

# **NASAA STATEMENT OF POLICY REGARDING PEER-TO-PEER LENDING**

**(Adopted September 18, 2022)**

## **I. APPLICATION AND BACKGROUND INFORMATION**

This statement of policy applies to the registration and qualification of securities offerings involving peer-to-peer lending. In peer-to-peer lending, individuals or entities (borrowers) seeking loans receive their loan proceeds from other individuals (investors) in an arrangement involving a Lending Platform. A Lending Platform is an entity that utilizes an online auction type of marketplace to identify borrowers seeking loans and to facilitate the purchase of debt securities by investors. In these offerings, investors purchase debt securities which are issued in the name of the Lending Platform but depend upon the proceeds of a specific borrower loan for repayment. For the purpose of registering these securities, this statement of policy deems the Lending Platform to be the issuer of the debt securities in offerings that use the above-described structure.

While applications not conforming to the standards contained herein will be looked upon with disfavor, where sufficient justification is provided, certain guidelines may be modified or waived by the Administrator.

## **II. DEFINITIONS**

This statement of policy uses the following terms defined in the *NASAA Statement of Policy Regarding Corporate Securities Definitions*.

Administrator  
Affiliate  
Disclosure Document  
Independent Director  
Person  
Unsound Financial Condition

## **III. REQUIREMENTS FOR LENDING PLATFORMS**

- A. Net worth.** The Lending Platform must demonstrate that it is solvent and that it has enough liquidity to support viability for another year.; however, the Lending Platform's tangible net worth may not be less than \$250,000. The Administrator may require audited financial statements for its most recent fiscal year and, if necessary, unaudited financial statements prepared within 120 days after the date that the application is made.
- B.** The Lending Platform must not be in Unsound Financial Condition. If the Lending Platform is found to be in Unsound Financial Condition, then the *NASAA Statement of Policy Regarding Unsound Financial Condition* shall be applied.
- C. Regulatory compliance.** The Lending Platform and/or any third-party operator subcontracting with the Lending Platform must:

1. Comply with FINRA and state registration requirements;
2. Provide a copy of articles of incorporation or other documents which indicate formation of an entity, certified by a state or jurisdiction;
3. Provide financial statements of the entity; and
4. Provide a copy of any executed agreement between the Lending Platform and the third-party operator.

**D. Annual Reports.** The Lending Platform must deliver to the investors an annual report at least annually. The annual report must include a balance sheet of the Lending Platform, a statement of income, a statement of cash flow, and material information regarding the Lending Platform's portfolio of debt securities, including cash flows, delinquency rates, and gross and net loss rates. These financial statements must be audited in accordance with generally accepted accounting principles.

**E. Experience and Knowledge.** The officers and directors of the Lending Platform must demonstrate the knowledge and experience necessary to supervise the origination, bundling, and servicing of the loans. The Lending Platform must have at least one officer and one director with at least three years of relevant banking, lending, and investment experience demonstrating the knowledge required to enforce the Lending Platform's policies and to manage its operations. In addition, at least one officer must have relevant cybersecurity, e-commerce, and technology experience required to carry out the Lending Platform's services.

**F. Independent Directors.** The Lending Platform must have a majority of Independent Directors, and at a minimum have at least two Independent Directors. The Independent Directors must review and resolve any conflicts of interest. Independent Directors shall monitor the Lending Platform's net worth, assuring reporting of loan default rates and charge-offs in accordance with Paragraph I, investigate possible conflicts of interest between the Lending Platform and investors, review affiliated transactions, and assure information required by this policy is available to investors.

**G. Indemnification.** The Lending Platform must not indemnify its officers or affiliates for any liability or loss to investors or borrowers participating on the Lending Platform due to their negligence or misconduct. Indemnification of the officers, affiliates or directors will not be allowed for any liability imposed by judgment, and costs associated therewith, including attorney's fees, arising from or out of a violation of state or federal securities laws. Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that a court either: a. approves the settlement and finds that indemnification of the settlement and related costs should be made, or b. approves indemnification of litigation costs if a successful defense is made.

**H. Income Tax Information.** The platform must deliver to investors, no later than January 31 of each year, all information necessary for preparation of their federal

income tax returns, including, but not limited to, information enabling investors to report taxable income or loss from their investments or write off their investment.

- I. Verification of Material Information.** The Lending Platform must disclose in the Disclosure Document how often the platform verifies material information obtained from borrowers. This material information may include, but is not limited to, employment, stated income, other debt incurred, and debt-to-net income ratios. These procedures must be submitted to the Administrator upon request. The Lending Platform may not attempt to disclaim the accuracy of the information it presents to investors. The Lending Platform must provide any changes in material information about the borrower to the investors, at least annually, including any changes to previously provided information such as employment, income, and debt.
- J. Delinquencies, Charge-Offs and Defaults.** The Lending Platform must report delinquencies, charge-offs, and defaults to credit reporting agencies in accordance with state, provincial, and federal laws.
- K. Collection Efforts.** The Lending Platform must engage in reasonable, good-faith efforts to collect any unpaid debt on behalf of the investor and must make every effort to recover unpaid debts and apply payments pro-rata toward borrower's, unpaid debt securities. All payments received from a borrower will be dedicated, allocated, and used solely to service the applicable debt securities until payment in full. The Lending Platform must adopt procedures to identify bankrupt borrowers.
- L. Full Recourse.** The Lending Platform must retain full recourse on the debt securities issued through its platform, in the event of default.
- M. Borrower's Credit Profile.** The Lending Platform must secure an undertaking from borrowers to provide their individual credit reports. The Lending Platform must distribute material changes to the borrower's credit information to applicable holders of the debt securities annually. The Lending Platform must also distribute changes in the borrower's individual credit score.
- N. Promotional Materials.** In addition to the prospectus, the Lending Platform must submit all Promotional materials to the Administrator for review prior to dissemination. Promotional materials include advertisements, sales materials and web pages. Promotional materials may not be misleading.
- O. Commingling of Funds.** The Lending Platform must not commingle funds of any investor with its own funds.
- P. Credit Enhancements.** The Lending Platform's use of credit enhancements, or the lack thereof, must be prominently disclosed in the summary section of the Disclosure Document. These enhancements may take the form of insurance, letters of credit, lines of credit, over-collateralization, reserve accounts, guarantees, and other arrangements intended to decrease the likelihood of default.

Examiners may apply the provisions of the *NASAA Registration of Asset-Backed Securities* statement of policy regarding credit enhancements by analogy.

**Q. Secondary Markets.** If the Lending Platform provides a secondary market for resale of the debt securities, the Administrator may require the Lending Platform to disclose information about its compliance with the Securities Exchange Act of 1934, as well as demonstrate compliance with applicable state laws and regulations.

#### **IV. PUBLIC OFFERINGS OF PEER-TO-PEER LENDING DEBT SECURITIES**

**A. Trust Indenture.** Unless the Administrator permits otherwise, public offerings of debt securities covered by this statement of policy must be secured by a Trust Indenture which adequately protects the rights of the investors. At a minimum, the Trust Indenture must satisfy the following requirements:

1. The Trust Indenture must comply with the provisions of the Trust Indenture Act of 1939;
2. There must be one or more trustees under the Trust Indenture at all times;
3. The Trustee must have at least three years' relevant experience acting as a trustee for a Trust Indenture;
4. The Trust Indenture must be filed with the Administrator; and
5. The Trust Indenture must address what is deemed a default under the terms of the investor agreement.

#### **B. Disclosure Document.**

1. **Information about Peer-to-Peer Lending Arrangements.** In addition to general disclosure requirements, the Disclosure Document must disclose all material information about the following topics unique and specific to peer-to-peer lending and the Lending Platform:
  - a. Descriptive information about how the Lending Platform operates (i.e. verification procedures that will be utilized, the extent to which the loans are secured, any obligation of the Lending Platform to make payments to the investors, and any recourse by investors in the event of a defaulted loan);
  - b. Descriptive information about all material parties involved in the operation of the Lending Platform (such as the servicer and financial institutions);

- c. Descriptive information about any material events, affiliated transactions or circumstances that might be a material conflict of interest among the interests of the platform, its officers, directors or trustees, and investors;
- d. Compensation received by the Lending Platform and any other Person involved in loan administration and debt collection;
- e. Descriptive details about any material limitations on the obligations of the Lending Platform;
- f. The duties and obligations of the Lending Platform and a description of all transaction fees, servicing fees, and other charges, such as late fee charges, insufficient funds charges, check processing fees, and collection fees, and the impact on investors of the fees and charges;
- g. Descriptive information about the Trust Indenture and a statement that the Trust Indenture complies with the Trust Indenture Act of 1939;
- h. Financial suitability requirements applicable to investors funding a loan through the purchase of a debt security;
- i. Historical information regarding outstanding loans, default rates, and loan performance of the borrowers;
- j. The verification procedures, including the frequency and percentage of transactions in which transactions have been verified, used to verify the identity and financial condition of borrowers (such as the individual's credit information, income, and any bankruptcy records) and claimed use of loan proceeds with a discussion of the extent to which such information will be available to individuals bidding and committing to purchase the debt securities;
- k. A description of loan-collection procedures and methods, a description of any collection agent, and an explanation that the Lending Platform has no liability for the default of any of the loans funded through the Lending Platform;
- l. Terms of the indebtedness, including interest rates, repayment time periods, and consequences of default;
- m. The extent to which holders of the debt securities will have the ability to pursue borrowers to collect payments under the loan agreements;
- n. The extent to which holders of the debt securities will receive payments if borrowers default;
- o. A description of what constitutes a default;
- p. The extent to which the loans are secured;

- q. The extent to which the servicer can retain payments received from a borrower after the final maturity date of the debt security;
  - r. The extent to which, and the methods by which, an investor may transfer debt securities;
  - s. If using a third-party servicer, that the servicer is the assignee of the promissory note and the extent to which the promissory notes are obligations of the platform to the holders of the debt securities; and
  - t. All servicing or origination fees and costs charged to the borrower and the investor, and how those fees and costs are calculated.
2. **Risk Disclosure and Material Information.** The Disclosure Document must describe risks and material information specific to investing in peer-to-peer debt securities, which must include but is not limited to the following:
- a. The high-risk nature of peer-to-peer lending, including the statement that a person should not invest unless they can afford to lose their entire investment;
  - b. The lack of any guarantee that a note issued by the Lending Platform will be paid if unsecured or undersecured;
  - c. The risk that a loan payment may be refunded due to a charge-back by the borrower's financial institution and result in a negative cash balance in the account of the investor; and
  - d. Any risks and material information regarding the possible dissipation of funds prior to the issuance of loans, time limits under which funds may be held by the Lending Platform without investing them in debt securities, and whether funds may be returned to investors because loans were not fully funded.
- C. Online Disclosure.** If a Lending Platform offers securities online, the platform must disclose, at a minimum, all material information about the following topics on its website prior to the sale of investor notes related to borrower loans:
- 1. If the borrower is not an individual, a description of the entity, its legal status, and its corporate history;
  - 2. If the borrower is an individual, information about the borrower; including, but not limited to, occupation and employment history for the past two years, and information about the borrower's income and monthly expenses;
  - 3. Terms for the borrower loan, including the target amount of the loan;
  - 4. Terms for the investor notes;

5. The borrower's required minimum monthly payment and whether early payments are permitted;
6. A description of the material terms of any indebtedness of the Lending Platform, including the amount, interest rate, maturity date, and any other material terms;
7. Disclosure of any loan and payment history of the borrower through the Lending Platform within the past three years;
8. The Lending Platform must prominently display on its website the extent to which it acts as a rating organization by scoring or grading the ability of the borrower to pay the loan and interest on the debt security;
9. The Lending Platform shall disclose what investor information is verified; and
10. Administrators may require the Lending Platform to provide additional information regarding borrowers.

**D. Subscription Agreements.** The Lending Platform and each person selling the debt securities on behalf of the Lending Platform must require the investors to complete a subscription agreement, minimally satisfying the following:

1. The Lending Platform, and each person selling the debt securities, must make reasonable efforts to determine that the purchase of the debt securities is a suitable and appropriate investment for each investor on the basis of information obtained from the prospective investor. Relevant information for determining suitability and appropriateness includes the investor's age, investment objectives, investment experience, income, net worth, financial situation, other investments of the prospective purchaser, and any other material factors;
2. The Lending Platform must maintain subscription agreements for at least six years from full repayment. The suitability standards in this policy do not relieve a broker-dealer or Lending Platform from the responsibility to make an independent determination of suitability under industry standards; and
3. The subscription agreement cannot require investors to state any of the following:
  - a. That the investor understands or comprehends the risk factors associated with the investment;
  - b. That the investment is suitable for the investor;
  - c. That the investor has read the Disclosure Document; and
  - d. That the investor has read or relied solely on the Disclosure Document or online material.

**E. Investor Agreements.** Investor agreements must describe the terms and provisions of the service agreement between the Lending Platform and the investors. The investor agreement must:

1. State the information about the borrower that the Lending Platform provides to investors and state whether that information is verified or unverified;
2. Require delivery of the borrower's financial information required in III H and L to the investor at least annually;
3. Require the Lending Platform to deliver notice of, and all material information regarding, any relevant bankruptcy filing by the borrower to the investor;
4. Require the Lending Platform to deliver notice and all material information regarding debt securities deemed worthless for tax reporting purposes under section 165 of the Internal Revenue Code;
5. Require the Lending Platform to deliver to investors an annual report at least annually. The annual report must include a balance sheet for the Lending Platform, a statement of income, a statement of cash flow, and material information regarding the Lending Platform's portfolio of debt securities, including cash flows, delinquency rates, and gross and net loss rates. These financial statements must be prepared in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards;
6. Require the Lending Platform to deliver to the investor, no later than January 31 of each year, all information necessary for preparation of their federal income tax returns, including, but not limited to, information enabling investors to report taxable income from their investments, or write off their investment when repayment of the note is no longer anticipated because of a bankruptcy, and information regarding original discount rules in order to allow investors to determine whether continued accrual of the original issue discount as income is applicable; and
7. Require the Lending Platform to disclose all servicing or origination fees or costs charged to the borrower and the investor, and how those fees or costs are calculated.

**F. Investor Qualifications.**

1. Total sales to an investor in a Lending Platform shall not exceed:
  - a. The greater of \$2,200 or 5 percent of the lesser of the investor's annual income or net worth if either the investor's annual income or net worth is less than \$110,000; or



- b. 10 percent of the lesser of the investor's annual income or net worth, not to exceed an amount sold of \$110,000, if both the investor's annual income and net worth are equal to or more than \$110,000.
  - 2. The risks to individual investors of non-pooled investments are greater than the risk of pooled investments. In most current peer-to-peer lending offerings, lending members pick specific loan investments from specific investors unknown to them. Their investment risk is tied specifically to the loans selected. In addition to the above, Administrators may require Lending Platforms establish a minimum number of loans per investor or pooling/bundling to spread the risk of delinquencies, charge-offs and loan defaults among all investors in the offering. In that event, the Administrator may apply the provisions of the NASAA Registration of Asset-Backed Securities statement of policy regarding portfolio characteristics by analogy.
- G. Disclosure and Marketing.** Sales material, including without limitation internet and social media advertisements, as well as any mobile applications, used in the offer and sales of notes, must conform to filing, disclosure, and adequacy requirements under applicable state regulations. Statements made in sales material may not conflict with, or modify, risk factors or other statements made in the Disclosure Document.