

# **Policy Statement**

## **Electronic Signatures and Investment Documents**

The Tennessee Securities Division (“Division”) sets forth the Statement of Policy regarding the use of electronic signatures on subscription agreements and the electronic delivery of prospectuses and other documents for use with various investment products by broker-dealers and investment advisers in the sale of a security (“E-Subscription Program”). These offerings include those offerings that are currently registered with the Securities and Exchange Commission (“SEC”) and the Division, or currently have a pending application for registration pending clearance from the Division or pending SEC effectiveness or yet to be filed with the SEC and the Division.

### **Background:**

The Electronic Signatures in Global and National Commerce Act (“ESign”)<sup>1</sup> and the Tennessee Uniform Electronic Transaction Act (“UETA”)<sup>2</sup> are the primary laws governing the use of electronic signatures and records in commercial transactions. The UETA applies to electronic records and electronic signatures relating to a transaction.<sup>3</sup> It defines electronic record as a “record created, generated, sent, communicated, received, or stored by electronic means...”<sup>4</sup> and defines electronic signature as an “electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”<sup>5</sup> UETA is intended to facilitate the use of electronic means, but does not require it.<sup>6</sup> Further, the legal effect or enforcement of a record or signature may not be denied solely because it is in electronic form.<sup>7</sup>

### **Use of Electronic Signatures and Subscription Documents:**

Information required or requested by the Division pursuant to the Securities Act and Rules may be submitted to the Division through “electronic data gathering, access, and retrieval methods acceptable to the Division.”<sup>8</sup> All applicable requirements pursuant to the Securities Act and Rules will apply equally to E-Subscription Programs and hard copy filings. The only difference between the process and protocols for hard copy and electronic delivery should be in the delivery mechanism. Use of an E-Subscription Program will not impact applicable regulatory requirements, including, but not limited to, those relating to fiduciary duty, suitability, and know-your customer obligations, as applicable. The E-Subscription Program **shall not have** any

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<sup>1</sup> Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. §§ 7001 *et seq.*).

<sup>2</sup> Uniform Electronic Transactions Act, Tenn. Code Ann. §§ 47-10-101, *et seq.*

<sup>3</sup> *Id.* at § 47-10-103(a).

<sup>4</sup> *Id.* at § 47-10-102(7).

<sup>5</sup> *Id.* at § 102(8).

<sup>6</sup> *Id.* at § 105, cmt. 1

<sup>7</sup> *Id.* at § 107(a).

<sup>8</sup> TENN. COMP. R. & REGS. 0780-04-01-.04(3)(e)1.

hidden data, tabs, or any other content otherwise not displayed on any page. The Division finds the use of an E-Subscription Program acceptable if the following procedures and safeguards are in place:

**Format**

- The electronic information contained in an E-Subscription Program must be in clear, easily accessible and readable formats that are suitable for reproduction on white paper 8 ½” x 11” or 8 ½” x 14” in size pursuant to TENN. COMP. R. & REGS. 0780-04-01-.04(3)(e)2.
- A specimen copy of the subscription agreement and any other subscription documents shall be filed as part of the Registration Statement for each offering filed.
- Electronic versions of the filed specimen copy shall be identical, excluding small formatting discrepancies due to the difference in mediums.
- The format shall allow for the investor to print and/or download the accepted documents and agreements for his or her records.

**Confirmation and Authentication**

- Any participation in the E-Subscription Program shall be optional and investors should be fully informed that participation in the E-Subscription Program is not mandatory for participation in the investment opportunity.
- Investors must affirmatively opt into the E-Subscription Program and shall continue to receive hard copies if no election is made.
- Investors may change their election or terminate their participation in an E-Subscription Program at any time.
- The E-Subscription Program shall provide authentication for each investor that elects to participate in the program. An investor’s broker-dealer or investment adviser shall confirm the identity and personal information of the investor and establish unique log-in credentials for the investor to use through a password-protected and encrypted web browser.
- The authentication information provided by investors to their broker-dealer or investment adviser shall be consistent with Financial Industry Regulatory Authority’s Know-Your-Customer obligations and comply with the Customer Identification Program requirements of the USA Patriot Act.

**Compliance**

- Broker-dealers and investment advisers shall utilize the same compliance and supervisory protocols whether using an E-Subscription Program or paper form.
- The broker-dealer or investment adviser shall maintain the E-Subscription Program in compliance with review, approval, routing and storage procedures pursuant to Rule 17a-3 and 17a-4 of the Securities Exchange Act of 1934.
- The E-Subscription Program shall maintain continued compliance with all required federal and state disclosure requirements and applicable North American

Securities Administrators Association Statements of Policy and Guidelines (collectively “NASAA Guidelines”).

- The broker-dealer or investment adviser shall maintain the same protocols as paper documents demonstrating compliance with the “five business days” delivery requirement of NASAA Guidelines and refrain from allowing investors to electronically access subscription documents before the expiration of the five-business-days delivery prohibition.

### **Safeguards**

- An equal standard of security, accuracy, and accessibility shall apply to E-Subscription Programs the same as paper records.
- The E-Subscription Program shall require the investor to separately sign or initial each item requiring completion in the subscription agreement in accordance with the applicable NASAA Guidelines.
- No investor shall receive a prospectus or subscription agreement before his or her broker-dealer or investment adviser has determined that the program is suitable for the particular investor and that investor has requested the program documents.
- The E-Subscription Program shall prevent the investor from signing the document prior to previewing the document in its entirety.
- Once the investor has reviewed the document in its entirety, he or she shall be redirected to the beginning of the document to begin the signing process.
- The investor shall have the option to opt out of the E-Subscription Program once he or she has reviewed the electronic paperwork but before signing.
- Secure delivery of electronic documents and their completion and execution by the prospective investor shall be accomplished through the use of a password-protected and encrypted web browser providing the investor with the ability to use electronic buttons to accept, sign, and initial the documents confirming his or her commitment to invest in the offering.
- Safeguards shall be instituted to prevent an investor from signing or initialing out of order on the documents.
- In the event of discovery of a security breach at any time in any jurisdiction, the E-Subscription Program shall be suspended and the Division notified of the breach.

Any questions about the positions set forth in or the intent of this Statement of Policy should be directed to the Tennessee Securities Division, Davy Crockett Tower, 8<sup>th</sup> Floor, 500 James Robertson Parkway, Nashville, Tennessee, 37243, or by telephone number (615) 741-2947 or email at [Securities1@tn.gov](mailto:Securities1@tn.gov).