead merit state are designated. The lead disclosure state coordinates all disclosure comments and the lead merit state coordinates all merit comments. The two lead states generate one comment letter on behalf of all jurisdictions. The issuer negotiates resolution of comments with the two lead states. Once the lead disclosure state agrees to clear the offering, all participating disclosure jurisdictions agree to clear it simultaneously. The same is true with respect to the merit jurisdictions. In this way, CER simplifies the overall blue-sky registration process and places a significant portion of the coordination effort on the states.

Finally, CER offers issuers an expedited review process. Under CER, all participating jurisdictions agree to an immediate review of the application. The CER Program Protocol establishes compulsory time periods for review and generation of comments. The time to clear an offering through CER remains contingent on the response time of the issuer, but the state response time is established and predictable. Because of the time and effort necessary to coordinate multiple jurisdictions, issuers should plan on the CER process taking a minimum of thirty days. Please consider this time frame when requesting registration under CER.

## **II. Candidates for CER**

CER generally is intended only for initial public offerings of common stock, preferred stock, warrants, rights and units comprised of equity securities. Such offerings also must be registered (or seeking registration) under Section 5 of the Securities Act of 1933. Thus, CER is not available for Regulation A offerings. CER is not available for issuers of blind pool or blank check offerings. Issuers should note that CER may not be available on all offerings even if the offering fits within the initial screening criteria.

### **III. Required Forms**

The issuer should submit directly to each state in which it seeks to sell, those forms required by each state. These forms typically are:

- Form U-1 (Uniform Application to Register Securities);
- Form U-2 (Consent to Service of Process);
- Form U-2A (Form of Corporate Resolution); and
- Form CER-1 (Application for Coordinated State Review). It is on this form that the issuer selects all jurisdictions in which it seeks to register under the CER Program.

### **IV. Required Fees**

The issuer is required to remit the fee required by each state in which it seeks to sell its securities. Such fee shall be submitted directly to that state along with other required documentation.

### **V. Pennsylvania's Role as Coordinating State**

Pennsylvania acts as the CER Program Administrator. In this role, Pennsylvania designates the lead merit and disclosure states, communicates with issuer's counsel and the participating jurisdictions, acts as a troubleshooter for the process in general, and facilitates each specific application.

In addition to submitting the paperwork to each state in which it seeks to sell, the issuer also shall send the Form CER-1 to the State of Pennsylvania. If the issuer does not seek to register its securities in Pennsylvania, the issuer should submit only the Form CER-1 and the appropriate offering documents. If the issuer seeks to register its securities in Pennsylvania, it should submit the Form CER-1, the appropriate registration forms, fees and offering documents.

### **VI. Selection of the Lead Jurisdictions**

As the coordinating jurisdiction, Pennsylvania is responsible for selecting the two "lead" jurisdictions from the states checked by the issuer on the Form CER-1. The issuer does not have the option of requesting specific lead jurisdictions. Pennsylvania will select the lead jurisdictions based on a number of factors, including the state's resources and experience in CER applications. There may be no correlation between the lead jurisdictions and the issuer's home jurisdiction.

### **VII. Timing of the CER Process**

Within three full business days of Pennsylvania's receipt of the issuer's Form CER-1, Pennsylvania will designate the two lead states. All participating states have ten business days to comment on the issuer's application and forward those comments to the lead states. Within another five business days, the lead states collect and consolidate all the comments and send one coordinated comment letter to the issuer. The lead states then resolve outstanding comments with the issuer's legal counsel. Once the lead states clear the application, all participating states agree to clear it simultaneously. The issuer should anticipate that the CER process will take a minimum of thirty days. For greater detail

on the timing of the CER process, please refer to the CER Program Protocol.

### **VIII. Adding Jurisdictions to the Form CER-1**

After the CER process has begun, the issuer has a limited ability to add jurisdictions. The issuer may add as many jurisdictions it desires so long as such additions occur within the initial 10-day comment period. Following that period, the issuer may not be permitted to add jurisdictions, and thus, may be required to seek independent registration in each additional jurisdiction subject to that jurisdiction's standards of review for non-CER registrations. For more information, please refer to the CER Program Protocol.

### **IX. The Comment Letter**

The comment letter will be divided into various sections, covering disclosure comments, merit comments and any state specific comments.

Merit or substantive Issues: Merit comments are based only on the NASAA Statements of Policy. All merit comments will be resolved through the lead merit state.

Disclosure Issues: Disclosure comments may be based on the NASAA Statements of Policy and/or be generated independently by the various examiners. Comments of this type will be submitted by both disclosure and merit examiners. All disclosure comments will be resolved through the lead disclosure state.

State Specific Comments: As the CER process does not encompass all areas of regulatory oversight, the examiners may make state specific comments. The state specific comments may include issuer dealer/agent registration, appropriate fees/documents, compliance with certain Internet offering requirements, etc. These comments may be resolved through the lead states. However, the issuer may ultimately have to resolve the comment directly with that particular state.

## **X. Applicable NASAA Statements of Policy**

CER utilizes the following NASAA Statements of Policy in the review of CER applications. The text of each of these statements is contained in its entirety in the NASAA Reports.

Corporate Securities Definitions .....	¶ 3811
Impoundment of Proceeds .....	¶ 2151
Loans and Other Material Affiliated Transactions .....	¶ 371
Options and Warrants .....	¶ 2801
Preferred Stock .....	¶ 3001
Promoter's Equity Investment .....	¶ 3101
Promotional Shares .....	¶ 3201
Specificity in Use of Proceeds .....	¶ 3831
Underwriting Expenses and Underwriter's Warrants .....	¶ 3671
Unsound Financial Condition .....	¶ 3821
Voting Rights .....	¶ 2401

Additionally, please note this volume also contains the Model Promotional Shares Lock-In Agreements for Class A and Class B issuers. These lock-in agreements are used in conjunction with the Statement of Policy Regarding Promotional Shares.

## **XI. Overview of the Administrators' Responsibilities**

The lead states are responsible for the following:

- Collecting comments from participating jurisdictions;
- Drafting comment letters including disclosure, merit and state specific comments;
- Forwarding copies of comment letters to the issuer and the participating jurisdictions;
- Forwarding copies of the issuer's response letters to the participating jurisdictions;
- Negotiating resolutions to comments with the participating jurisdictions;
- Negotiating resolutions to comments with the issuer;
- Making all final decisions regarding the resolution of comments;
- Recommending registration of the issuer's offering; and
- Forwarding that recommendation to all participating jurisdictions.

## **XII. Overview of the Issuer's Responsibilities**

The Issuer is responsible for the following:

- Submitting Form CER-1 to Pennsylvania, regardless of its intent to sell securities in Pennsylvania;
- Filing Form CER-1 and all other appropriate documents and fees in each participating jurisdiction in which it seeks to register securities;
- Filing all amendments with the participating jurisdictions;
- Communicating with the lead disclosure and lead merit examiners to resolve comments;
- Negotiating resolutions to state specific comments with the participating jurisdictions; and
- Forwarding notice to all participating jurisdictions that the Securities and Exchange Commission has cleared the issuer's offering.

### **XIII. Participating Jurisdictions**

States currently participating in CER include:

Alabama	Kansas	New Hampshire	South Dakota
Alaska	Kentucky	New Jersey	Texas
Arizona	Maine	New Mexico	Utah
Arkansas	Maryland	North Carolina	Vermont
California	Massachusetts	North Dakota	Virginia
Connecticut	Michigan	Oklahoma	Washington
Delaware	Mississippi	Oregon	West Virginia
Idaho	Missouri	Pennsylvania	Wisconsin
Indiana	Montana	Rhode Island	
Iowa	Nevada	South Carolina	

### **XIV. Jurisdictions Offering Automatic Effectiveness**

Because the states of Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, New York, and Wyoming do not require a state-level substantive review of this type of filing, they are not included in CER.