



COMPENDIUM

Third Edition

PA SECURITIES ACT
OF 1972

ORDERS

PA TAKEOVER
DISCLOSURE LAW OF 1976

NO-ACTION LETTERS

PA INVESTMENT
COMPANY ACT OF 1933

INDEX TO
NO-ACTION LETTERS

REGULATIONS

POSITIONS

FORMS

As the Compendium was most recently published in 2011, some of the statutes, regulations, staff positions and other content may have subsequently changed. Please see the Pennsylvania Department of Banking and Securities' website at dobs.pa.gov to access the current versions of the statutes and regulations and to review the most recent policies, positions and interpretative letters that may supersede content in the Compendium.

COMPENDIUM

Third Edition

of Commission and Staff Positions,
Summary of Significant Commission Orders
and Compilation of Staff No-Action Letters
including
Pennsylvania Securities Act of 1972,
Takeover Disclosure Law of 1976
and the
Investment Company Act of 1933 with annotations,
Commission Regulations and Commission Forms

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COMPENDIUM, THIRD EDITION

USER'S GUIDE

Compendium, Third Edition is divided into nine sections which are separated by tabs.

Each section contains a separate table of contents noting placement of the material contained in that section. A brief description of each entry also is provided to quickly orient the reader to the subject matter. To assist with the updating of **Compendium**, each section is paginated separately.

The Pennsylvania Securities Act of 1972, the Takeover Disclosure Law of 1976 and the Investment Company Act of 1933 have been cross-referenced to guide the User into corresponding Regulations, Forms, Commission and Staff Positions, Significant Commission Orders and Staff No-Action Letters.

These cross-references refer the User to the appropriate pages within each **Compendium** section where relevant information may be found. For instance, a reference to Commission Orders, p. 13 means that pertinent information relating to Commission Orders issued under that section will be found on page 13 in the Section on Significant Commission Orders.

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Third Edition

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**COMPENDIUM OF COMMISSION AND STAFF POSITIONS,
SUMMARY OF SIGNIFICANT COMMISSION ORDERS AND
COMPILATION OF STAFF NO-ACTION LETTERS**

Third Edition

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PENNSYLVANIA SECURITIES ACT OF 1972

PENNSYLVANIA SECURITIES ACT OF 1972

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PENNSYLVANIA SECURITIES ACT OF 1972

AN ACT

Relating to securities; prohibiting fraudulent practices in relation thereto; requiring the registration of broker-dealers, agents, investment advisers, and securities; and making uniform the law with reference thereto.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

PART I

SHORT TITLE; DEFINITIONS

Section 101. Short Title.--This act shall be known and may be cited as the "Pennsylvania Securities Act of 1972."

cross-references

Regulations: 101.000

Section 102. Definitions.--When used in this act, the following definitions shall be applicable, unless the context otherwise requires:

(a) "Advertisement" means any communication used in connection with a sale or purchase or an offer to sell or purchase a security which is publicly disseminated by means of print, radio, television, Internet or other media.

cross-references

Regulations: 203.190, 606.031

(b) An "affiliate" of, or a person "affiliated" with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

(c) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include: (i) an individual who represents an issuer in effecting transactions in securities exempted by section 202, transactions exempted by section 203 or transactions in a covered security described in sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r) if no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with any of the foregoing transactions; (ii) an individual who represents a broker-dealer in effecting transactions in this State, which transactions are limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o(h)(2)); and (iii) an individual who has no place of business in this State if he effects transactions in this State exclusively with broker-dealers. Except where representing an issuer in effecting transactions in securities registered under section 205 or 206, a bona fide officer, director, or partner or employe of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation directly or indirectly related to purchases or sales of securities.

cross-references

Regulations: 102.031

Index to Staff No-Action Letters: p. 1

(d) “Bank” means a bank, savings bank, savings institution, savings and loan association, thrift institution, trust company or similar organization which is organized or chartered under the laws of a state or of the United States, is authorized to and receives deposits and is supervised and examined by an official or agency of a state or by the United States if its deposits are insured by the Federal Deposit Insurance Corporation or a successor authorized by Federal law.

cross-references

Regulations: 102.041

Positions: p. 1-3

(e) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. “Broker-dealer” does not include:

(i) An agent;

(ii) An issuer;

(iii) A bank which meets the exceptions from the definition of “broker” under section 3(a)(4)(B) or (E) or the definition of “dealer” under section 3(a)(5)(B) or (C) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78c(a)(4)(B) or (E) or (5)(B) or (C));

(iv) An executor, administrator, guardian, conservator or pledgee;

(v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors;

(vi) A person licensed as a real estate broker or agent under the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act, and whose transactions in securities are isolated transactions incidental to that business; or

(vii) Other persons not within the intent of this subsection whom the commission by regulation designates.

cross-references

Regulations: 102.050

Positions: p. 3-6

Index to Staff No-Action Letters: p. 2

(f) “Commission” means the Pennsylvania Securities Commission.

cross-references

Regulations: 102.060

(f.1) “Federally covered adviser” means a person who is registered under section 203 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-3).

(f.2) “Federally covered security” means any security that is a covered security under section 18(b) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)).

(g) “Control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(h) “Fraud,” “deceit” and “defraud” are not limited to common law fraud or deceit.

(i) “Guaranteed” means guaranteed as to payment of principal, interest, purchase price, dividend or call premium.

(j) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” does not include:

(i) A bank;

(ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) A broker-dealer registered under this act without the imposition of the condition referred to in section 305(b)(v);

(iv) A publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client and is of general, regular and paid circulation; and the agents and servants thereof in the performance of their regular duties on behalf of such publication or service;

(v) A person whose advice, analyses or reports relate only to securities exempted under section 202(a);

(vi) A person who has no place of business in this State if his only clients in this State are other investment advisers, federally covered advisers, broker-dealers or institutional investors;

(vii) A person who has a place of business in this State and during the preceding twelve-month period has had not more than five clients in or out of this State and does not hold himself out generally to the public as an investment adviser;

(viii) A person that is an investment adviser representative;

(ix) A federally covered adviser;

(x) A person excluded from the definition of “investment adviser” under section 202(a)(11) of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-2(a)(11)); or

(xi) Other persons not within the intent of this subsection whom the commission by regulation designates.

cross-references

Positions: p. 6-10

Index to Staff No-Action Letters: p. 3

(j.1) “Investment adviser representative” means:

(i) with respect to any investment adviser registered or required to be registered under this act, any partner, officer, director or person occupying a similar status or performing similar functions, or other individuals employed by or associated with an investment adviser, except clerical or administrative personnel, who performs any of the following:

(A) Makes any recommendations or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given;

(D) Solicits, offers or negotiates for the sale of or sells investment advisory services; or

(E) Supervises employees who perform any of the foregoing;

(ii) with respect to any federally covered adviser, any individual employed by or associated with a federally covered adviser who is an “investment adviser representative” and who has a “place of business” in this State as those terms are defined in the rules and regulations of the Securities and Exchange Commission.

(k) “Institutional investor” means any bank, insurance company, pension or profit sharing plan or trust (except a municipal pension plan or system), investment company, as defined in the Investment Company Act of 1940, or any person, other than an individual, which controls any of the foregoing, the Federal Government, State or any agency or political subdivision thereof, except public school districts of this State, or any other person so designated by regulation of the commission.

cross-references

Regulations: 102.111, 102.112

Positions: p. 14

Index to Staff No-Action Letters: p. 3

(k.1) “Knowing and knowingly” as used in sections 407(a), 511, 512(a) and 513 shall have the same meaning as the term “knowingly” is defined in 18 Pa.C.S. § 302(b)(2) (relating to general requirements of culpability).

(l) “Issuer” means any person who issues or proposes to issue any security, and any promoter who acts for an issuer proposed to be formed. With respect to certificates of deposit, voting trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; except that with respect to equipment-trust certificates or like securities, the term “issuer” means the person by whom the equipment or property is or is to be used. With respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, the term “issuer” means the person or persons actively managing the exploration or development of the property who sell such interests or participations or payments or any person or persons who subdivide and sell such interests or participations or payments. The determination of the person or persons actively managing the exploration or development of the property shall be made on the basis of the actual relationship of the parties and not on the basis of the legal designation of a person’s interest. Members of unincorporated associations, which members have

limited liability, and any trustee or member of a trust, committee or other legal entity shall not be deemed to be an “issuer” for the purposes of this act.

cross-references

Index to Staff No-Action Letters: p. 3

(l.1) “Municipal pension plan or system” means a pension plan or system provided by a municipality as those terms are defined in section 102 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.

(m) “Non-issuer transaction” means any transaction not directly or indirectly for the benefit of the issuer.

(n) “Person” means an individual, corporation, partnership, association, joint stock company, syndicate, trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, government, political subdivision of a government, or any other entity.

(o) “Promoter” includes (i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; (ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, ten per cent or more of any class of securities of the issuer or ten per cent or more of the proceeds from the sale of any class of securities. For purposes of sections 207 and 208, a “promoter” includes (iii) any person who is described in clauses (i) and (ii); (iv) any person who is an officer or director of the issuer; (v) any person who legally or beneficially owns, directly or indirectly, five per cent or more of any class of the issuer’s equity securities; or (vi) any person who is an affiliate of a person described in clause (i), (ii), (iii), (iv) or (v). “Promoter” does not include a person who receives securities or proceeds solely as underwriting compensation if that person does not otherwise come within the definition of “promoter.”

(p) “Publish” means publicly to issue or circulate by newspaper, mail, radio, television, Internet or other media or otherwise to disseminate to the public.

cross-references

Regulation: 606.031

(q) “Reporting company” means any person which has been required to file, and has filed, all required periodic reports with the Securities and Exchange Commission and has filed all annual reports, if any, which it is required to file for at least twelve months prior to the time of application of this definition for persons filing pursuant to the provisions of section 13 or 15(d) of the Securities Exchange Act of 1934 or the provisions of section 30 of the Investment Company Act of 1940.

(r) (i) “Sale” or “sell” includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value or any issuance of securities pursuant to any merger, consolidation, sale of assets or other corporate reorganization, involving the exchange of securities, in whole or in part, for the securities of any other person.

(ii) “Offer” or “offer to sell” includes every direct or indirect attempt or offer to sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(iii) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(iv) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(v) A purported gift of assessable stock (for which the statutory consideration has not been paid) involves an offer and sale.

(vi) An offer of rescission made pursuant to section 504(e) involves an offer and sale.

(vii) The terms “sale,” “sell,” “offer” and “offer to sell” do not include: (A) any bona fide secured transaction in, or loan of, outstanding securities; or (B) any dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation.

(viii) A dividend or distribution by any person to all or any class of its security holders of the securities of any other person, whether or not such dividend or distribution is for value, involves a sale.

cross-references

Index to Staff No-Action Letters: p. 3

(s) “Securities Act of 1933,” “Securities Exchange Act of 1934,” “Public Utility Holding Company Act of 1935,” “Trust Indenture Act of 1939,” “Investment Advisers Act of 1940,” “Investment Company Act of 1940” and “Internal Revenue Code of 1954” mean the Federal statutes of those names as amended before or after the effective date of this act, or any successor statutes thereto. Section numbers of such statutes or regulations adopted thereunder and referred to herein include such amendments thereto as may be adopted before or after the effective date of this act. “Securities and Exchange Commission” means the “United States Securities and Exchange Commission.”

(t) “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; membership interest in a limited liability company of any class or series, including any fractional or other interest in such interest, unless excluded by clause (v); or, in general, any interest or instrument commonly known as or having the incidents of a “security”; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by written document. “Security” does not include:

(i) Any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business; or

(ii) Any beneficial interest in any testamentary trust; or

(iii) Any insurance or endowment policy or annuity contract under which an insurance company admitted in this State promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period; or

(iv) Any certificate issued under section 809 of The Insurance Company Law of 1921, act of May 17, 1921 (P.L.682), as amended; or

(v) A membership interest in a limited liability company where all of the following

conditions are satisfied:

(A) The membership interest is in a company that is not managed by managers;

(B) The purchaser of the membership interest enters into a written commitment to be engaged actively and directly in the management of the company; and

(C) The purchaser of the membership interest, in fact, does participate actively and directly in the management of the company.

cross-references

Regulations: 102.201, 102.202

Positions: p. 10-14

Index to Staff No-Action Letters: p. 3

(u) “State” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

(v) “Underwriter” means a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (i) to purchase securities for distribution or (ii) to distribute securities for or on behalf of such issuer or other person or (iii) to manage or supervise a distribution of securities for or on behalf of such issuer or other person.

(w) “Wilful and “wilfully” mean the following:

(1) As used in all sections of the act except section 511 with respect to a wilful violation of section 401(a) of the act, and notwithstanding any law or statute to the contrary, wilful means that the person acted intentionally in the sense that the person intended to do the act and was aware of what the person was doing. Proof of evil motive or intent to violate the act or knowledge that the person’s conduct violated the act is not required.

(2) For purposes of section 511 with respect to a wilful violation of section 401(a) of the act, wilful means that the person acted intentionally, knowingly or recklessly as those terms are defined in 18 Pa. C.S. § 302 (relating to general requirements of culpability).

PART II

REGISTRATION OF SECURITIES AND NOTICE FILINGS BY ISSUERS OF FEDERALLY COVERED SECURITIES

Section 201. Registration Requirement.--It is unlawful for any person to offer or sell any security in this State unless the security is registered under this act, the security or transaction is exempted under section 202 or 203 hereof or the security is a federally covered security.

cross-references

Positions: p. 14-20

Index to Staff No-Action Letters: p. 3

Section 202. Exempt Securities.--The following securities are exempted from sections 201 and 211:

(a) Any security issued or guaranteed by the United States, any state or Canadian Province, any political subdivision of a state or Canadian Province, foreign government with which the United States currently maintains diplomatic relations, or any agency or corporate or other instrumentality of any of the foregoing, or any certificate of deposit for any of the foregoing, provided that if the issuer or guarantor is a foreign government other than Canada or an instrumentality of a foreign government other than Canada, such security or certificate of deposit therefor is recognized as a valid obligation by the issuer or guarantor thereof or its or their successors.

cross-references

Regulations: 202.010, 202.092, 606.031, 609.010
Positions: p. 20-25
Index to Staff No-Action Letters: p. 4

(b) Any security issued or guaranteed by any bank or savings association and any security the offer, sale, issuance or guarantee of which (i) is subject to regulation by the Interstate Commerce Commission, or (ii) is registered under the Public Utility Holding Company Act of 1935 or the act of May 28, 1937 (P.L.1053), known as the "Public Utility Law," or (iii) the issuer of which is regulated as to the issuance or guarantee of such security by a governmental authority of the United States.

cross-references

Index to Staff No-Action Letters: p. 5

(c) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date after issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, except where such paper is proposed to be sold or offered to the public in units of less than five thousand dollars (\$5,000) to any single person.

cross-references

Regulations: 202.030
Commission Orders: p. 24
Index to Staff No-Action Letters: p. 5

(d) Any security issued or guaranteed by any Federal credit union or any credit union, industrial loan association or other similar association organized and supervised under the laws of this State.

cross-references

Regulations: 202.041

(e) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (i) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (ii) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships, or dues, or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization from this exemption. This exemption shall not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of such nonprofit organization.

cross-references

Regulations: 202.051, 202.052, 209.010, 606.041
Index to Staff No-Action Letters: p. 5

(f) Any security listed, or approved for listing upon notice of issuance, on the New York, American, or Philadelphia stock exchange or quoted on the National Market System of the Nasdaq Stock Market; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed, approved or quoted; and any warrant or right to purchase or subscribe to any of the foregoing.

cross-references

Index to Staff No-Action Letters: p. 6
Commission Orders: p. 7

(g) Any security issued in connection with an employe's stock option, purchase, savings, pension, profit-sharing or similar benefit plan.

cross-references

Regulations: 202.070
Positions: p. 25
Index to Staff No-Action Letters: p. 6

(h) Any security of a registered broker-dealer issued to its officers, partners or employes, subject to such regulations as the commission may establish.

(i) Any security as to which the commission by regulation or order finds that registration is not necessary or appropriate for the protection of investors.

cross-references

Regulations: 202.091, 202.092, 202.093, 202.094, 202.095, 606.031
Index to Staff No-Action Letters: p. 6
Commission Orders: p. 1-8; 23-24

(j) Any membership interest in a limited liability company that renders one or more professional services. As used in this subsection, the term "professional services" shall have the meaning set forth in 15 Pa.C.S. § 2902 (relating to definitions).

Section 203. Exempt Transactions.--The following transactions are exempted from sections 201 and 211:

(a) Any non-issuer transaction except where directly or indirectly for the benefit of an affiliate of the issuer.

cross-references

Regulations: 203.011
Index to Staff No-Action Letters: p. 6

(b) Any non-issuer transaction directly or indirectly for the benefit of an affiliate of the issuer which is exempted from section 5 of the Securities Act of 1933, other than those transactions exempted pursuant to section 3(a)(11) or 3(b) of the Securities Act of 1933, and the rules and regulations now or hereafter adopted thereunder.

cross-references

Index to Staff No-Action Letters: p. 6

(c) Any offer or sale to an institutional investor or to a broker-dealer, whether the buyer is acting for itself or in some fiduciary capacity.

cross-references

Regulations: 102.111, 102.112, 203.031, 504.060
Index to Staff No-Action Letters: p. 6

(d) Any sales by an issuer to not more than twenty-five persons in this State during a period of twelve consecutive months if (i) the issuer shall obtain the written agreement of each such person not to sell the security within twelve months after the date of purchase; (ii) no general solicitation through public media advertising, mass mailing, Internet or other means is used in connection with soliciting such sales; (iii) no cash or securities is given or paid, directly or indirectly, to any promoter as compensation in connection therewith unless such compensation is given or paid in connection with a sale made by a broker-dealer registered pursuant to section 301 and any person receiving such compensation is either such broker-dealer or an agent registered pursuant to section 301 of such broker-dealer; (iv) the filing fee specified in section 602(b.1) is paid; and (v) the issuer has provided written notice to each such person of the right to withdraw an acceptance as provided by section 207(m)(2). Purchasers of securities registered under this act or sold in reliance upon an exemption under this act other than this subsection (d), (f) or (s) shall not be included in computing the twenty-five persons for purposes of this exemption. A notice in the form prescribed by the commission, signed by an officer of the issuer and stating the name, principal business address of the issuer, proposed use of the proceeds from the sale and such facts as are necessary to establish this exemption shall be filed, together with a copy of any offering literature used in connection with such offer or sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

cross-references

Regulations: 203.041, 203.187, 203.189, 203.191, 204.010, 204.011, 207.130, 209.010, 504.060, 606.011, 606.031, 609.010, 609.012, 609.036
Positions: p. 26-31
Index to Staff No-Action Letters: p. 6
Commission Orders: p. 8-14; 26-27
Commission Forms: Form E
Filing Fee: Offering Amount in PA less than \$1 million = \$150
Offering Amount in PA \$1 million or more = \$400

(e) Any offer to not more than fifty persons in this State during a period of twelve consecutive months (i) if no sales result from such offer or if sales resulting from such offer are exempt by reason of subsection (d) hereof and (ii) no general solicitation through public media advertising, mass mailing, Internet or other means is used in connection with making the offer. This subsection shall not be applicable to offers made pursuant to any other subsection of this section, except subsections (d) and (f).

cross-references

Regulations: 204.010, 606.031, 609.012

Positions: p. 26-28

(f) Any offer or sale of a preorganization subscription or securities of a newly-formed person as part of its initial capitalization to not more than five persons.

cross-references

Positions: p. 27-28, 31-33

Index to Staff No-Action Letters: p. 7

(g) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(h) Any offer, but not a sale, of a security for which a registration statement has been filed under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or a notification of exemption from registration pursuant to Regulation A promulgated under section 3(b) of such act (15 U.S.C. § 77c(b)) if (i) no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under the Securities Act of 1933 or this act; and (ii) no such offer is made until after such registration statement, including a prospectus, has been filed with the commission.

cross-references

Regulations: 203.189, 204.012

(i.1) Any sale of an equity security, except securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), if: (i) the securities are proposed to be registered under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e) and, in fact, become registered under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e); (iv) the issuer of the security is a reporting company as defined in section 102(q); (v) no stop order or refusal order is in effect and no public proceeding or investigation looking toward such an order is pending under the Securities Act of 1933 or this act; (vi) the equity security is listed on a national securities exchange registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) or quoted on the National Market System or Small Cap Market of the Nasdaq Stock Market; (vii) the issuer, at the time the registration statement becomes effective under section 5 of the Securities Act of 1933, has not received an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern unless the securities being sold in reliance upon this subsection are the subject of an offering that is being underwritten on a firm commitment basis by a broker-dealer registered under section 301. An exemption under this section shall terminate upon the termination of the registration statement under section 5 of the Securities Act of 1933. For purposes of this subsection, the commission, by regulation, may define the term "equity security."

cross-references

Regulations: 203.091

Commission Orders: p. 14

Positions: p. 33

Editor's Note: Section 203(I) was re-designated as 203(I.1) by Act 126 of 1994, effective March 7, 1995.

(j) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels: (i) if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit; (ii) no public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction; and (iii) no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with the transaction.

cross-references

Regulations: 203.101, 606.031

(k) Any judicial sale or any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

cross-references

Index to Staff No-Action Letters: p. 7

(l) Any transaction now or hereafter exempted from section 5 of the Securities Act of 1933 by virtue of sections 3(a)(9) or 3(a)(10) thereof.

cross-references

Commission Orders: p. 14

Index to Staff No-Action Letters: p. 7

(m) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

cross-references

Regulations: 203.131

(n) Any transaction pursuant to an offer of securities to existing equity security holders of (i) the issuer; (ii) a corporation which prior to the commencement of the offer owned substantially all of the voting stock of the issuer; or (iii) a corporation which organized the issuer for the purpose of the offer, if no compensation, other than a standby commission, is paid or given directly or indirectly for soliciting any equity security holder in this State. "Equity security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance.

cross-references

Regulations: 203.141

(o) Any transaction incident to a vote by security holders, or written consent of some or all security holders in lieu of such vote, pursuant to the articles of incorporation or the applicable corporation statute or other statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or in part, of the issuance of securities of another person, reclassification of securities, or reorganization involving the exchange of securities, in whole or in part, for the securities of any other person if, in the case of any proposed transaction where no proxy materials are required or permitted to be filed with the Securities and Exchange Commission by either party to the transaction and where more than twenty-five per cent of the security holders of either party to the transaction are

residents of this State, materials specified by regulation of the commission are prepared in connection with the proposed transaction and, after filing with and review by the commission, distributed to the security holders of each party to the transaction prior to the vote or solicitation of written consent and the filing fee specified in section 602(b.1) is paid.

cross-references

Regulations: 203.151, 609.031, 609.034
Commission Orders: p. 15; 27
Index to Staff No-Action Letters: p. 8
Commission Forms: 203-O
Filing Fee: \$350

(p) Any offer or sale of an evidence of indebtedness of an issuer either: organized exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual; or organized as a chamber of commerce or trade or professional association if all the following are met:

(1) The issuer files a notice with the commission in the form prescribed by the commission not later than five business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier. The notice filed with the commission shall be accompanied by a copy of a disclosure document and any offering literature to be used in connection with an offer or sale of securities under this section.

(2) The filing fee prescribed in section 602(b.1)(x) has been paid.

(3) Each person who accepts an offer to purchase securities under this subsection has received a written notice of a right to withdraw an acceptance as provided in section 207(m)(2).

(4) The issuer and any predecessor of the issuer have not defaulted within the current fiscal year and the three preceding fiscal years with respect to any debt security previously sold by the issuer or its predecessor.

(5) The total amount of securities proposed to be offered under this subsection are secured by a mortgage or deed of trust upon the existing land and buildings owned by the issuer which mortgage or deed of trust is or will become a first lien at or prior to the issuance of the securities or there exists a provision satisfactory to the commission for escrowing of the proceeds from the sale of the securities until such first lien is established.

(6) The total amount of securities proposed to be offered under this subsection does not exceed as of the time the form required by this subsection is filed with the commission seventy-five per cent of the fair market value of the land and buildings to be included in the mortgage or deed of trust.

(7) No promoter of the issuer expects or intends to make a profit directly or indirectly from any business activity associated with the organization or operation of the issuer.

(8) The issuer complies with regulations of the commission with respect to trust indentures and the use of an offering document.

cross-references

Regulations: 203.161, 209.010, 606.011, 609.031, 609.034
Commission Orders: p. 27
Commission Forms: 203-P
Filing Fee: \$100

(q) Any bona fide distribution in partial or total liquidation of a person, whether or not the assets being distributed include securities of any other person and whether or not wholly or partially in exchange for the securities of the person making the distribution, and any stock split and any stock dividend, where the corporation distributing the dividend is not the issuer, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend in lieu of the stock and if the dividend is issued pro rata by class.

cross-references

Regulations: 203.171
Positions: p. 33-34
Commission Orders: p. 15

(r) Any transaction or class of transactions as to which the commission by regulation or order finds that registration is not necessary or appropriate for the protection of investors. As a condition of the availability of an exemption granted or established under this section, the commission may require compliance with the provisions of section 207(m)(2) and the rules and regulations promulgated thereunder.

cross-references

Regulations: 203.183, 203.184, 203.185, 203.186, 203.187, 203.188, 203.189, 203.190, 203.192, 203.202, 203.203, 207.130, 209.010, 606.031
Positions: p. 32-47
Commission Orders: p. 16-21
Index to Staff No-Action Letters: p. 8

(s) Any offer or sale of a security which is exempt from registration under section 5 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77e) pursuant to Rule 505 of Regulation D promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b)) if:

(i) The issuer files a notice in the form prescribed by rule of the commission, together with a copy of any offering document or literature proposed to be used in connection with such offer and sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier;

(ii) The issuer pays the filing fee specified in section 602(b.1);

(iii) No mass mailing is used, public media advertising made or other form of general solicitation is utilized in connection with offers and sales under this subsection;

(iv) No compensation is given or paid, directly or indirectly, to any person in connection with a sale under this subsection unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under section 301; and

(v) Neither the issuer nor a predecessor of the issuer; affiliated issuer; officer, director or general partner of the issuer; promoter of the issuer presently connected with the issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the issuer; underwriter of the securities to be offered under this subsection or any partner, director or officer of such underwriter has within five years of filing a notice pursuant to subparagraph (i):

(A) Filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

(B) Been convicted of any criminal offense in connection with the offer, purchase or sale of a security or involving fraud or deceit;

(C) Been subject to a state administrative enforcement order or judgment finding fraud or deceit in connection with the purchase, offer or sale of any security;

(D) Been subject to a state administrative enforcement order or judgment which prohibits, denies or revokes the use of an exemption from registration in connection with the purchase, offer or sale of a security; or

(E) Been subject to an order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase, offer or sale of any security.

The provisions of this subparagraph shall not apply if the party subject to a disqualification described in clause (A), (B), (C), (D) or (E) is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; the state securities administrator or the court or regulatory authority that entered the order judgment or decree waives the disqualification prior to the first offer being made in this State under this subsection; or the issuer establishes that it did not know and, in the exercise of reasonable care based on a factual inquiry, could not have known that a disqualification existed under this subparagraph.

cross-references

Regulations: 203.187, 203.189, 203.191, 606.031

Commission Forms: Form E

Filing Fee: Offering in PA less than \$1 million = \$150

Offering in PA \$1 million or more = \$400

(t) Any offer and any sale resulting from such offer where the securities being offered, whether in or outside of this State, will be sold only to accredited investors as that term is defined in the rules and regulations of the Securities and Exchange Commission if:

(i) The securities are sold in good faith reliance that the offering would qualify for an exemption from registration under section 5 of the Securities Act of 1933 (15 U.S.C. § 77e), pursuant to section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. § 77c(a)(11)) or the regulations adopted by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b)), except an offering under Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 (15 U.S.C. § 77c(b));

(ii) The issuer files a notice in the form prescribed by rule of the commission, together with a copy of any offering document or literature proposed to be used in connection with such offer and sale, with the commission not later than the day on which the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier;

(iii) The issuer pays the filing fee specified in section 602(b.1);

(iv) No compensation is given or paid, directly or indirectly, to any person in connection with a sale under this subsection unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under section 301;

(v) Neither the issuer nor a predecessor of the issuer; affiliated issuer; officer, director or general partner of the issuer; promoter of the issuer presently connected with the issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the issuer; underwriter of the securities to be offered under this subsection or any partner, director or officer of such underwriter has within five years of filing a notice pursuant to subparagraph (i):

(A) Filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;

(B) Been convicted of any criminal offense in connection with the offer, purchase or sale of a security or involving fraud or deceit;

(C) Been subject to a state administrative enforcement order or judgment finding fraud or deceit in connection with the purchase, offer or sale of any security;

(D) Been subject to a state administrative enforcement order or judgment which prohibits, denies or revokes the use of an exemption from registration in connection with the purchase, offer or sale of a security; or

(E) Been subject to an order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase, offer or sale of any security.

The provisions of this subparagraph shall not apply if the party subject to a disqualification described in clause (A), (B), (C), (D) or (E) is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; the state securities administrator or the court of regulatory authority that entered the order judgment or decree waives the disqualification prior to the first offer being made in this State under this subsection; or the issuer establishes that it did not know and, in the exercise or reasonable care based on a factual inquiry, could not have known that a disqualification existed under this subparagraph;

(vi) The issuer specifies in any advertisement, communication, sales literature or other information which is publicly disseminated in connection with the offering of securities, including by means of electronic transmission or broadcast media, that the securities will be sold only to accredited investors. For purposes of this paragraph, "publicly disseminated" means communicated to 100 or more persons or otherwise communicated, used or circulated in a public manner;

(vii) The issuer does not engage in any solicitation of prospective purchasers by telephone until the issuer has reasonable grounds to believe that the person to be solicited is an accredited investor;

(viii) The issuer places a legend on the cover page of any disclosure document proposed to be used in connection with the offering or on the cover page of the subscription agreement advising that the securities described in the disclosure document or the subscription agreement will be sold only to accredited investors;

(ix) The issuer is not an investment company as defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); and

(x) The issuer is not a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

cross-references

Regulations: 203.201, 606.031
Positions: p. 47-54
Commission Forms: Form E
Filing Fee: \$500

Section 204. Exemption Proceedings.--(a) The commission may by regulation as to any type of security or transaction, or by order in a particular case, as to any security or transaction increase the number of purchasers or offerees permitted, or waive the conditions in either of sections 202 or 203.

cross-references

Regulations: 204.010, 204.011, 204.012
Positions: p. 54-58
Commission Orders: p. 21-23; 28
Index to Staff No-Action Letters: p. 8

(b) The commission may by order deny or revoke any exemption specified in section 202 or 203 with respect to a specific security or transaction. The order shall be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a). No order under this section shall operate retroactively. No person shall be considered to have violated section 201 by reason of any offer or sale effected after the entry of an order under this section if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

cross-references

Regulations: 606.041

Section 205. Registration by Coordination.--(a) Registration by coordination may be used for any offering for which a registration statement has been filed under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §77a et seq.) or for any proposed sale pursuant to Regulation A promulgated under the exemption contained in section 3(b) of such act (15 U.S.C. § 77c(b)) provided, except in the case of open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), such registration statement or notification of proposed sale has not become effective.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 207(b):

(i) Two copies of the preliminary prospectus or offering circular filed under the Securities Act of 1933;

(ii) If the commission by regulation requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(iii) If the commission by regulation or order requires, any other information, or copies of any documents, filed under the Securities Act of 1933; and

(iv) An undertaking to forward to the commission all future amendments to the Federal prospectus or offering circular, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the Securities and Exchange Commission, or such longer period as the commission permits.

cross-references

Regulations: 205.021, 207.091, 209.010, 606.011, 606.031, 609.010, 609.031, 609.032, 609.033, 609.034, 609.036, 609.037

Positions: p. 58-60; 69-99

Commission Orders: p. 28

Index to No-Action Letters: 9

Commission Forms: Form R (only for Regulation A offerings), Form 207(j), Form 209

Uniform Forms: Form U-1 (all offerings)

Filing Fee: Issuers offering less than \$10 million in PA: \$750

Issuers offering \$10 million or more in PA: \$1,000

(c) A registration statement or notification of any proposed sale filed under this section automatically become effective at the moment the Federal registration statement or notification becomes effective if (i) no stop order is in effect in this State and no proceeding is pending under section 208; and (ii) the registration statement or notification has been on file with the commission for at least ten days.

cross-references

Regulations: 207.101

(d) The registrant shall notify the commission promptly by telephone or telegram of the date and time when the Federal registration statement became effective and the content of the price amendment, if any, and shall file a post-effective amendment promptly containing the information and documents in the price amendment. "Price amendment" means the final Federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commission may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if it promptly notifies the registrant by telephone or telegram of the issuance of such order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be vacated as of the time of its entry. The commission may by regulation or order waive any of the conditions specified in subsection (b) or (c).

cross-references

Regulations: 205.040

Commission Orders: p. 23

(e) If the Federal registration statement becomes effective before all the conditions in this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commission of the date when the Federal registration statement is expected to become effective, the commission shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under section 208; but this advice by the commission does not preclude the institution of such a proceeding at any time.

Section 206. Registration by Qualification.--(a) Any security may be registered by qualification.

cross-references

Regulations: 206.010, 206.020, 206.041, 207.101, 207.130, 209.010, 606.011, 606.031, 609.010, 609.031, 609.032, 609.033, 609.034, 609.036, 609.037

Positions: p. 60-67, 69-99

Commission Orders: p. 28

Commission Forms: Form R (only for offerings exempt from Section 5 of the Securities Act of 1933 pursuant to Section 3(a)(11), Reg. A or Rule 504), Form 209

Uniform Forms: Form U-1

Filing Fee: \$500 plus 1/20 of 1% of the maximum aggregate offering price at which the securities are to be offered in PA up to a maximum filing fee of \$3,000

(b) A registration statement under this section shall contain the information specified in section 207(b), and shall contain the following information and be accompanied by the following documents:

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by clause (2): the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;

(4) with respect to any person owning of record, or beneficially if known, ten per cent or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;

(5) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(6) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;

(7) the capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable; the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6), or (8) and by any person who holds or will hold ten per cent or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and non-assessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, or such other financial statements as may be required pursuant to section 609(c); and

(17) such additional information as the commission requires by regulation or order.

For purposes of this section 206(b) the commission may classify issuers and types of securities.

cross-references

Regulations: 206.020

(c) Registration under this section becomes effective when the commission so orders. If a registration statement has been on file for at least thirty days and all information required by the commission has been furnished, the person filing the statement may at any time file a written request that the commission take action within ten days following the filing of such request. If a request is filed and the commission takes no action within the period, the registration becomes effective at the end of the ten-day period.

cross-references

Regulations: 206.041, 606.041

(d) The commission may by regulation or order require as a condition of registration under this section that a prospectus containing any designated part of the information contained in the registration statement or filed with it be sent or given to each person to whom an offer is made before or concurrently with: the first written offer made to him, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution; or the confirmation of any sale made by or for the account of any person; or the payment pursuant to any sale; or the delivery of the security pursuant to any sale; whichever first occurs.

Section 207. General Registration Provisions.--(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a licensed broker-dealer.

(b) Every registration statement shall specify: (i) the amount of securities to be offered in this State; (ii) the states in which a registration statement or application in connection with the offering has been or is to be filed; (iii) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the Securities and Exchange Commission, or any withdrawal with prejudice of a registration statement or application relating to the offering; and (iv) the names of all underwriters and broker-dealers selling or offering the securities in this State. Where the names of all underwriters or broker-dealers are not known at the time of filing of the registration statement, such list may be supplemented from time to time prior to or after effectiveness, provided that no delay of effectiveness or suspension shall be caused by the filing of any such supplement.

(c) Any document filed under this act or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement.

(d) The commission may by regulation or otherwise permit the omission of any item of information or document from any registration statement.

(e) The commission may by regulation or order require as a condition of registration by qualification or as a condition of registration by coordination (if more than sixty-six and two-thirds per cent of the issue of securities part or all of which is to be registered by coordination is to be sold in Pennsylvania) that a report by an accountant, engineer, appraiser or other professional person be filed. The commission may also designate one of its employees to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification.

cross-references

Regulations: 207.050

(f) In the case of a non-issuer distribution, information may not be required under section 206(b) or section 207(k) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The commission may by regulation or order require as a condition of registration that any security issued within the past five years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this State be escrowed until the issuer receives a specified amount from the sale of the security either in this State or elsewhere; or that the proceeds from the sale of the registered security in this State be escrowed for a specific use as set forth in the prospectus; or it may impose any or all of these requirements. With respect to securities registered by coordination, no escrow of promotional shares hereunder shall be required to extend beyond four years. The commission may by regulation or order determine the conditions of any escrow required hereunder, but may not reject a depository solely because of location in another state.

cross-references

Regulations: 207.071, 207.072

Positions: p. 67-97

Index to Staff No-Action Letters: p. 9

Fee for Commission to act as Escrow Holder: \$100

(h) The commission may by regulation require that debt securities of designated classes to be registered by qualification shall be issued under a trust indenture containing such provisions as it determines, but such provisions shall not be in addition to or inconsistent with the terms required or permitted by the Trust Indenture Act of 1939.

(i) The commission may by regulation require (i) with respect to registration by coordination that a copy of each form of subscription or sale contract used or proposed to be used in this State be filed with the commission prior to its use in this State; and (ii) with respect to registration by qualification that, as a condition of registration, any security registered be sold only on a specified form of subscription or sale contract; and (iii) that a signed or conformed copy of each such contract be preserved for any period up to three years.

cross-references

Regulations: 207.091

(j.1) A registration by coordination is effective for one year from its effective date. The effectiveness of a registration by coordination may be extended beyond the initial one-year effectiveness period in increments of one-year periods up to a maximum of three years from the initial effectiveness date, provided that the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution and the commission has been notified of such continued offering and the

period thereof. A registration by qualification is effective for one year from its effective date. The fact that a registration statement has been effective in this State with respect to any security does not permit sales of securities of the same class by the issuer or an affiliate of the issuer if such person did not file the registration statement, unless a separate registration statement is filed and declared effective with respect thereto, or an exemption from registration is available. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this State, unless permitted by regulation or order of the commission. No registration statement is effective during the time a stop order is in effect under section 208.

cross-references

Regulations: 207.101

Positions: p. 97

Commission Forms: 207-J

Editor's Note: Section 207(j) was re-designated as Section 207(j.1) by Act 126 of 1994, effective March 7, 1995.

(k) During the effective period of a registration statement, the commission may by regulation require the person who filed the registration statement to file reports with the commission, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering; provided, however, that no person need comply with any such regulation of the commission if such person files with the commission copies of all reports such person is required to file with the Securities and Exchange Commission and if such reports are filed in a timely manner. If any of the securities registered have been sold in the State, the commission may by regulation extend the period for filing the reports for an additional term not exceeding two years from the date the registration became effective or the date of its last amendment or extension.

cross-references

Commission Orders: p. 29

(l) A registration statement relating to any offering of securities may be amended after its effective date so as to increase the specified amount of securities proposed to be offered in this State. The amendment becomes effective upon the payment of the required filing fee, if any, and when the commission so orders.

cross-references

Regulations: 606.041

(m) (1) Except where such securities are registered under section 5 of the Securities Act of 1933, each person who accepts an offer to purchase securities registered by qualification directly from an issuer or an affiliate of an issuer shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days after he receives a prospectus relating to the offering (which is not materially different from the final prospectus relating to such offering) and a notice explaining the provisions of this subsection. As used herein, the term "final prospectus" shall mean the document prepared in accordance with such regulations as the commission may provide, to be used by the seller in connection with an offering of securities in this State after the registration of such securities has become effective under this act.

(2) Each person who accepts an offer to purchase securities exempted from registration by section 203(d) and (p) directly from an issuer or affiliate of an issuer shall receive a written notice in such form as the commission, by rule, may prescribe informing such person of his right under this subsection to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person, within two business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no written binding contract of purchase, within two business days after he makes the initial payment for the securities being offered.

cross-references

Regulations: 203.161, 207.130

(n) For purposes of coordinating the provisions of this act with uniform procedures to facilitate electronic filings of registration statements and notice filings, including, without limitation, by a securities registration depository, the commission, by regulation, may adopt appropriate procedures or forms or waive or modify any provision of section 205 or 206 or this section. The commission, by regulation, also may prescribe methods for accepting electronic or digital signatures on forms to be filed electronically with the commission.

cross-references

Regulations: 207.140

Section 208. Denial, Suspension, and Revocation of Registrations.--(a) The commission may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds that the order is in the public interest and that:

(i) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under section 207(l) as of its effective date, or any report under section 207(k) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(ii) Any provision of this act or any regulation, order or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by: (A) the person filing the registration statement, (B) the issuer, (C) any partner, officer or director of the issuer, (D) any person occupying a similar status or performing similar functions, (E) any affiliate of the issuer, but only if the person filing the registration statement is an affiliate of the issuer, or (F) any broker-dealer;

(iii) The securities are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other Federal or State act applicable to the offering, but the commission may not institute a proceeding against an effective registration statement under this section more than one year from the date of the order or injunction relied on, and it may not enter an order under this section on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this act;

(iv) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(v) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options, or has worked or tended to work a fraud upon purchasers or would so operate, provided that any underwriting compensation approved by a national securities association registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15

U.S.C. § 78a et seq.) with respect to the underwriting activities of its members shall not be deemed unreasonable under this section;

(vi) The applicant or registrant has failed to pay the proper filing fee but the commission shall vacate any such order when the deficiency has been corrected;

(vii) Advertising prohibited by section 606 has been used in connection with the sale or offering of the securities;

(viii) In the case of an offering of debt securities, the offering involves an excessive debt-to-equity ratio or the issuer, at the time it filed an application under section 205 or 206, had received an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern;

(ix) The offering is being made by a development stage company which has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; or

(x) The issuer has loaned money to an officer, director or general partner of the issuer or a person who legally or beneficially owns five per cent or more of a class of equity securities of the issuer or any affiliate of such person which moneys have not been repaid to the issuer prior to effectiveness of the registration statement under this act, except that this provision shall not apply to loans described in section 13(k)(2) or (3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78(m)(2) or (3).

cross-references

Positions: p. 67-99

(b) The commission may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to it when the registration statement became effective unless the proceeding is instituted within thirty days after effectiveness.

(c) The commission may by order deny, postpone, suspend or revoke the effectiveness of a registration statement. The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the applicant or registrant. The order shall contain findings of fact and conclusions of law and include a notice affording the applicant or registrant an opportunity for a hearing under section 607(a). No order shall operate retroactively. No person shall be considered to have violated section 201 solely by reason of an order entered under this section for any offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

cross-references

Regulations: 207.101

Section 209. Books, Records and Accounts.--(a) Every issuer registering securities for sale in this State or who has sold securities in this State pursuant to an exemption contained in section 202(e), 203(d), 203(p) or 203(r) shall at all times keep and maintain a complete set of books, records, and accounts of such sales and the disposition of the proceeds thereof for a period of three years following the last sale of securities in this State or one year after the disposition of all proceeds, whichever is longer, and shall thereafter, at such times as are required by the commission, make and file in the office of the commission, a report, setting forth the securities sold by it under such registration or exemption, the proceeds derived therefrom and the disposition thereof.

cross-references

Regulations: 203.188, 209.010

Commission Forms: 209

Uniform Forms: NF

(b) Subject to the limitations of section 18 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r), every open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), making a filing under section 205, 206 or 211 shall file reports with the commission at such times and in such manner as the commission, by rule, may prescribe which, at a minimum, set forth the total amount of securities offered and sold in this State during the effective period of the registration statement or notice filing.

(c) Except open-end and closed-end investment companies, face amount certificate companies and unit investment trusts, as such persons are classified in the Investment Company Act of 1940, every issuer registering securities for sale in this State under section 206 shall file an annual report with the commission, no earlier than three hundred sixty-five days and no later than four hundred twenty days from the effective date of the registration, setting forth the total amount of securities sold in this State during the effective period of the registration statement.

Section 210. Retroactive Registration or Amendment of Notice of Filing for Certain Securities.--The commission, by regulation, may establish procedures whereby an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. 80a-1 et seq.), which, during the effective period of registration under section 205 or 206 or the effective period of a notice filing, sold securities in this State in excess of the aggregate amount of securities registered for sale in this State under section 205 or 206 or covered by the notice filing may apply to the commission to register such securities retroactive to the date of the initial registration or to amend the notice filing retroactive to the date of the initial notice filing. An application for retroactive registration or amendment of a notice filing for such securities shall not be granted if, at the time the application is filed, a civil, criminal or administrative proceeding is pending alleging violations of section 201 for the sale of such securities in this State, or such securities were sold more than twenty-four months prior to the date the application was filed with the commission. An application under this section shall not be granted unless the applicable oversale assessment prescribed by section 602.1(d) has been paid.

cross-references

Regulations: 210.010, 606.041

Commission Forms: 210

Assessments: see section 602.1(d)

Section 211. Federally Covered Securities.--(a) With respect to any security that is a covered security under section 18(b)(2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)(2)), the following shall apply:

(1) An open-end or closed-end investment company, unit investment trust or face amount certificate company, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), annually shall notify the commission of its intent to offer such federally covered securities for sale in this State by paying the filing fee specified in section 602(b.1) and, if applicable, the assessment specified in section 602.1(a)(5) and filing any or all of the following documents which the commission, by rule or order, may require:

(i) Prior to the initial offer of such federally covered security in this State, all documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. § 77a et seq.) or, as an alternative thereto, a notice form adopted by the commission.

(ii) After the initial offer of such federally covered security in this State, all documents that are part of an amendment to a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 or, as an alternative thereto, a notice form adopted by the commission, which shall be filed concurrently with the commission.

(iii) Any other documents that are part of a Federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the commission.

(2) An initial notice filing by a unit investment trust shall be effective for the period beginning with its effective date in this State and ending one year after the date the registration statement for the same securities became effective with the Securities and Exchange Commission. A renewal notice filing by a unit investment trust shall be effective for a period of one year. An initial or renewal notice filing by a unit investment trust becomes effective upon receipt by the commission of a properly completed filing, including documents required by paragraph (1), and a correct fee and, if applicable, the correct assessment unless another date is requested in writing by the issuer in the notice filing made with the commission.

(3) A notice filing by an open-end or closed-end investment company or face amount certificate company, as such terms are classified in the Investment Company Act of 1940, shall be effective for the period beginning with its effective date in this State and ending sixty days after the filer's fiscal year end for the year in which the notice filing was made. A notice filing by an open-end or closed-end investment company or face amount certificate company becomes effective upon receipt by the commission of a properly completed filing, including documents required by paragraph (1), and a correct fee and, if applicable, the correct assessment unless another date is requested in writing by the issuer in the notice filing made with the commission.

cross-references

Regulations: 205.040, 211.010

Uniform Forms: NF

Notice Filing Fee: Offering in PA is \$4 million or less: 1/20 of 1% with a minimum fee of \$350
 Offering in PA is more than \$4 million but less than \$100 million = \$3,000
 Offering in PA is \$100 million or more = \$3,500
 Offering in PA is Indefinite = \$4,000

(b) With respect to any security that is covered security under section 18(b)(4)(D) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)(4)(D)), an issuer shall file a notice with the commission on Form D promulgated by the Securities and Exchange Commission and effective as of September 1, 1996, not later than fifteen calendar days after the first sale of such federally covered security occurs in this State, together with the filing fee specified in section 602(b.1).

cross-references

Regulations: 211.010, 606.041

Positions: p. 99-102

Uniform Forms: SEC Form D (as in effect on September 1, 1996)

Notice Filing Fee: \$525

(c) (1) The commission may issue a stop order suspending the offer or sale of a security described in subsection (a) or (b) upon finding that:

(i) The order is necessary or appropriate in the public interest for protection of investors; and

(ii) There is a failure to comply with any condition established under this section.

(2) A stop order under this section may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a). No person shall be considered to have violated section 201 solely by reason of an order entered under this section for an offer or sale effected after the entry of an order under this section if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

PART III

**REGISTRATION OF BROKER-DEALERS, AGENTS,
INVESTMENT ADVISERS, INVESTMENT ADVISER
REPRESENTATIVES AND NOTICE FILINGS
BY FEDERALLY COVERED ADVISERS**

Section 301. Registration Requirement.--Unless exempted under section 302 hereof:

(a) It is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act.

cross-references

Positions: p. 102-105

Index to Staff No-Action Letters: p. 9

(b) It is unlawful for any broker-dealer or issuer to employ an agent to represent him in this State unless the agent is registered under this act. The registration of an agent is not effective during any period when he is not associated with a specified broker-dealer registered under this act or a

specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where affiliated organizations are registered broker-dealers, an agent may represent one or more of such organizations. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commission. The commission may adopt a temporary registration procedure to permit agents to change employers without suspension of their registrations hereunder.

cross-references

Regulations: 301.020, 302.051, 302.060
Index to Staff No-Action Letters: p. 9

(c) It is unlawful for any person to transact business in this State as an investment adviser unless he is so registered or registered as a broker-dealer under this act or unless he is exempted from registration. It is unlawful for any person to transact business in this State as an investment adviser representative unless he is so registered or exempted from registration.

cross-references

Index to Staff No-Action Letters: p. 9

(c.1) The following apply:

(1) It is unlawful for any:

(i) Person required to be registered as an investment adviser under this act to employ an investment adviser representative unless the investment adviser representative is registered under this act or exempted from registration, provided that the registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this act; or

(ii) Federally covered adviser to employ, supervise or associate with an investment adviser representative having a place of business in this Commonwealth unless such investment adviser representative is registered under this act or exempted from registration.

(2) If a registered investment adviser representative begins or terminates employment with an investment adviser or a federally covered adviser, the investment adviser in the case under paragraph (1)(i) or the investment adviser representative in the case of paragraph (1)(ii) shall promptly notify the commission.

(3) The commission may adopt a temporary registration procedure to permit investment adviser representatives to change employers without suspension of their registrations under this act.

(d) It is unlawful for any licensed broker-dealer, agent or investment adviser to effect a transaction in securities, directly or indirectly, in this State if the registrant is in violation of this act, or any regulation or order promulgated under this act of which he has notice, if such violation (i) is a material violation; (ii) relates to transactions effected in this State; and (iii) has been committed by such registrant, or if the information contained in his application for registration, as of the date of such transaction, is incomplete in any material respect or is false or misleading with respect to any material fact.

(e) Every registration or notice filing expires on December 31 of each year unless renewed. No registration or notice filing is effective after its expiration, unless a renewal application has been timely filed, and expiration of a registration for which no renewal application has been filed is deemed an application for withdrawal under section 305(f).

(f) It is unlawful for any federally covered adviser to conduct advisory business in this State unless such person complies with the provisions of section 303(a)(iii).

Section 302. Exemptions.--The following persons shall be exempted from the registration provisions of section 301:

(a) A broker-dealer registered under the Securities Exchange Act of 1934, who has not previously had any certificate denied or revoked under this act or any predecessor statute, if he has no place of business in this State and, during any period of twelve consecutive months, he does not direct offers to sell or buy into this State in any manner to persons other than broker-dealers, institutional investors or governmental agencies and other instrumentalities designated by regulation of the commission, or to more than five other customers in this State, whether or not the offeror or any of the offerees is then present in this State.

cross-references

Index to Staff No-Action Letters: p. 9

(b) An agent in so far as he effects transactions on behalf of a broker-dealer who is exempted by the provisions of subsection (a).

(c) A person who represents an issuer in effecting transactions in securities registered under section 205 or 206 who:

(1) Is a bona fide officer, director, partner or employe of the issuer or an individual occupying similar status or performing similar functions; and

(2) Does not receive any compensation, directly or indirectly, for effecting the transactions.

(d) An investment adviser who does not have a place of business in this State and during the preceding twelve-month period has had not more than five clients who are residents of this State exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors.

(d.1) An investment adviser representative who is employed by or associated with an investment adviser insofar as he transacts business in this State on behalf of an investment adviser who is exempted by the provisions of subsection (d).

(d.2) An investment adviser representative who has a place of business in this State and is employed by or associated with a federally covered adviser and the federally covered adviser meets any of the criteria described in section 303(a)(iii)(A), (B) or (C).

(e) Any person who represents an issuer in effecting transactions in:

(1) Securities that are exempted by section 202(e), (f) or (g);

(2) Securities involved in a transaction exempted by section 203(c), (g), (k), (l) or (m); or

(3) Securities which are covered securities under section 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)(1)).

cross-references

Regulations: 302.051

Index to Staff No-Action Letters: p. 9

(f) The commission may by such regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of section 301 any class of persons specified in such regulations.

cross-references

Regulations: 302.060, 302.061, 302.063, 302.064, 302.065

Commission Orders: p. 29

Section 303. Registration and Notice Filing Procedure.--(a) (i) Except as provided by clause (iii), any broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal license by filing an application with the commission. The application shall contain such information, and in such detail, as the commission by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing similar functions any injunction or administrative order or conviction referred to in section 305(a)(ii), information about affiliates or predecessors of the applicant, and any other matters which the commission determines are relevant to the application. If a broker-dealer, agent, investment adviser or investment adviser representative seeks to obtain an initial or renewal license and, in connection therewith, requests a waiver of any requirement imposed under this section or section 304 or any regulation promulgated thereunder, the commission, in granting the waiver may impose conditions on or limit the scope of the initial or renewal license.

(ii) If no denial order is in effect and no proceeding is pending under section 305, the registration becomes effective on the forty-fifth day after the filing of the application therefor or any material amendment thereto, or on such earlier date as the commission may order. The commission is directed to cooperate with other securities administrators and regulatory authorities to simplify and coordinate registration, application and renewal procedures.

(iii) A federally covered adviser shall file with the commission, prior to acting as a federally covered adviser in this State, a copy of such documents as have been filed with the Securities and Exchange Commission which the commission by regulation may require, together with the fee specified in section 602(d.1). This requirement shall not apply to a federally covered adviser that:

(A) Has a place of business in this State and whose only clients in this State are investment advisers, federally covered advisers, broker-dealers or institutional investors;

(B) Does not have a place of business in this State and during the preceding twelve-month period has had not more than five clients who are residents of this State, exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors; or

(C) Meets the definition of any person described in section 102(j)(i) through (viii), (x) or (xi), except a federally covered adviser that is also a broker-dealer registered under section 301, that has an individual employed by or associated with such person who meets the definition of investment adviser representative in section 102 (j.1)(ii).

cross-references

Regulations: 303.011, 303.012, 303.013, 303.014, 303.015, 303.021

Commission Orders: p. 30-36

Uniform Forms: BD, U-4, ADV

Filing Fee: Broker-dealer - \$500 per annum

Agent - \$115 for initial registration; \$100 for each annual renewal

Investment adviser - \$350 per annum

Investment adviser representative - \$115 for initial registration; \$100 for each annual renewal
Agent transfer - \$115 per transfer
Investment adviser representative transfer - \$115 per transfer
Notice Filing Fee: Federally covered adviser: \$350 per annum

(b) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the registrant's term. A federally covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the notice period. There shall be no filing fee.

(c) The commission may by regulation prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser, and the commission may by order require an examination of a licensed broker-dealer, agent or investment adviser for due cause.

cross-references

Regulations: 303.031, 303.032
Positions: p. 105-106
Commission Orders: p. 36-38
Uniform Forms: U-10 (For employees of non-NASD firms)

(d) The commission may by regulation require a minimum capital for registered broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) and establish minimum financial requirements for investment advisers subject to the limitations of section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a). The commission may classify broker-dealers for purposes of such requirements and may establish different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

cross-references

Regulations: 303.041, 303.042
Positions: p. 106-107
Commission Orders: p. 38-39

(e) The commission may by regulation require surety bonds to be posted by any broker-dealer, investment adviser, and any issuer who employs agents subject to registration under section 301 in connection with effecting transactions in any security not exempted by section 202(e), (f) or (g) or effecting securities transactions not exempted by section 203(c), (g), (k), (l) or (m) in any amount the commission may prescribe, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers and may determine their conditions. All bonds required shall provide for suit thereon by injured customers, clients or purchasers, but no bond may be required of any registered broker-dealer or investment adviser whose net capital or minimum financial requirements exceeds the amount prescribed by regulation for this purpose. Such bond, unless canceled as provided herein, shall be in effect during the entire period that a registration is in effect. Every bond shall contain a provision that such bond is not cancellable, except on thirty-days prior written notice to the person by whom the bond was posted and the commission, provided that such cancellation shall not affect any liability incurred or accrued prior to the effective date of such cancellation.

cross-references

Regulations: 303.051
Uniform Forms: USB

Section 304. Post-registration Provisions.-(a) Every registered broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commission by regulation prescribes, except as provided by section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a) in the case of an investment adviser. All records so required with respect to an investment adviser shall be preserved for such period as the commission prescribes by regulation. Subject to the limitations of section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, all records required shall be preserved for three years unless the commission by regulation prescribes otherwise for particular types of records, and all required records shall be kept within this State or shall, at the request of the commission, be made available at any time for examination by it either in the principal office of the registrant or by production of exact copies thereof in this State.

cross-references

Regulations: 304.011, 304.012

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the commission by regulation prescribes, except as provided by section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

cross-references

Regulations: 304.021, 304.022

Commission Orders: p. 39-41

(c) If the information contained in any document filed with the commission is or becomes inaccurate or incomplete in any material respect, the registrant or federally covered adviser shall promptly file a correcting amendment if the document is filed with respect to a registrant or when such amendment is required to be filed with the Securities and Exchange Commission if the document is filed with respect to a federally covered adviser.

(d) The commission shall make periodic examinations, within or without this State, of each broker-dealer and investment adviser at reasonable times and in reasonable scope. These examinations may be made without prior notice to the broker-dealer or investment adviser. For the purpose of avoiding unnecessary duplication of examinations, the commission, in so far as it deems it practicable in administering this subsection, shall cooperate with securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) or any other department or agency of this State.

cross-references

Regulations: 304.041

(e) The commission may by regulation prohibit unreasonable charges, commissions or other compensation of broker-dealers and investment advisers, provided that any charges, commissions, or other compensation consistent with rates set by a national securities exchange, when applied to transactions on that exchange, or by the Securities and Exchange Commission or national securities association registered under the Securities Exchange Act of 1934, shall not be deemed unreasonable under this section. Any underwriting compensation permitted by a national securities association registered under the Securities Exchange Act of 1934 with respect to the underwriting activities of its members shall not be deemed unreasonable under this section.

cross-references

Regulations: 304.051, 304.052

(f) The commission may prescribe rules which it finds appropriate in the public interest and for the protection of investors for the conduct of business by broker-dealers and investment advisers who are not members of the National Association of Securities Dealers, Inc. or any other national securities association registered under the Securities Exchange Act of 1934, which association has adopted rules of conduct.

cross-references

Regulations: 304.061

(g) All broker-dealers and investment advisers registered hereunder shall display copies of their currently effective licenses, bearing the seal of the commission, prominently in each place of business within this State. Each such certificate shall contain the names of such persons as the commission shall by rule provide.

Section 305. Denial, Suspension, Revocation and Conditioning of Registration.--(a) The commission may, by order, deny, suspend, revoke or condition any registration or may censure any registrant if it finds that such order is in the public interest and that such registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, whether prior or subsequent to becoming associated with such person:

(i) Has filed an application for registration or a document in connection with an application for registration which as of its effective date or as of a date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact; or

(ii) Has been: (A) convicted within ten years of the date of the commission's action of any felony or misdemeanor, or of any substantially equivalent crime by a foreign court of competent jurisdiction, or held liable in a civil action by final judgment of a court and the commission finds that such felony, misdemeanor or civil action: (I) involved the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary and any substantially equivalent activity however denominated by the laws of a relevant foreign government or conspiracy to commit any such offense; (II) arose out of the conduct of the business of an issuer, broker-dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the foregoing or any entity or person required to be registered under the Commodity Exchange Act (42 Stat. 988, 7 U.S.C. § 1 et seq.) or any substantially equivalent foreign statute or regulation; (III) involved the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities or any substantially equivalent activity however denominated by the laws of a relevant foreign government; or (IV) involved the violation of 18 U.S.C. § 152 (relating to concealment of assets; false oaths and claims, bribery), 1341 (relating to frauds and swindles), 1342 (relating to fictitious name or address) or 1343 (relating to fraud by wire, radio or television) or Ch. 25 (relating to counterfeiting and forgery) or 47 (relating to fraud and false statements) or a violation of any substantially equivalent foreign statute; or (B) convicted of any other felony; or

(iii) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities future contract business or involving fraudulent conduct in the banking or insurance business; or

(iv) Is subject to (A) any currently effective order or order entered within the past five years of the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, investment adviser representative, futures commission merchant, commodity pool operator, commodity trading advisor or a person associated with a futures commission merchant, commodity pool operator or commodity trading advisor, or (B) any currently effective order of any national securities association, national securities exchange (as defined in the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a et seq.)) or self-regulatory organization operating under the authority of the Commodity Futures Trading Commission suspending or expelling such person from membership in such association, exchange or self-regulatory organization, or (C) any currently effective cease and desist order or a cease and desist order entered within the past five years by the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities administrator of any other state and where, in the case of a cease and desist order entered by a state, the cease and desist order contained a finding of a wilful violation of that state's securities law, or (D) a currently effective United States Postal Service fraud order; but the commission may not institute a revocation or suspension proceeding under this subsection on the basis of an order under another state law more than one year after termination of the effectiveness of the order relied on and unless the order was based on facts which would currently constitute grounds for an order under this section; or

(v) Has wilfully violated any provision of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934, the Trust Indenture Act of 1939 (53 Stat. 1149, 15 U.S.C. § 77 aaa et seq.), the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), the Commodity Exchange Act, any law of a foreign country governing or regulating any aspect of the business of securities, commodities futures or banking or this act, or of any rule, regulation or order under any of such statutes; or

(vi) Has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any of the statutes, rules, regulations or orders referred to in subsection (v); or

(vii) Has failed reasonably to supervise his agents or employees, if he is a broker-dealer, or his investment adviser representatives or employees, if he is an investment adviser; or

(viii) Is the subject of a currently effective order of the commission denying, suspending or revoking his registration in any other capacity under this act; or

(ix) Has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer; or

(x) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, or is in such financial condition that he cannot continue in business with safety to his customers, or has not sufficient financial responsibility to carry out the obligations incident to his operations provided that the commission has made a specific finding of insolvency, absence of safety or insufficient financial responsibility; or

(xi) Is not qualified on the basis of such factors as training, experience and knowledge of the securities business; except as otherwise provided in subsection (b); or

(xii) Is selling or has sold, or is offering or has offered for sale, in this State securities through any unregistered agent required to be registered under this act or for any broker-dealer or issuer with knowledge that such broker-dealer or issuer had not or has not complied with this act; or

(xiii) Has made any material misrepresentation to or withheld or concealed from or omitted to state to the commission or any of its representatives any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or has refused to furnish information reasonably requested by the commission; or

(xiv) Is subject to any currently effective order or orders entered within the past five years by any regulator of another country:

(A) denying registration to or revoking or suspending the registration of such person as a broker-dealer, agent, investment adviser, investment adviser representative, futures commission merchant, commodity pool operator, commodity trading adviser or a person associated with a futures commission merchant, commodity pool operator or commodity trading adviser; or

(B) denying, revoking or suspending the person's legal authorization to engage in the business of banking or insurance; or

(xv) Is subject to any currently effective order of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of another country suspending or expelling such person from membership in such exchange or self-regulatory association; or

(xvi) Is subject to a currently effective order or orders entered within the past five years by a state insurance regulator or Federal or state banking regulator denying registration, articles of incorporation or association, certificate of organization or authorization to do business, charter or license, or revoking or suspending the registration, articles of incorporation or association, certificate of organization or authorization to do business, charter or license of such person to engage in the insurance, banking or other financial services industry, or finding that such person has engaged in fraudulent, unethical, dishonest or abusive practices in connection with any aspect of the business of insurance, banking or other financial services.

(a.1) The commission, by order, may deny the application of:

(i) an agent or investment adviser representative if the individual is obligated pursuant to an award of an arbitration panel to pay compensation to purchasers of securities and, as of the date the application is filed with the commission, has not paid the awarded compensation to the purchasers in full and within the time period specified by the arbitration panel; or

(ii) a broker-dealer or investment adviser if a promoter, director, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer or general partner (or person occupying a similar status or performing similar functions) of the applicant held a similar position with another broker-dealer, investment adviser or federally covered adviser which entity pursuant to an award of arbitration panel is obligated to pay compensation to purchasers of securities and, as of the date the application is filed with the commission, has not paid the awarded compensation to the purchasers in full and within the time period specified by the arbitration panel.

The commission may issue an order prospectively rescinding a denial order issued under this subsection if the person whose application has been denied under this subsection provides credible evidence that the compensation awarded by the arbitration panel which was the basis for denial of the application under this subsection has been paid in full and in cash.

(a.2) The commission, by order, may suspend the registration of a broker-dealer, investment adviser, agent or investment adviser representative if such person is obligated, pursuant to an award of an arbitration panel, to pay compensation to purchasers of securities in this

Commonwealth and has not paid the awarded compensation in full and in cash. The commission shall rescind the suspension order prospectively if the person provides credible evidence to the commission that the compensation awarded by the arbitration panel has been paid in full and in cash to purchasers of securities in this Commonwealth. Rescission of a suspension order issued under this section shall reinstate the person as a registrant in the same category held at the time the suspension order was issued but only if:

- (i) the person otherwise currently meets all requirements for registration in that category set forth in this act and regulations promulgated thereunder;
- (ii) there is no basis for the commission to act pursuant to subsection (a) or (a.1); and
- (iii) applicable fees and compliance assessments set forth in sections 602 and 602.1 have been paid as if the person had been registered during the period of suspension.

cross-references

Regulations: 305.011, 305.012, 305.019

Positions: p. 107

- (b) The following provisions govern the application of section 305(a)(xi):
 - (i) The commission may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual, or (B) an agent of the broker-dealer.
 - (ii) The commission may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual, (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser or (C) an investment adviser representative.
 - (iii) The commission may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.
 - (iv) The commission shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.
 - (v) The commission shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this State as an investment adviser.
 - (vi) The commission may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The commission may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order made known to it by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. This provision shall not apply to renewals of registrations.
- (d) The commission may by order summarily deny, postpone or suspend an application or registration pending final determination of any proceeding under this section. The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the applicant or registrant and the employer or prospective employer if the

applicant or registrant is an agent or investment adviser representative. The order shall contain findings of fact and conclusions of law and include a notice affording the applicant or registrant an opportunity for a hearing in accordance with section 607(a).

(e) If the commission finds that any registrant or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commission may by order revoke the registration or deny the application.

(f) Withdrawal from the status of a registered broker-dealer, agent, investment adviser or investment adviser representative becomes effective on the thirtieth day after receipt of an application to withdraw, or within such shorter period as the commission determines, unless a revocation or suspension proceeding is pending before the commission when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted before the commission within thirty days after the withdrawal application is filed. If a proceeding is so pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commission by order determines. If no proceeding is so pending or instituted and withdrawal automatically becomes effective, the commission may institute a revocation or suspension proceeding under subsections (a)(i), (v), (vi), (vii), (viii), (ix), (xii) and (xiii) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the registration was in effect.

cross-references

Regulations: 305.061, 606.041

Uniform Forms: BDW, U-5

(g) No order may be entered under this section except under subsection (d) without appropriate prior notice to the applicant or registrant as well as the employer or prospective employer if the applicant or registrant is an agent or associated person, opportunity for hearing and written findings of fact and conclusions of law. In cases of denial orders, such findings and conclusions shall be provided only if requested by the applicant.

Section 306. Prohibited Employment.--(a) It is unlawful for any person, as to whom an order suspending or revoking his registration is in effect, wilfully to become or to be employed in any capacity by any broker-dealer or investment adviser or in the position of agent for an issuer without the consent of the commission; and it is unlawful for any broker-dealer, investment adviser or issuer to permit such a person to become or to remain a person employed by him without the consent of the commission if such broker-dealer, investment adviser or issuer knew, or in the exercise of reasonable care should have known, of such order.

(b) No issuer (except for a broker-dealer registered hereunder) shall employ any person as an agent hereunder if such issuer knew, or in the exercise of reasonable care should have known, that such person has at any time within the twelve previous months participated in this State as an agent, officer or director of another issuer in the sale of securities of that issuer, which securities were registered under section 205 or 206.

PART IV

FRAUDULENT AND PROHIBITED PRACTICES

Section 401. Sales and Purchases.--It is unlawful for any person, in connection with the offer, sale or purchase of any security in this State, directly or indirectly:

(a) To employ any device, scheme or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

cross-references

Regulations: 401.020

(c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

cross-references

Regulations: 401.030

Section 402. Market Manipulation.--It is unlawful for any person, directly or indirectly, in this State:

(a) For the purpose of creating a false or misleading appearance of active trading in a security or a false or misleading appearance with respect to the market for a security:

(i) to effect any transaction in the security which involves no change in the beneficial ownership thereof; or

(ii) to enter any order or orders for the purchase (or sale) of the security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price for the sale (or purchase) of the security, have been or will be entered by or for the same or affiliated persons;

(b) To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others; or

(c) To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security, if he is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from any such person.

Section 403. Prohibited Transactions; Broker-dealers and Agents.--No broker-dealer or agent shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this State by means of any manipulative, deceptive or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this act or any regulation or order hereunder.

cross-references

Regulations: 403.010

Positions: p. 107

Section 404. Prohibited Advisory Activities.--(a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this State:

(1) To employ any device, scheme, or artifice to defraud the other person.

(2) To engage in any transaction, act, practice, or course of business which operates as a fraud or deceit upon any other person.

(3) Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment adviser in relation to such transaction.

(4) To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

(5) To fail to disclose to the board of school directors of a public school district or to a municipal pension plan or system in this Commonwealth the compensation that such person will give, directly or indirectly, to another person in connection with either obtaining the board of school directors or municipal pension plan or system as an advisory client or advising the board of school directors or municipal pension plan or system as to any transaction involving the purchase or sale of a security with respect to an investment of public school district funds pursuant to section 440.1 of the act of March 10, 1949 (P.L. 30, No. 14), known as the "Public School Code of 1949," and 53 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and borrowing) or investment of funds of the municipal pension plan or system.

(6) To represent that he is an investment counsel or to use the name "investment counsel" as descriptive of his business unless a substantial part of his business consists of rendering investment advisory services on the basis of the individual needs of his clients.

(7) Unless the person is registered as a broker-dealer under this act, to take and have custody of any securities or funds of any client if he fails to meet such requirements therefor as may be prescribed by the commission by regulation.

(b) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The prohibitions of this section shall apply to federally covered advisers and other persons excluded from the definition of investment adviser under section 102(j)(i) through (viii), (x) and (xi) only to the extent that the prohibited conduct involves fraud or deceit.

cross-references

Regulations: 404.010, 404.011, 404.012, 404.013

Section 405. Contract Requirements.--It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract if such contract:

(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) fails to provide in writing that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide in writing that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), and the rules and regulations promulgated thereunder or any contract for the rendering of investment advisory services to an institutional investor. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Section 406. Inside Information.--It is unlawful for an issuer or any person who is an officer, director, or affiliate of an issuer or any other person whose relationship to the issuer gives him access, directly or indirectly, to material information about the issuer not generally available to the public, to purchase or sell any security of the issuer in this State at a time when he knows material information about the issuer gained from such relationship, which information (a) would significantly affect the market price of that security; (b) is not generally available to the public; and (c) he knows is not intended to be so available, unless he has reason to believe that the person selling to or buying from him is also in possession of the information.

Section 407. Misleading Filings; Misrepresentations of Commission Approval.--(a) It is unlawful for any person to make or cause to be made, in any document filed with the commission or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Where any person has failed to make reasonable inquiry as to the accuracy of the information being filed with commission, such person may not rely upon that failure as a defense to a violation of this section.

(b) It is unlawful for any person registered as a broker-dealer, agent or investment adviser under this act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved or that his abilities or qualifications have in any respect been passed upon by the commission. Nothing in this section prohibits a statement (other than in a paid advertisement) that a person is registered under this act, if such statement is true in fact and if the effect of such registration is not misrepresented.

(c) (i) Neither the fact that an application for registration of securities or a notice filing under this act has been filed nor the fact that such application or notice filing becomes effective constitutes a finding by the commission that any document filed under this act is true, complete or not misleading. Neither any such fact nor the fact that an exemption is available for a security or a transaction means that the commission has passed upon the merits or qualifications of, or recommended or given approval to any person, security or transaction.

(ii) It is unlawful to make, or cause to be made, to any prospective purchaser or any other person, any representation inconsistent with clause (i) of this subsection.

cross-references

Regulations: 604.011

Section 408. Prohibited Transactions Involving Nonprofit Organizations.--It is unlawful for any person to purchase or sell or induce or attempt to induce the purchase or sale of any security in this Commonwealth by means of any manipulative, deceptive or other fraudulent scheme, device or contrivance, or in violation of this act or any regulation or order hereunder, in a transaction involving an organization formed exclusively for educational, benevolent, fraternal, religious, charitable, social, athletic, reformatory or cultural purposes and not for pecuniary profit or other charitable organization as defined under section 3 of the act of December 19, 1990 (P.L.1200, No.202), known as the "Solicitation of Funds for Charitable Purposes Act," in which the purchase or sale of the security is a condition for receipt by the organization of a gift, grant, donation or similar contribution or of a promise therefor.

Section 409. Prohibited Transactions Involving Public School Districts or Municipal Pension Plans or Systems of this State.--It shall be unlawful for any person to purchase or sell or induce or attempt to induce the purchase or sale of any security in this State by means of any manipulative, deceptive or other fraudulent scheme, device or contrivance or in violation of this act or regulation or order issued under this act in a transaction involving a public school district or municipal pension plan or system in this State.

Section 410. Prearranged Trading Programs.--In connection with the offer, sale or purchase of any security in this State, no person shall be deemed to have violated section 401 or 406 or otherwise to have made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading if such person demonstrates that the offer, sale or purchase was prearranged in accordance with 17 CFR § 240.10b5-1(c) (relating to trading "on the basis of" material nonpublic information in insider trading cases), or any successor thereto, promulgated under section 10(b) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

PART V

ENFORCEMENT

Section 501. Civil Liabilities.--(a) Any person who: (i) offers or sells a security in violation of section 407(c) or at any time when such person has committed a material violation of section 301, or any regulation relating to either section 301 or 407(c), or any order under this act of which he has notice; or (ii) offers or sells a security in violation of sections 401, 403, 404 or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the purchaser not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

cross-references

Regulations: 501.011

(b) Any person who purchases a security in violation of sections 401, 403, 404 or otherwise by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income or distributions, in cash or in kind, received by the purchaser

thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

(c) Any person who wilfully participates in any act or transaction in violation of section 402 shall be liable to any other person who purchases or sells any security at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall be the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of his purchase or sale in the absence of the act or transaction, plus interest at the legal rate.

(d) Any investment adviser who violates section 405 shall be liable to the other party to the investment advisory contract for all fees paid under such contract to the investment adviser, less any profits earned by such party through transactions effected as a result of advice given under the contract, plus interest at the legal rate. In addition, either party may, at any time, declare the contract null and void as of the date of such declaration.

(e) Any person who violates section 406 shall be liable to the person who purchases a security from him or sells a security to him in violation of section 406, for damages equal to the difference between the price at which such security was purchased or sold and the market value which such security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information, plus interest at the legal rate, unless the defendant proves that the plaintiff knew the information or that the plaintiff would have purchased or sold at the same price even if the information had been revealed to him.

(f) Any investment adviser who violates section 301 shall be liable to the client for all fees paid, directly or indirectly, to the investment adviser for investment advisory services during the period of such violation.

(g) Any person who violates section 404(a)(1) through (4) or any material provision of section 404(a)(7) or otherwise makes any untrue statement of a material fact or omits stating a material fact necessary in order to make statements made, in the light of the circumstances under which they are made, not misleading (the person not knowing of the untruth or omission) and who does not sustain the burden of proof that he did not know and, in the exercise of reasonable care, could not have known of the untruth or omission, shall be liable to the person purchasing the security. The person purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of income or distribution, in cash or in kind, received on the security, upon the tender of the security or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender, less the value of the security when the person disposed of it, plus interest at the legal rate from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions specified in the Pennsylvania Rules of Civil Procedure. A person who is liable under this section and any offeror or seller of the security liable under subsection (a) are jointly and severally liable to the person purchasing the security.

Section 502. Violation of Registration Requirements.--Any person who violates section 201 or any material condition imposed under section 206 or 207 shall be liable to the person purchasing the security offered or sold in violation of section 201 from him who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition. Any person on whose behalf an

offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable. No person shall be liable under this section if the sale of the security is registered prior to the payment or receipt of any part of the consideration for the security sold, even though an offer to sell or a contract of sale may have been made or entered into without registration.

Section 503. Joint and Several Liability; Contribution; Corporation's Right of Indemnification.--

(a) Every affiliate of a person liable under section 501 or 502, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employe of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the person liable hereunder proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) A corporation which is liable under this act shall have a right of indemnification against any of its affiliates whose wilful violation of any provision of this act gave rise to such liability. All persons civilly liable under this act shall have a right of contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except that no person whose wilful violation of any provision of this act has given rise to any civil liability shall have any right of contribution against any other person guilty merely of a negligent violation.

Section 504. Time Limitations on Rights of Action.--(a) No action shall be maintained to enforce any liability created under section 501 (or section 503 in so far as it relates to that section) unless brought before the expiration of five years after the act or transaction constituting the violation or the expiration of one year after the plaintiff receives actual notice or upon the exercise of reasonable diligence should have known of the facts constituting the violation, whichever shall first expire.

(b) No action shall be maintained to enforce any liability created under section 502 (or section 503 in so far as it relates to that section) unless brought before the expiration of two years after the violation upon which it is based or the expiration of one year after the plaintiff receives actual notice or upon the exercise of reasonable diligence should have known of the facts constituting such violation, whichever shall first expire.

(c) No action shall be maintained to enforce any right of indemnification or contribution created by section 503 unless brought before the expiration of one year after final judgment based upon the liability for which the right of indemnification or contribution exists.

(d) No purchaser may commence an action under section 501, 502 or 503 if, before suit is commenced, the purchaser has received a written offer: (i) stating the respect in which liability under such section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income or distributions, in cash or in kind, received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 501(a); and (ii) stating that the offer may be accepted by the purchaser at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the commission may by rule prescribe; and the purchaser has failed to accept such offer in writing within the specified period. The limitations on a purchaser commencing an action under this subsection shall not apply if the purchaser has accepted an offer to repurchase made under this subsection within the time period specified under this subsection and has complied with all the terms of this subsection but has not received the cash payment specified by this subsection within ninety days of the date of acceptance of the offer to repurchase.

cross-references

Regulations: 504.060, 513.010, 604.012

Positions: p. 107-110

Commission Orders: p. 41-43

Commission Forms: RO

(e) No seller may commence an action under section 501, 502 or 503 if, before suit is commenced, the seller has received a written offer: (i) stating the respect in which liability under such section may have arisen and fairly advising the seller of his rights; (ii) offering to return the security plus the amount of any income or distributions, in cash or in kind, received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with section 501(b); and (iii) providing that the offer may be accepted by the seller at any time within a specified period of not less than thirty days after the date of receipt thereof, or such shorter period as the commission may by regulation prescribe; and the seller has failed to accept the offer in writing within the specified period.

(f) Offers under subsection (d) or (e) of this section 504 shall be in the form and contain the information the commission by rule prescribes. Every offer under this subsection shall be delivered to the offeree personally or sent by certified mail addressed to him at his last known address. If an offer is not performed in accordance with its terms, suit by the offeree under section 501, 502 or 503, shall be permitted without regard to subsections (d) and (e) of this section 504.

Compiler's Note: Section 2 of Act 130 of 2004, which amended section 504(a), provided that the amendment shall apply to all proceedings commenced on or after the effective date of Act 130.

Section 505. Death of Plaintiff or Defendant.--(505 repealed Apr. 28, 1978, P.L.202, No.53)

Section 506. Limitation of Liability.--Except as explicitly provided in this act, no civil liability in favor of any private party shall arise against any person by implication from or as a result of the violation of any provision of this act or any rule or order hereunder. Nothing in this act shall limit any liability which might exist by virtue of any other statute or under common law if this act were not in effect.

Section 507. No Waiver of Right of Action.--Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

Section 508. Limitation on Plaintiffs.--No person may base any suit on any contract in violation of this act or any rule or order hereunder if he has made or engaged in the performance of such contract or has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation.

Section 509. Right of Commission to Bring Actions for Injunction and Equitable Relief; Class Actions; Contempt of Commission Orders.--(a) Whenever it appears to the commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion bring an action in the name of the people of the Commonwealth of Pennsylvania in the Commonwealth Court or in any of the several courts of common pleas to enjoin, through a preliminary or permanent injunction, temporary restraining order or writ of mandamus, the acts or practices or to enforce compliance with this act or any rule or order hereunder. The commission also may seek and the court upon proper showing shall grant such other ancillary and equitable relief as the facts warrant, including, without limitation, appointment of a receiver, temporary receiver or conservator of the defendant's assets, a freeze of the defendant's assets, obtaining of an accounting, orders of rescission, orders of restitution, orders of disgorgement or other relief as may be appropriate in the public interest. The court shall not require the commission to meet the criteria for an equitable injunction in order for the court to grant an injunction, restraining order or writ of mandamus. The court shall not require the commission to post a bond.

(b) The commission may, with the approval of the Attorney General, include in any action authorized by subsection (a) a claim for damages under section 501, 502 or 503 on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award appropriate relief to such persons, if the court finds that enforcement of the rights of such persons by private civil action, whether by class action or otherwise, would be so burdensome or expensive as to be impractical.

(c) Any person violating any (i) stop order issued under section 208, (ii) cease advertising order issued under section 606(c), (iii) cease and desist order issued under section 606(c.1), (iv) order of the commission requiring a rescission pursuant to section 513, (v) order of the commission imposing any bar described in section 512, (vi) order of the commission requiring return of sales compensation under section 514(a) or (vii) any order of the commission imposing an administrative assessment under section 602.1(b) or (c) from which no appeal of such an order has been taken pursuant to section 607(d) of the act or which has been sustained on appeal, or which has been appealed but where no supersedeas has been granted for the period during which the order has been violated, shall be deemed to be in contempt of such order. Upon petition and certification of such order by the commission, the Commonwealth Court or any of the courts of common pleas if it finds after hearing or otherwise that the person is not in compliance with the order shall adjudge the person in contempt of the order and shall assess such civil penalties of an amount not less than five thousand dollars (\$5,000) nor greater than fifteen thousand dollars (\$15,000) per violation and grant such equitable relief as it may deem appropriate.

(d) If the commission provides work product or services to a receiver, trustee or conservator appointed by a court pursuant to subsection (a), the court, upon petition by the commission for reimbursement of costs for providing such work product or services, may award the commission reimbursement of all direct costs incurred in providing the work product or services to the receiver, trustee or conservator as well as a pro rata portion of salaries of commission staff who were involved in providing the work product or services. This award may be made from funds recovered by and under the control of the receiver, trustee or conservator who holds the funds for the benefit of investors, provided that the award may not exceed ten per cent of the funds held. Reimbursements received by the commission under this section shall be treated as moneys received under section 602.1.

Section 510. Investigations and Subpoenas.--(a) The commission in its discretion:

(i) May make such public or private investigations within or without this State as it deems necessary to determine whether any person has violated or is about to violate this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;

(ii) May, for a reasonable time not exceeding thirty days, take possession of the books, papers, accounts and other records, however created, produced or stored, pertaining to the business of any broker-dealer or investment adviser or pertaining to the activities of any issuer in connection with any transaction in a security, whether or not exempted under section 202 or 203 and the use of any proceeds obtained therefrom, and place a keeper in exclusive charge of them in the place where they are usually kept. During such possession no person shall remove or attempt to remove any of the books, records, accounts, or other papers except pursuant to a court order or with the consent of the commission; but the directors, officers, partners, and employes of the broker-dealer, investment adviser or issuer may examine them, and employes shall be permitted to make entries therein reflecting current transactions;

(iii) May require or permit any person to file a statement in writing, under oath or otherwise as the commission determines, as to all the facts and circumstances concerning the matter being investigated;

(iv) May publish information concerning any violation of this act or any rule or order hereunder or concerning securities, or practices in the sale thereof, which appear or tend to be unfair, inequitable or fraudulent, but only where it deems such publication to be in the public interest and for the protection of investors; and

(v) May hold hearings, upon reasonable notice, in respect of any matters arising out of the administration of this act.

(vi) May record presentations made at meetings, seminars or other assemblies conducted in a public forum which may involve the offer or sale of securities in this State in any manner that the commission determines appropriate.

(b) For the purpose of any investigation, hearing or proceeding under this act, the commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commission deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commonwealth Court or any of the several courts of common pleas of Pennsylvania, upon application by the commission, may issue to the person an order requiring him to appear before the commission, or the officer designated by it, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(d) (i) If, in a proceeding before the commission, any person shall refuse to testify or to produce evidence of any other kind on the ground that his testimony or evidence may tend to incriminate him, that person may be ordered to give such testimony. The order to testify shall not be given except upon an order of court after a hearing in which the Attorney General has established a need for the grant of immunity, as hereinafter provided;

(ii) The Attorney General may petition the Commonwealth Court or the court of common pleas of the county in which such person resides (if he is a resident of this State) for an order requiring any person to testify or produce evidence, which petition may be joined in by the district attorney of such county. Such petition shall set forth the nature of the investigation and the need for the immunization of the witness;

(iii) No such witness shall be prosecuted or subjected to any penalty or forfeiture, nor shall there be any liability on the part of and no cause of action of any nature shall arise against, any such witness for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court;

(iv) No person so ordered to testify or to produce evidence, shall be exempt from any punishment or forfeiture for perjury committed by him while so testifying. Such testimony shall be admissible against him in any criminal action or other proceeding concerning such perjury;

(v) Any person who shall refuse or decline to testify or produce evidence of any other kind after being granted immunity and ordered by the court shall be guilty of criminal contempt and, upon conviction thereof, shall be sentenced to pay a fine of not exceeding one thousand dollars (\$1,000), or to undergo imprisonment for a period not exceeding one year, or both.

(e) At the request of the securities regulatory authority of another jurisdiction, the commission may provide assistance if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether a person has violated, is violating or is about to violate laws or rules relating to securities matters that the requesting authority administers or enforces. The commission may, in its sole discretion, conduct such investigation and use the powers conferred under this section

as the commission deems necessary to collect information and evidence pertinent to the request for assistance. The assistance may be provided without regard to whether facts stated in the request would constitute a violation of this act or the laws of the Commonwealth. In deciding whether to provide such assistance, the commission shall consider whether:

- (i) the requesting authority is permitted and has agreed to provide reciprocal assistance in securities matters to the commission; and
- (ii) compliance with the request would prejudice the public interest.

Section 511. Criminal Penalties.--(a) Except as provided in this section, a person who wilfully violates any material provision of this act, except section 407(a), or any rule under this act, or any order of which he has notice, or who violates section 407(a) knowing that the statement made was false or misleading in any material respect, commits a felony of the third degree and may be fined not more than two hundred fifty thousand dollars (\$250,000) or imprisoned for not more than seven years, or both, if the amount of money paid by the purchaser for the securities involved in the violation is less than two hundred fifty thousand dollars (\$250,000), and not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than seven years, or both, if the amount of money or securities involved in the violation is two hundred fifty thousand dollars (\$250,000) or more. In addition to fine or imprisonment, or both, a person may be sentenced to make restitution.

(b) A person who wilfully violates section 401, 408 or 409 commits a felony of the second degree and may be fined not more than one million dollars (\$1,000,000) or imprisoned for not more than ten years, or both. In addition to fine or imprisonment, or both, the person may be sentenced to make restitution.

(c) (1) A person who wilfully violates section 401, 408 or 409 commits a felony of the first degree and may be fined not more than five million dollars (\$5,000,000) or imprisoned for not more than twenty years, or both, if one of the conditions specified in paragraph (2) or (3) is met, and not more than ten million dollars (\$10,000,000) or imprisoned for not more than twenty years, or both, if both of the conditions specified in paragraphs (2) and (3) are met. In addition to a fine or imprisonment, or both, the person may be sentenced to make restitution.

(2) Within ten years of being convicted under this subsection for wilful violation of section 401, 408 or 409, the person was the subject of:

- (i) a criminal felony conviction;
- (ii) an injunction issued by a court of competent jurisdiction; or
- (iii) an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities, banking or insurance regulator of another state, a Federal banking regulator or the securities, banking or insurance regulatory authority of another country which found that person wilfully violated any provision of the Federal or State securities, banking, insurance or commodities laws or the securities, commodities, insurance or banking laws of that country.

(3) One or more of the victims of the unlawful conduct is sixty years of age or older.

(d) A person who knowingly alters, destroys, shreds, mutilates, conceals, covers up, falsifies or makes a false entry in any record, document or tangible object with the intent to impede, obstruct or influence an investigation by the commission under section 510 or an examination under section 304(d) commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(e) A person who knowingly alters, destroys, shreds, mutilates or conceals a record, document or other object or attempts to do so with the intent to impair its integrity or availability for use in a proceeding before the commission or in a proceeding brought by the commission or otherwise obstructs, influences or impedes such proceedings or attempts to do so commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(f) A person who knowingly, with the intent to retaliate, takes any action harmful to another person, including interference with the lawful employment or livelihood of another person, for providing the commission with any truthful information relating to a violation of this act commits a felony of the second degree and may be fined not more than five hundred thousand dollars (\$500,000) or imprisoned for not more than ten years, or both.

(g) (1) Each of the acts specified in subsections (a) through (f) shall constitute a separate offense, and a prosecution or conviction for any such offense shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under this act more than five years after the alleged violation.

(2) This section shall be construed to provide additional and cumulative remedies, and nothing contained in this act shall be construed to affect the ability of the Commonwealth to bring an information or indictment under common law or other criminal statutory provisions for the same conduct.

(h) The following persons have jurisdiction to investigate violations of this section and institute criminal proceedings for any violation of this section:

(1) The district attorney of a county.

(2) The Attorney General, in addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L. 950, No. 164), known as the "Commonwealth Attorneys Act." This paragraph includes authority over a series of violations involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(i) No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

cross-references

Regulations: 501.011

Compiler's Note: Section 10 of Act 190 of 1990 provided that the reenactment of section 511 is intended to reestablish five years as the time for the commencement of prosecution for an offense under Act 284, the provision of 42 Pa. C. S. § 5552 (relating to other offenses) notwithstanding.

Section 512. Statutory Bars.--(a) After giving notice and opportunity for a hearing, the commission, where it has determined that a person wilfully violated this act or any rule or order thereunder or knowingly aided in the act or transaction constituting such violation, may issue an order accompanied by written findings of fact and conclusions of law which bars, conditionally or unconditionally and either permanently or for such period of time as the commission shall determine, such person from:

(1) Representing an issuer offering or selling securities in this State;

(2) Acting as promoter, officer, director, or partner of an issuer (or an individual occupying a similar status or performing similar functions) offering or selling securities in this State or of a person who controls or is controlled by such issuer;

(3) Being registered as a broker-dealer, agent, investment adviser or investment adviser representative under section 301;

(4) Being an affiliate of any person registered under section 301; or

(5) Relying upon an exemption from registration contained in section 202, 203 or 302.

(b) The commission shall not issue an order under this section with respect to any public proceeding which was instituted prior to the date of enactment.

(c) It shall be unlawful for any broker-dealer or investment adviser to permit a person as to whom an order is in effect under this section, without the consent of the commission, to become or remain associated with a broker-dealer or investment adviser in contravention of such order if the broker-dealer or investment adviser knew or in the exercise of reasonable care should have known of such order.

(d) It shall be unlawful for any issuer to permit, without the consent of the commission, a person as to whom an order is in effect under this section to participate in the offer or sale of the issuer's securities in this State in contravention of such order if the issuer knew or in the exercise or reasonable care should have known of such order.

Section 513. Commission Orders of Rescission.--After giving notice and opportunity for a hearing, the commission, where it has determined that an issuer wilfully violated section 201 or 401, may issue an order accompanied by written findings of fact and conclusions of law which requires the issuer or any control person of the issuer who knowingly aided in the act or transaction constituting such violation to effect a rescission offer in a manner which the commission by rule or order may prescribe to persons who purchased securities of the issuer in this State involved in the violation. The commission shall not issue an order under this section with respect to any public proceeding which was instituted prior to the date of enactment.

cross-references

Regulations: 513.010

Section 514. Return of Sales Compensation.--(a) After giving notice and opportunity for hearing, the commission, where it has determined that a person who represented an issuer in effecting transactions in securities in this Commonwealth while in willful violation of section 301(a) and received compensation in connection with these transactions, may issue an order, accompanied by written findings of fact and conclusions of law, which requires the person to return to purchasers of securities in this Commonwealth, in cash, the amount of compensation received for effecting those securities transactions.

(b) No order shall be issued under this section if the transactions in securities meet any of the following criteria:

(1) The transactions involved securities which were the subject of an effective registration statement filed with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.).

(2) The transactions involved securities which are exempted securities under section 3(a) of the Securities Act of 1933 except section 3(a)(4) and (11).

(3) The transactions are exempt from registration under section 5 of the Securities Act of 1933 pursuant to section 4 thereof except a transaction for which the issuer is relying on any rule or regulation promulgated by the United States Securities and Exchange Commission under section 4(2) of the Securities Act of 1933.

(c) The commission may issue more than one order under this section against the same person involving the same security.

(d) An order issued under this section shall not be deemed conclusive as to the total number of purchasers in this Commonwealth of any particular security or the total dollar amount of sales compensation received by a person for transactions effected in a particular security with purchasers in this Commonwealth for which liability may be imposed under subsection (a).

Section 515. Temporary Freeze Authority.--(a) Whenever, during the course of a lawful investigation involving possible violations of this act or rule or order issued thereunder by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m and 78o(d)) or any of its directors, officers, partners, controlling persons, agents or employees, it shall appear to the commission that it is likely that the issuer will make extraordinary payments, whether compensation or otherwise, to any such persons, the commission may petition the Commonwealth Court or any court of common pleas for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for forty-five days. A temporary order may be issued and entered under this subsection only after notice and opportunity for hearing unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

(b) A temporary order issued under subsection (a) shall:

(i) become effective immediately;

(ii) be served upon the parties subject to it; and

(iii) be effective and enforceable for forty-five days unless set aside, limited or suspended by a court of competent jurisdiction and may be extended by the court upon good cause shown for not longer than forty-five additional days, provided that the combined period of the order shall not exceed ninety days.

(c) If the issuer or other person described in subsection (a) is charged with a violation of this act or rule or order issued under this act before the expiration of the effective period of a temporary order as set forth in subsection (b), including any applicable extension period, the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person shall have the right to petition the court for review of the order.

(d) If the issuer or other person described in subsection (a) is not charged with a violation of this act or rule or order issued under this act before the expiration of the effective period of a temporary order as set forth in subsection (b), including any applicable extension period, the escrow shall terminate at the expiration of the forty-five-day effective period or the expiration of any extension period, as applicable, and the disputed payments with accrued interest shall be returned to the issuer or other affected person.

(e) This section shall not apply to an issuer or director, officer, partner, controlling person, agent or employee of an issuer that has not more than one hundred equity security holders.

PART VI

ADMINISTRATION

Section 601. Administration.--(a) This act shall be administered by the commission, which shall be an independent administrative board subject to the provisions of The Administrative Code of 1929. It shall consist of three commissioners appointed by the Governor with the advice and consent of the Senate. The commissioners shall hold office at the pleasure of the Governor and until their successors are duly appointed and qualified. A quorum of the commission shall be a majority of the commissioners then serving. Any action taken at a meeting at which a quorum of the commission is present shall be the lawful act of the commission for all purposes.

cross-references

Regulations: 601.010

(b) The commission shall also employ a secretary, who shall certify to all actions of the commission and shall make and keep all files and records of proceedings before it.

cross-references

Regulations: 601.020

(c) It is unlawful for the commission or any of its officers or employees to use for personal benefit any information which is filed with or obtained by the commission and which is not generally available to the public. Nothing in this act authorizes the commission or any of its officers or employees to disclose such confidential information except among themselves or to other securities administrators, regulatory authorities or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this act or any other law of this State.

(c.1) Except for the privileges created in this subsection, no provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commission or any of its officers or employees.

(1) The documents described in clause (2) and any testimony sought concerning information in those documents are privileged from disclosure under a subpoena directed to the commission or any of its officers or employees if the documents relate to:

(i) An investigation authorized under section 510 which has not been closed.

(ii) An action in which neither the commission nor any of its officers or employees is a party.

(2) The documents which are the subject of the privilege created in clause (1) include:

(i) Documents relating to an investigation conducted under section 510, including, but not limited to, statements made or taken in accordance with section 510(a) or (b) and documents in possession of the commission under section 510(a)(ii).

(ii) Documents received in connection with a subpoena issued under section 510.

(iii) Documents relating to an examination conducted under section 304(d).

(iv) Documents obtained from a securities administrator, regulatory authority or law enforcement or governmental agency relating to an investigation authorized under section 510 or an examination conducted in accordance with section 304(d).

(v) Documents deemed confidential by order of the commission under section 603(c).

(3) Complaints filed with the commission and testimony concerning information in the complaints are privileged absolutely from disclosure under a subpoena directed to the commission or its officers or employees.

(4) No privilege is created under clause (1) or (3) if document sought under a subpoena directed to the commission or its officers or employees is otherwise publicly available.

(d) The principal office of the commission shall be in Harrisburg. It shall establish and maintain offices in such other towns or cities throughout the State as it may, from time to time, determine.

(e) The commission shall adopt a seal bearing the inscription: "Pennsylvania Securities Commission." The seal shall be affixed to or imprinted on all orders or certificates issued by it and such other instruments as the commission directs. All courts shall take judicial notice of the seal.

Section 601.1. Salaries of Commissioners.--(a) The chairman of the commission shall receive a salary at the rate of twenty-eight thousand five hundred dollars (\$28,500) per annum. Each other member of the commission shall receive a salary at the rate of twenty-six thousand dollars (\$26,000) per annum.

(b) The commissioners shall receive annual cost-of-living increases under section 3(e) of the act of September 30, 1983 (P.L. 160, No. 39), known as the "Public Official Compensation Law."

Section 602. Fees.--(a) The commission shall charge and collect the fees fixed in this section and remit them to the General Fund.

(b) (Reserved).

(b.1) Filing fees for sales of securities:

(i) (Reserved).

(ii) Registration statement filings under section 205, except as provided in subclause (iv), based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration statement:

(A) less than \$10,000,000 \$750

(B) \$10,000,000 or more 1,000

(iii) Registration statement filings under section 206, except as provided in subclause (iv)..... 500

Plus 1/20 of 1% of the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration up to a maximum filing fee of \$3,000.

(iv) In the case of registration statement filings under section 205 or 206 or notice filings under section 211 by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940.

Based upon the maximum aggregate offering price at which such securities are to be offered in this State during the effective period of the registration or notice filing, the fee for

(A) \$4,000,000 or less, 1/20 of 1% with a minimum fee of \$350

(B) more than \$4,000,000 but less than \$100,000,000 \$3,000

(C) \$100,000,000 or more \$3,500

(D) for an indefinite amount of securities to be offered in this State during the effective period of registration or notice filing. The amount specified in clause (c) plus a \$500 assessment specified in section 602.1(a)(5).

(v) Exemption filings under section 203(o) shall be: 350

(vi) When a registration statement or notice of filing made under section 211(a) is withdrawn before the effective date or a pre-effective stop order is entered under section 208, the amount that the commission shall retain from the filing fee and, if applicable, an assessment imposed under section 602.1(a)(5) shall be:

(A) Under section 205 or a notice filing under section 211(a) 400

(B) Under section 206 250

(vii) Filing a notice on SEC Form D under section 211(b)..... 525

(viii) Filing an application for exemption from registration under section 203(d) or (s):

(A) Where the maximum aggregate offering price at which such securities are offered in this State is less than \$1,000,000..... 150

(B) Where the maximum aggregate offering price at which such securities are offered in this State is \$1,000,000 or more..... 400

(ix) Filing an application for exemption from registration under section 203(t) ... 500

(x) Filing an application for exemption from registration under section 203(p) .. 100

(b.2) There shall be no refund of any filing fee specified in subsection (b.1)(vii) through (x).

cross-references

Regulations: 602.022

(c) (Reserved).

(d) (Reserved).

(d.1) Every applicant for an initial or renewal license under section 301 shall pay a filing fee of three hundred fifty dollars (\$350) in the case of a broker-dealer, eighty dollars (\$80) in the case of an agent, two hundred seventy-five dollars (\$275) in the case of an investment adviser and eighty dollars (\$80) in the case of an investment adviser representative. The term of an agent's or associated person's

registration hereunder shall be concurrent with that of his employer, if a broker-dealer or an investment adviser. When an agent changes employers, an eighty dollar (\$80) fee shall be paid. When an investment adviser representative changes employers, an eighty dollar (\$80) fee shall be paid. When an application is denied or withdrawn or a registration revoked, the filing fee shall be retained. A federally covered adviser shall pay an annual notice filing fee of three hundred fifty dollars (\$350).

(e) The fee for the commission's acting as an escrow holder for securities under section 207 is one hundred dollars (\$100).

(f) The commission may fix by regulation a reasonable charge for any publication issued under its authority.

cross-references

Regulations: 602.060

(g) The commission may fix by regulation reasonable charges for the cost of administering examinations required for registration under this act by section 301.

Section 602.1. Assessments.--(a) (1) Each agent and investment adviser representative, when applying for an initial license under section 301 or changing employers, shall pay a compliance assessment in accordance with the following schedule: thirty-two dollars (\$32) for the period July 1, 2001 through June 30, 2004, thirty-five dollars (\$35) for the period July 1, 2004, through June 30, 2007, thirty-seven (\$37) for the period July 1, 2007, through June 30, 2010, and forty dollars (\$40) thereafter.

(2) Each agent and investment adviser representative, when applying for a renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: seventeen dollars (\$17) for the period July 1, 2001, through June 30, 2004, twenty dollars (\$20) for the period July 1, 2004, through June 30, 2007, twenty-two dollars (\$22) for the period July 1, 2007, through June 30, 2010, and twenty-five dollars (\$25) thereafter.

(3) Each broker-dealer, when applying for an initial or renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: one hundred dollars (\$100) for the period beginning with the date of enactment of this paragraph through June 30, 2001, and one hundred fifty dollars (\$150) thereafter.

(4) Each investment adviser, when applying for an initial or renewal license under section 301, shall pay a compliance assessment in accordance with the following schedule: fifty dollars (\$50) for the period beginning with the date of enactment of this paragraph through June 30, 2001, and seventy-five dollars (\$75) thereafter.

(5) The assessment for a notice filing by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as such persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), for an indefinite amount of securities to be offered in this State during the effective period of the notice filing shall be five hundred dollars (\$500) beginning with the date of enactment of this paragraph.

(b) A registrant, applicant for registration, issuer or other person upon whom the commission has conducted an examination, audit, investigation or prosecution and who has been determined by the commission to have violated this act or rule or order of the commission under this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but not be limited to, the salaries and other compensation paid to clerical, accounting, administrative, investigative, examiner and legal personnel, the actual amount of expenses reasonably incurred by such personnel and the commission in the conduct of such examination, audit, investigation or prosecution, including a pro rata portion of the commission's administrative expenses.

(c) After giving notice and opportunity for a hearing, the commission may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in the amounts provided in paragraph (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser where the commission determines that the person willfully has violated this act or a rule or order of the commission under this act or has engaged in dishonest or unethical practices in the securities business; has taken unfair advantage of a customer; or has failed reasonably to supervise its agents or employees or against any other person if the commission determines that the person wilfully violated section 301, 401, 404, 406 through 409 or 512(d) or a cease and desist order issued by the commission under section 606(c.1).

(1) The commission, in issuing an order under this subsection, may impose the administrative assessments set forth below. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(i) In issuing an order against any broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 or an affiliate of any broker-dealer or investment adviser, the commission may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of the act or rule or order issued under this act. If any of the victims of the person's violative conduct were individuals aged 60 or more, the commission also may impose a special administrative assessment in addition to the foregoing amounts of up to fifty thousand dollars (\$50,000).

(ii) In issuing an order against a person for wilful violation of section 401(a) or (c), 404, 406, 408, 409 or 512(d) or for wilful violation of a cease and desist order issued under section 606(c.1), the commission may impose a maximum administrative assessment of up to one hundred thousand dollars (\$100,000) for each act or omission that constitutes a violation of any of those sections. In addition to the foregoing assessment, the commission also may impose a special administrative assessment of up to fifty thousand dollars (\$50,000) for each of the provisions described as follows that the commission determines are applicable:

(A) The person, within seven years prior to the commission taking action under this subsection, was the subject of: a criminal felony conviction; an injunction issued by any court of competent jurisdiction; or an order of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the securities, banking or insurance regulator of another state, a Federal banking regulator or the securities, banking or insurance regulatory authority of another country which found that the person wilfully had violated any provision of the Federal or state securities, banking, insurance, or commodities laws or the securities, commodities, insurance or banking laws of another country.

(B) The person's violative conduct involved individuals aged 60 or more.

(C) The person's violative conduct involved use of the Internet or boiler room tactics which included, without limitation, use of any high-pressure sales tactics designed to create an artificially short time period for which the person being solicited is pressured to make an investment decision or overcome the person's reluctance to commit to the investment being offered, use of scripts designed to allay any objections or concerns expressed by the person being solicited or making repeated telephone calls or sending multiple e-mail messages to the same person pressuring the person to make an immediate investment decision.

(iii) In issuing an order against a person for wilful violation of section 401(b) or 407, the commission may impose an administrative assessment of up to fifty thousand dollars (\$50,000) for each of the criteria described in subclause (ii)(A) and (C) that the commission determines are applicable. No assessment shall be imposed under this subclause if the person is subject to an administrative assessment imposed under any other provision of this subsection.

(iv) In issuing an order against a person, other than a federally covered adviser, for wilful violation of section 301, the commission may impose the following administrative assessments which may be in addition to an administrative assessment imposed under any other provision of this subsection:

(A) For a person who at the time of the wilful violation was not registered under section 301, was not registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and was not a member of a national securities association registered under that act, the commission may impose a maximum administrative assessment of up to fifty thousand dollars (\$50,000) for each act or omission which constitutes a violation of section 301.

(B) For a person (not an individual) that at the time of the wilful violation was not registered under section 301 but was registered as a broker or dealer with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 and was a member of a national securities association registered under the act, the commission may impose a maximum administrative assessment of up to fifty thousand dollars (\$50,000) for each act or omission which constitutes a violation of section 301. An assessment imposed under this subclause shall be in addition to any liability a person may have under an order issued under section 514.

(v) In issuing an order for wilful violation of section 301(c.1)(1)(ii) against a person that is a federally covered adviser, the commission may impose the following administrative assessments:

(A) Up to one hundred thousand dollars (\$100,000) if the number of investment adviser representatives involved in the violation was less than five.

(B) Up to two hundred thousand dollars (\$200,000) if the number of investment adviser representatives involved in the violation was five or more.

(vi) In issuing an order for a wilful violation of section 301(f) against a person that is a federally covered adviser, the commission may impose an administrative assessment of two thousand dollars (\$2,000).

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the commission shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation.

(ii) The scope of the violation, including the number of persons in and out of this Commonwealth affected by the conduct constituting the violation.

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this Commonwealth to whom the restitution or compensation has been made.

(iv) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or pleas of guilty or nolo contendere or settlement with, the commission or any securities administrator of any other state or other country, any court of competent jurisdiction, the Securities and Exchange Commission, the Commodity Futures Trading Commission, any other Federal or State agency or any national securities association or national securities exchange as defined in the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

(v) Any other factor that the commission finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

(3) An administrative assessment imposed by an order issued under this subsection is not mutually exclusive of any other remedy available under this act.

(4) The commission shall not impose an administrative assessment with respect to any public proceeding which was instituted prior to the date of its enactment.

(d) Each application filed with the commission under section 210 by an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), to register securities sold in this State in excess of the aggregate amount of securities registered under section 205 or 206 and each amendment to a notice filing submitted relating to securities sold in the State in excess of those included on an earlier notice filing shall include the payment of an oversale assessment which shall be three times an amount which equals the difference between the registration or notice filing fee that would have been payable under section 602(b.1) based upon the total amount of securities sold in this State and the total registration or notice filing fees previously paid to the commission with respect to such registration or notice filing, but in no case shall the oversale assessment be less than three hundred fifty dollars (\$350) or be more than three thousand dollars (\$3,000).

(e) Moneys payable for assessments established by this section shall be collected by the commission and deposited into the General Fund and shall be credited to the appropriation of the commission for the fiscal year received. These moneys are intended to meet the expenses of the commission in administering the provisions of this act, including any or all of the following activities:

(1) expenses, including personnel, operating and fixed assets costs, relating to the registration of broker-dealers, agents, investment advisers and associated persons under section 301 and the conduct of examinations of broker-dealers and investments advisers registered under section 301 and other compliance-related activities of the commission;

(2) nonpersonnel expenses related to establishing and maintaining an entrepreneur education program to educate small business persons in this Commonwealth as to the issuance of securities as a means of raising capital;

(3) nonpersonnel expenses related to establishing and maintaining a securities fraud awareness program to educate public investors in this Commonwealth about fraudulent and manipulative securities practices;

(4) nonpersonnel expenses related to conducting enforcement-related activities of the commission; and thereafter,

(5) other expenses of the commission necessary to implement the provisions of this act.

cross-references

Regulations: 604.018

Section 603. Administrative Files.--(a) A document is filed when it is received by the commission or by any other person which the commission by regulation or order may designate.

cross-references

Regulations: 603.011

(b) The commission shall keep a register of all registrants, registration statements and notice filings which are or have ever been effective under this act and all denial, suspension or revocation orders which have been entered under this act. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, notice filing or report shall be made available to the public in accordance with regulations prescribed by the commission; except that the commission may make the following orders or regulations:

(1) Upon proper showing of the registrant or issuer, the commission may order certain filings or parts of filings nonpublic.

(2) The commission, by rule or order, may deem certain categories of information filed with the commission as nonpublic.

cross-references

Regulations: 603.031

Commission Orders: p. 43-47

(d) The commission upon request shall furnish to any person, at a reasonable charge, a copy of any document described in subsection (c) in any medium available to the commission. Upon request and payment of a reasonable charge, the document may be certified under the seal of the commission.

(e) The commission, by order, may subsequently make public information contained in the documents described in subsection (c)(1) and (2), and the order may limit the amount of information made public or place conditions on its use. Prior to issuing an order under this subsection, the commission shall notify in writing the person who originally requested confidentiality at the person's last known address in the commission's files at least thirty days before the commission may issue an order under this subsection.

cross-references

Regulations: 603.040

Fee: Certifications - \$5 per certification

Photocopies - \$.50 per page

Section 604. Interpretive Opinions of Commission.--The commission in its discretion may honor requests from interested persons for interpretive opinions and may make such opinions available to the public under section 603(c).

cross-references

Regulations: 604.010, 604.011, 604.012, 604.016, 604.017, 604.018, 604.019, 604.020, 604.021, 604.022, 604.023

Section 605. Commissioners and Commission Employees; Relationship with Licensed Persons or Qualified Organizations.--(a) Neither the commissioners nor any employe, clerk or servant of the commission, during their respective terms of employment, shall be interested as a director, officer, shareholder, member, partner, agent, or employe of any person who, during the period of such official's or employe's association with the commission, (i) was licensed or applied for license as a broker-dealer, agent or investment adviser under this act, or (ii) applied for or secured the registration of securities under this act.

(b) Nothing contained in subsection (a) shall prohibit the holding or purchasing of any securities by any employe, clerk, or servant in accordance with such regulations as the commission shall adopt for the purpose of protecting the public interest and avoiding conflicts of interest with respect to such employes, clerks and servant.

cross-references

Regulations: 605.020

(c) Nothing contained in subsection (a) shall prohibit the holding or purchasing of any securities by any commissioner if: either (i) the commissioner, together with his spouse, minor children and parents or other relatives who are members of his household, owns less than one-tenth of one per cent of any class of outstanding securities of any issuer described in subsection (a)(ii); or (ii) such security is held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this State which has sole investment discretion regarding the holding, purchase and sale of securities, and (A) the commissioner did not, directly or indirectly, advise, counsel, command or suggest the holding, purchase or sale of any such security or furnish any information relating to any such security to such bank or trust company, and (B) such account or trust does not at any time have more than ten per cent of its total assets invested in the securities of any one issuer or hold more than five per cent of the outstanding shares or units of any class of securities of any one issuer. Each commissioner shall report to the Governor not less often than quarterly all holdings, purchases, and sales of securities by him, which reports shall be retained by the Governor's office as public documents.

Section 606. Miscellaneous Powers of Commission.--(a) The commission may, by regulation, require any issuer of securities registered under this act or exempted from registration under section 203(d) or (p), which issuer has not filed reports with the Securities and Exchange Commission pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §§ 78m or 78o(d)), to distribute financial information to its security holders at least annually.

cross-references

Regulations: 606.011
Commission Orders: p. 47

(b) If, in its opinion, the public interest and the protection of investors so require, the commission may apply to a court of competent jurisdiction for an order suspending all trading in this Commonwealth by broker-dealers and agents in any security for any period.

(c) No person shall publish in this State any advertisement concerning any security (other than advertisements relating to federally covered securities, tombstone advertisements permitted under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) and the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) and the rules and regulations promulgated thereunder) except in accordance with such rules as the commission may promulgate from time to time. No person shall publish any advertisement concerning any security in this State after the commission issues a cease advertising order in which it finds that the advertisement contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).

cross-references

Regulations: 606.031
Positions: p. 110-114
Index to Staff No-Action Letters: p. 9

(c.1) Whenever the commission finds that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order thereunder, the commission may order such person to cease and desist from such act or practice. The order may be issued summarily without notice or hearing. Upon issuance of a summary order, the commission shall promptly provide the order to the person against whom it is issued. The order shall contain findings of fact and conclusions of law and include a notice affording the person an opportunity for a hearing under section 607(a).

(d) The commission may, by regulation, delegate any powers specified in this act to be exercised by the commission to members of the commission's staff, except for powers related to hearings.

cross-references

Regulations: 606.041

Section 607. Hearings and Judicial Review.--(a) Within thirty days after receipt of a summary order issued under section 204(b), 208(c), 211(c), 305(d), 606(c) or 606(c.1), the person against whom the order was issued and entered may file with the commission a written request for a hearing in respect to any matters determined by the order. Upon receipt of the written request, the matter shall be set down for a hearing to commence within thirty days after receipt of the request unless the person making the request consents to a later date. If the person making the request consents to a later date for the hearing but fails, after notification by first class mail to the person's last known address in the commission's files, to consent to a hearing date that is within one hundred eighty days of the date the written request for a hearing was filed with the commission under this subsection, the request for a hearing shall be deemed abandoned, and the summary order shall be deemed a final order. After hearing, the commission may determine to rescind, modify or vacate the summary order to make it a final order. If no hearing is requested or a request for hearing is filed untimely, the summary order shall be deemed to be a final order.

cross-references

Positions: p. 114

(b) Within thirty days after receipt of an order issued and entered by the commission after a hearing, the person against whom the order was issued and entered may apply to the commission for a rehearing. The commission, in its sole discretion, may grant the application and hold a rehearing. Failure of the commission to grant a rehearing within thirty days of receipt of an application shall constitute a denial. After rehearing, the commission may issue an order affirming, vacating or modifying the original order.

(c) Hearings and rehearings shall be public.

(d) Orders of the commission shall be subject to judicial review in accordance with law, but orders originally entered without a hearing may be reviewed only if the party seeking review has filed a request for a hearing within the time provided under subsection (a). Filing for judicial review of a commission order shall not operate as a stay of the commission's order unless specifically ordered by the court.

cross-references

Regulations: 901.011

Section 608. Injunction Procedure.--(608 repealed Apr. 28, 1978, P.L.202, No.53)

Section 609. Regulations, Forms and Orders.--(a) The commission may make, amend and rescind any regulations, forms and orders that are necessary to carry out this act, including regulations and forms governing registration statements, notice filings, applications and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with this act. All regulations of the commission (other than those relating solely to its internal administration) shall be of general application and future effect and shall be made, amended or rescinded in accordance with the act of June 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency Law," and the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law." For the purpose of rules and forms, the commission may classify securities, persons and matters within its jurisdiction, and prescribe different requirements for different classes. The commission may, in its discretion, waive any requirement of any regulation or form in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

cross-references

Regulations: 609.010, 609.011, 609.012
Commission Orders: p. 48-50

(b) No regulation, form or order may be made, amended or rescinded unless the commission finds that the action is necessary or appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act.

(c) Subject to the limitations of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.), the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) and the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1 et seq.), the commission may by regulation or order prescribe the kind, form and content of financial statements required under this act, the fiscal or other periods and dates for such statements, the circumstances under which consolidated or other combining financial statements shall be filed, or other requirements it deems necessary for financial statement presentation purposes, and whether any required financial statements shall be certified by independent certified accountants in good standing with this State. All financial statements shall be prepared reflecting conformity with generally accepted accounting principles in the United States consistently applied, unless variance therefrom is disclosed in an acceptable manner, and shall reflect pertinent disclosures by financial notes or other form, where required for that data in compliance with pronouncements by recognized authoritative accounting bodies or if applicable, by governmental agencies, and if otherwise permitted by regulation or order of the commission.

cross-references

Regulations: 609.031, 609.032, 609.033, 609.034, 609.036, 609.037
Positions: p. 114-116
Commission Orders: p. 50-52

(d) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any regulation, form or order of the commission, notwithstanding that the regulation form or order may later be amended or rescinded or be determined to be invalid for any reason.

(e) The commission may propose and adopt regulations under this act prior to its effective date, provided that such regulations do not take effect until on or after the effective date of this act.

(f) (1) An application for registration of securities shall be deemed abandoned if the application has been on file with the commission for a minimum of twelve consecutive months and the applicant has failed to respond to the commission's notice of abandonment sent by first class mail to the applicant's last known address in the commission's files within sixty calendar days after the date the notification was mailed by the commission. There shall be no refund of any fees paid by the applicant.

(2) An application for registration as a broker-dealer, agent, investment advisor or investment adviser representative shall be deemed abandoned if the application has been on file with the commission for a minimum of six consecutive months and the applicant has failed to respond to the commission's notice of abandonment sent by first class mail to the applicant's last known address in the commission's files within sixty calendar days after the date the notification was mailed by the commission. There shall be no refund of any fees or assessments paid by the applicant.

Section 610. Destruction of Documents and Records.--The commission may make such regulations with respect to record retention as it may deem appropriate and desirable, consistent with law.

cross-references

Regulations: 610.010

Section 611. Cancellation of Federal Preemption.--Under the authority of section 6(c) of the Philanthropy Protection Act of 1995 (Public Law 104-62, 15 U.S.C. § 80a-3a(c)), on and after the effective date of this section, section 6 of the Philanthropy Protection Act of 1995 shall not preempt the laws of this Commonwealth referred to in section 6 of the Philanthropy Protection Act of 1995. This preemption shall apply to all administrative and judicial actions commenced on or after the effective date of this section.

Section 612. Burden of Proof.--a) In a civil action or administrative proceeding under this act, a person claiming status as a federally covered security or adviser or an exemption, exception or exclusion from a definition has the burden of proving the availability of the status, exemption, exception or exclusion.

(b) In a proceeding for a criminal violation of this act, a person claiming status as a federally covered security adviser or an exemption, exception or exclusion from a definition has the burden of going forward with evidence of the claim, exemption, exception or exclusion.

PART VII

GENERAL PROVISIONS

Section 701. Service of Process.--(701 repealed Apr. 28, 1978, P.L.202, No.53)

Section 702. Scope of Act.--(a) The provisions of this act concerning sales and offers to sell apply to persons who sell or offer to sell when (i) a sale or offer to sell is made in this State or when (ii) an offer to purchase is made and accepted in this State. The provisions concerning purchases and offers to purchase apply to persons who buy or offer to buy when (i) a purchase or offer to purchase is made in this State or when (ii) an offer to sell is made and accepted in this State.

cross-references

Positions: p. 116

(b) For the purpose of this section, an offer to sell or to purchase is made in this State, whether or not either party is then present in this State, when the offer originates from this State or is directed by the offeror to this State and received by the offeree in this State; provided, however, for the purpose of section 201 an offer to sell which is not directed to or received by the offeree in this State is not made in this State.

(c) For the purpose of this section, an offer to purchase or to sell is accepted in this State when acceptance is communicated to the offeror in this State, and has not previously been communicated to the offeror, orally or in writing, outside this State; and acceptance is communicated to the offeror in this

State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State, and it is received by the offeror in this State.

(d) An offer to sell or to purchase is not made in this State when the publisher circulates, or there is circulated on his behalf in this State, any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this State, or a radio or television program originating outside this State is received in this State.

Section 703. Statutory Policy.--(a) This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act" and to coordinate the interpretation and administration of this act with related Federal regulation.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this law are declared to be severable.

Section 704. Prior Law.--(704 repealed July 4, 2002, P.L. 721, No. 108)

Section 705. Effective Date.--This act shall take effect January 1, 1973.

TAKEOVER DISCLOSURE LAW OF 1976

TAKEOVER DISCLOSURE LAW OF 1976

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TAKEOVER DISCLOSURE LAW

Providing for the protection of Pennsylvania corporations, shareholders, employees and the public, and to prevent fraud and deception by requiring certain persons purchasing equity securities of any corporation incorporated in Pennsylvania or having its principal office and substantial assets located in this Commonwealth to make a full and fair disclosure to offerees of all material information in regard to takeover offers.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title. - This act should be known as the "Takeover Disclosure Law."

Section 2. Findings and Declaration of Policy. - It is hereby determined and declared as a matter of legislative finding that legislation is necessary to provide adequate protection for Pennsylvania corporations, shareholders, and employees and the public from the use of takeover offers without full and fair disclosure of information concerning them.

Section 3. Definitions. - As used in this act:

"Affiliate" with respect to a person means any person controlling, controlled by, or under common control with such person.

"Associate" with respect to a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding, or disposing of, or exercising any voting rights attached to the equity securities of an issuer.

"Commission" means the Pennsylvania Securities Commission.

"Equity security" means any share or similar security, or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right or any other security which, the commission, for the protection of security holders, treats as an equity security pursuant to the Pennsylvania Securities Act of 1972 or pursuant to any regulation of the commission.

"Offeree" means a record or beneficial owner of equity securities to whom a takeover offer is made or proposed to be made.

"Offeror" means a person who makes or participates in any way in making a takeover offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the takeover offer.

"Takeover offer" means the acquisition of or offer, other than an offer incident to a vote by security holders pursuant to the articles of incorporation or the applicable corporation statute or other statute governing such person, or pursuant to a partnership agreement, a declaration of trust, trust indenture or any agreement among security holders on a merger, consolidation, sale of assets in consideration, in whole or in part, of the issuance of securities of another person, reclassification of securities, or reorganization involving the exchange of securities, in whole or in part, for the securities of any other person, to acquire any equity security of a target company, pursuant to a tender offer, if after the acquisition thereof, the offeror would, directly or indirectly, be a beneficial owner of more than 5% of any class of the outstanding equity securities of the target company. "Takeover offer" does not include the following offers or the acquisition of equity securities pursuant to such offers: (i) an offer to acquire equity securities to be effected by a broker-dealer registered with the Securities and Exchange Commission on a stock exchange or in the over-the-counter market if the broker performs only the customary broker's function and receives no more than the customary broker's commission and if neither the principal nor the broker solicits or arranges for the solicitation of orders to sell such equity securities, (ii) offers made by a dealer for his own account in the ordinary course of his business of buying and selling such security, (iii) an offer to acquire equity securities of a target company which has no more than 100 equity security holders of record or no more than \$1,000,000 of assets, (iv) an offer which, if accepted by all the offerees, will not result in the offeror having acquired more than 2% of the same class of equity securities of the target company within the preceding 12-month period, (v) an offer by the issuer to acquire its own equity securities, (vi) an offer which, if accepted by all of the offerees, will not result in the offeror having acquired equity securities of the issuer from more than 25 persons within the preceding 12-month period, for purposes of computing the 25 persons for the purpose of this definition any securities purchased pursuant to clause (i) of this section not being included,

and (vii) any offer which the commission, by regulation or order, shall exempt from the definition of “takeover offer” as not being made for the purpose of and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this act.

cross references

Positions: p. 116
Commission Orders: p. 53
Index to Staff No-Action Letters: p. 10

“Target company” means an issuer of securities whose equity securities are or are to be the subject of a takeover offer (i) which is organized under the laws of this Commonwealth, or (ii) which has its principal place of business and substantial assets located in this Commonwealth.

Section 4. Registration of Takeover Offers. - (a) It is unlawful unless the securities or the offer are exempt pursuant to section 8, for any offeror to make a takeover offer involving a target company or to acquire any equity securities of the target company pursuant to the offer, unless at least 20 days prior thereto such offeror (i) files with the commission a registration statement containing the information prescribed by section 5, (ii) sends a copy of the registration statement by certified mail to the target company at its principal office and to the collective bargaining representative, if any, of the employees employed at the principal place of business of the target company and (iii) publicly discloses the offering price of the proposed offer and the fact that a registration statement has been filed with the commission which contains substantial additional information about the proposed offer, which registration statement is available for inspection at the commission’s principal office during business hours.

(b) The registration statement shall be filed on forms prescribed by the commission, and shall be accompanied by a consent by the offeror to service of process and the filing fee specified in section 10.

cross-references

Positions: p. 117-121
Index to Staff No-Action Letters: p. 10
Filing Fee: See §10(a)

(c) The commission may by order or regulation require the offeror to file any other documents, exhibits and information that it deems material to the takeover offer, and may permit the omission of any of the information specified in section 5 if it determines that such information is not required for the protection of offerees. The commission may by order summarily delay the effective date of the offer if it determines that the registration statement does not contain all of the information specified in section 5 or that the solicitation materials do not provide full disclosure to offerees of all material information concerning the offer.

(d) A takeover offer automatically becomes effective 20 days after the date of filing the registration statement with the commission unless delayed by order of the commission or unless prior thereto, the commission schedules a hearing with respect to the offer. The commission may schedule a hearing, on its own initiative or at the request of the target company, if the commission has reason to believe that the takeover offer fails to provide full and fair disclosure to offerees of all material information concerning the offer, or is in violation of this act or the act of December 5, 1972 (P.L. 1280, No. 284), referred to as the “Pennsylvania Securities Act of 1972.” If a hearing is scheduled, the offer shall not become effective until registered by order of the commission. Registration is not deemed to be approval of the offer by the commission and any representation to the contrary is unlawful.

(e) Any hearing scheduled by the commission under this section shall be held within 30 days of the date of the filing of the registration statement under section 5 and any determination made following the hearing shall be made within 30 days after such hearing has been closed, unless extended by order of the commission for the convenience of the parties or for the protection of offerees in this Commonwealth. If, upon the hearing, the commission finds that the takeover offer fails to provide full and fair disclosure to offerees of all material information concerning the offer, or is in violation of this act or the act of December 5, 1972 (P.L. 1280, No. 284), known as the “Pennsylvania Securities Act of 1972,” the commission shall by order deny registration of the offer. Any hearing held pursuant to this section shall be held according to the provisions of the act of June 4, 1945 (P.L. 1388, No. 442), known as the “Administrative Agency Law.”

Section 5. Information Filed With the Commission. - The information to be filed pursuant to section 4 shall include:

(1) Copies of all prospectuses, brochures, advertisements, circulars, letters, or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer.

(2) The identity and background of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected.

(3) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the target company, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were borrowed.

(4) A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management, personnel, or policies of employment. The offeror shall disclose any changes offeror intends to make with regard to any collective bargaining agreements.

(5) The number of shares or units of any equity security of the target company owned beneficially by such person and any affiliate or associate of such person, together with the name and address of each affiliate or associate.

(6) Particulars as to any contracts, arrangements or understandings to which an offeror is party with respect to any equity security of the target company, including without limitation transfers of any equity security, joint ventures, loan or option arrangement, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into.

(7) Particulars as to any contract, arrangement or understanding between any offeror and any officer, director or owner of 10% or more of the outstanding stock of the target company relating to employment of or purchase of services or property from any such officer, director or shareholder.

(8) Complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's equity securities and of its long term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of its employee relations history during the past five years including strikes and findings of unfair labor practices by the National Labor Relations Board, a description of material pending legal or administrative proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and any material changes therein during the past three years, the names and residence addresses of all directors and executive officers of the offeror and its affiliates and their principal occupations together with biographical activities and affiliations during the past three years. For the purposes of this paragraph, legal or administrative proceedings involving antitrust, equal opportunity and environmental matters shall be considered material.

(9) Such other and further documents, exhibits, data, and information as may be required by regulation of the commission necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

cross-references

Regulations: 1001.010
Commission Forms: TDL-1

Section 6. Filing of Solicitation Materials. - Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the takeover offer, shall be filed with the commission and sent to the target company or offeror, respectively, not later than the time copies of such solicitation materials are first published or used or sent to offerees if not previously filed with the commission and mailed to the target company or offeror. The commission may prohibit the use of any solicitation materials deemed false or misleading.

cross-references

Filing Fee: \$500 payable at initial filing of solicitation material

Section 7. Limitations on Offerors. - (a) An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of any offeree at any time within seven days from the date the offer has become effective under this act and, if the offeror has not taken up the equity securities within 60 days from the date the offer has become effective under this act, except as the commission may otherwise prescribe by regulation or order for the protection of investors.

(b) If an offeror makes a takeover offer for less than all the outstanding equity securities of any class; and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to security holders; and the number of securities deposited or tendered pursuant thereto within ten days after the offer has become effective under this act is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

(c) If an offeror varies the terms of a takeover offer before its expiration date by increasing the consideration offered to security holders, the offeror shall pay the increased consideration for all equity securities accepted whether such securities have been accepted by the offeror before or after the increase in the terms of the offer.

(d) No offeror may make a takeover offer or acquire any equity securities of a target company pursuant to the offer, at any time when an administrative or injunctive proceeding is pending on behalf of the commission against the offeror alleging a violation of this act or the act of December 5, 1972 (P.L. 1280, No 284), known as the "Pennsylvania Securities Act of 1972."

(e) No offeror may acquire, remove or exercise control, directly or indirectly, over any assets of a target company unless the takeover offer is effective or exempt under this act, except as permitted by order of the commission.

cross-references

Positions: p. 121

Section 8. Exempt Transactions and Securities. - The following securities or offers to purchase securities shall be exempted from section 4:

(a) An offer as to which the target company, acting through its board of directors, recommends acceptance to its shareholders, if at the time of such recommendation is first communicated to the shareholders, the offeror has filed a notice with the commission containing the following: (i) the information specified in section 13(d) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a et seq.), (ii) an undertaking to notify security holders of the target company that a notice has been filed with the commission which contains substantial additional information about the offering, which notice is available for inspection at the commission's principal office during business hours, (iii) such facts as are necessary to establish this exemption and (iv) the fee specified in section 10.

cross-references

Positions: p. 121
Filing Fee: \$100

(b) Any security or offer to purchase any security as to which the commission by regulation or order finds that registration is not necessary or appropriate for the protection of investors.

cross-references

Commission Orders: p. 53-54
Filing Fee: \$100

Section 9. Administration, Rules and Orders. - (a) This act shall be administered by the Pennsylvania Securities Commission which may exercise all powers granted to it under this act and the act of December 5, 1972 (P.L.1280, No. 284), known as the "Pennsylvania Securities Act of 1972" in the administration of this act.

(b) The commission may make, amend and rescind any regulations, forms or orders necessary to carry out this act. All regulations of the commission (other than those relating solely to its internal administration) shall be of general application and future effect and shall be made, amended or rescinded in accordance with the act of June 4, 1945 (P.L. 1388, No. 442), known as the "Administrative Agency Law," and the act of July 31, 1968 (P.L. 769, No. 240), known as the "Commonwealth Documents Law," and no regulation shall be effective until a public hearing is held thereon or until 30 days after the regulation is published pursuant to such "Commonwealth Documents Law." The commission may, in its discretion, waive any requirement of any regulation or form in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

cross-references

Commission Orders: p. 54

Section 10. Fees and Expenses. - (a) The commission shall charge the following fees for registration statements filed pursuant to section 4, the computation of the value of the offer being determined by reference to the maximum cash consideration payable by the offeror for the securities which are the subject of the takeover offer or, if the consideration shall be anything other than solely cash, to the fair market value of the maximum consideration being offered for such securities:

- (1) For an offer valued at less than five million dollars, \$1,500.
- (2) For an offer valued at five million dollars or more, but less than ten million dollars, \$2,000.
- (3) For an offer valued at ten million dollars or more, but less than twenty-five million dollars, \$3,000.
- (4) For an offer valued at twenty-five million dollars or more, \$5,000.

(b) The fee for filing a notice under section 8 is \$100.

(c) Any target company making any filing pursuant to section 6 shall be charged a fee of \$500, payable at the time of the initial filing.

(d) A registrant, applicant for registration, issuer or other person upon whom the commission has conducted an examination, audit, investigation or prosecution and who has been found guilty of a violation of the provisions of this act shall pay for all the costs incurred in the conduct of such examination, audit, investigation or prosecution. These costs shall include, but are not limited to, the salaries and other compensation paid to clerical, administrative, investigative and legal personnel, plus the actual amount of expenses reasonably incurred by such personnel or the commission in the conduct of such examination, audit, investigation or prosecution.

(e) The fee for requesting an order issued by the Commission under Section 8(b), \$100.

Editor's Note: The fee section was amended and transferred to Section 615-A of the Administrative Code of 1929 by Act 48 of 1981 (effective July 1, 1981). For the convenience of the reader, the original text of Section 10 has been modified to reflect the current fee language found in 71 P.S. § 615-A(3).

Section 11. Injunctions. - Whenever it shall appear to the commission that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of this act, or any regulation or order promulgated hereunder:

(1) the commission may issue and cause to be served upon any person violating any of the provisions of this act, an order requiring the persons in violation thereof to cease and desist therefrom; and

(2) the commission may bring an action to enjoin the acts or practices and to force compliance with this act, or any regulation or order hereunder. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order without bond to enforce the provisions of this act, and may order rescission of any sales or purchases of securities determined to be unlawful under this act, or any rules or order hereunder.

Section 12. Criminal Penalties. - (a) Any person, including a controlling person of an offeror or target company, who willfully violates any of the provisions of sections 4, 5, 6 or 7 or any regulation thereunder, or any order of which he has notice, may upon conviction, be sentenced to pay a fine of not more than \$1,000, or to imprisonment for not more than one year, or to both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned more than five years after the alleged violation.

(b) The commission may refer such evidence as is available concerning violations of this act or of any regulation or order hereunder to the Attorney General who may institute the appropriate criminal proceedings under this act. If referred to the Attorney General, he shall within 90 days file with the commission a statement concerning any action taken or, if no action has been taken, the reasons therefor.

(c) Nothing in this act limits the power of the Commonwealth to punish any person for any conduct which constitutes a crime under any other statute.

Section 13. Civil Liabilities. - (a) Any offeror who purchases a security in connection with a takeover in violation of this act, shall be liable to the person selling the security to him who may sue either at law or in equity. In an action for rescission the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable. If the purchaser no longer owns the security, damages are the excess of either the value of the security or the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

(b) Every person who directly controls a person liable under subsection (a), every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) No action may be maintained under this section unless commenced before the expiration of two years after the act or transaction constituting the violation or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires.

(d) The rights and remedies under this section are in addition to any other rights or remedies that may exist at law or in equity.

Section 14. Application of Corporate Takeover Law. - This act does not apply when:

(1) The offeror or the target company is a public utility or a public utility holding company as defined in section 2 of the Federal "Public Utility Holding Company Act of 1935," 49 Stat. 803, 15 U.S.C. 79, as amended, and the takeover offer is subject to approval by the appropriate Federal agency as provided in such act.

(2) The offeror or the target company is a bank or a bank holding company subject to the Federal "Bank Holding Company Act of 1956," 70 Stat. 133, 12 U.S.C. 1841, as amended, and the takeover offer is subject to approval by the appropriate Federal agency as provided in such act, or the target company is a bank or a bank holding company covered by section 112 of the act of November 30, 1965 (P.L. 847, No. 356), as amended, known as the "Banking Code of 1965."

(3) The offeror or the target company is a savings and loan holding company as defined in section 2 of the Federal "Savings and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12 U.S.C. 1730A, as amended, and the takeover offer is subject to approval by the appropriate Federal agency as provided in such act.

(4) The target company is a bank and the offer is part of a transaction involving a merger, consolidation, purchase of assets or assumption of liabilities subject to approval by an appropriate Federal supervisory authority.

(5) In the case of a target company, the acquisition of shares of such company is subject to regulation under the act of May 17, 1921 (P.L. 682, No. 284), known as "The Insurance Company Law of 1921," or under the act of May 28, 1937 (P.L. 1053, No. 286), known as the "Public Utility Law."

Section 15. Application of Securities Law. - All of the definitions and provisions of the act of December 5, 1972 (P.L. 1280, No. 284), known as the "Pennsylvania Securities Act of 1972," which are not in conflict with this act shall apply to any takeover offer involving a target company in this Commonwealth.

Section 16. Effective Date. - This act shall take effect immediately.

APPROVED - The 3rd day of March, A.D. 1976.

PENNSYLVANIA INVESTMENT COMPANY
ACT OF 1933

PENNSYLVANIA INVESTMENT COMPANY ACT OF 1933

7 P.S. §§6051 - 6062

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PENNSYLVANIA INVESTMENT COMPANY ACT OF 1933¹

Section 6051. Definitions

Wherever used in this act, the following words shall be construed as follows:

“Corporation” shall mean a corporation formed, incorporated, or organized under the laws of this Commonwealth, or of any other state or territory, the District of Columbia, or any foreign country.

“Person” shall mean an individual, firm, partnership, or association.

“Contract” shall mean a bond, note, certificate, contract, obligation, agreement, pass book, or any other chose in action evidenced by writing.

“Commission” shall mean the Pennsylvania Securities Commission.

Section 6052. License required of certain corporations, etc., doing certain business

After the first day of October, one thousand nine hundred and twenty-one, no corporation or person shall, whether or not operating under a declaration of trust or other agreement, engage or continue, either directly or indirectly, in the business, within this Commonwealth, of receiving single payments, regular installment payments, or contributions to be held or used in any plan of accumulation or investment, or of issuing, negotiating, offering for sale, or selling any contract on the partial payment or installment plan, or of assuming fixed obligations, or issuing, in connection therewith, a contract based upon payments being made upon installments or single payment, under which all or part of the total amount received is to be repaid at some future time, either with or without profit, unless such corporation or person is licensed to transact such business within this Commonwealth by the commission in the manner hereinafter provided.

cross-references

Positions: p. 122-123

Section 6053. Application for license; investigation; refusal or revocation of license

Every corporation or person, desiring to obtain a license under the provisions of this act, shall file with the commission, an application in writing in such form as may be prescribed by the commission. Before a license shall be issued by the commission, it shall make, or cause to be made, an investigation of the condition and affairs of the applicant and its general plan of operation. It shall investigate the moral character and general fitness of the applicant, if an individual, and of the members of a partnership or association, and of the directors, managers, trustees, and other officers of every applicant, to discharge the duties reposed in them, and may examine any or all of them under oath. It shall require the applicant to submit a mathematical chart or calculation, showing in detail the operation of the plan of investment carried on or proposed to be carried on, for the purpose of determining whether the same is financially and mathematically sound and the contracts or obligations issued or proposed to be issued possible of fulfillment. Unless the commission is satisfied as to the character and general fitness of the managing officers of the applicant to honestly and efficiently carry on its business, and that the plan of operation is financially sound, and the contracts issued or proposed to be issued possible of fulfillment, it shall refuse the license, and forthwith notify the applicant of such refusal, and specify in the notice the cause or causes thereof. The commission may revoke such license at any time when conditions arise which in its judgment, if existing at the time when the license was granted, would have been sufficient cause for refusing to issue such license.

¹ This act amended Act 176 of 1921 to transfer responsibility for the administration of that law from the Department of Banking to the Pennsylvania Securities Commission. Currently, the Commission has one registrant under this Act.

Section 6054. Deposit of security.

No corporation or person shall be licensed under the provisions of this act unless and until it has deposited with the commission in cash or bonds of the United States or of the State of Pennsylvania or of cities, counties, boroughs, or school districts of this Commonwealth, or of any authority created by the State or any political subdivision or any other state of the United States, approved by the commission of the clear market value of one hundred thousand dollars (\$100,000), as security for the fulfillment of its contracts made heretofore or hereafter with residents of Pennsylvania. Exchanges of such bonds may be made from time to time with the approval of the commission. If any of said bonds are called for payment, the proceeds thereof shall remain in the hands of the commission until other bonds of the character described in this section shall be substituted in like amount for the bonds so paid. The corporation or person making such deposit shall be entitled to the income thereon.

Section 6055. Fees

Every corporation or person licensed under the provisions of this act shall, before such license is issued, pay to the commission a fee of one hundred dollars (\$100) at the time such license is issued, and twenty-five dollars (\$25) on or before the first day of October annually thereafter. All fees paid to the commission under the provisions of this act shall be paid by it, through the Department of Revenue, into the State Treasury.

Section 6056. Reports

Every corporation or person licensed under the provisions of this act shall annually, on or before the fifteenth day of January, file in the office of the commission a report, which shall exhibit its financial condition on the thirty-first day of December of the previous year and its business of that year, and shall, at any other time upon written request of the commission, file a supplemental report of its financial condition and business done. For cause the commission may extend the time for filing the annual report, but not to a date later than the fifteenth day of February. Such report shall be in such form as may be established from time to time by the commission, and shall be sworn to by the president and secretary of the corporation or person, or, in their absence, by two of its principal officers empowered to act in their stead. A corporation or person which neglects to file its annual report with the commission within the time required shall be liable to a penalty of one hundred dollars (\$100) for each day during which such neglect continues. Such penalty shall be collected by the Attorney General as debts due the Commonwealth are collected.

Section 6057. Additional security

The commission may require every corporation or person licensed under the provisions of this act to set apart a fund, no portion of which shall be applied to the expense of such corporation or person, which shall consist of not less than ten per centum of the amount designated in each contract issued as applicable to the payment of the expenses of conducting the business of such corporation or person. Such fund shall be invested at the close of each calendar year, or oftener if the commission may require, in bonds of the character described in section four of this act, and forthwith deposited with the commission, in the same manner and under the same terms as prescribed by said section, as additional security for the fulfillment of its contracts, provided such corporations or person may deposit cash with the commission in lieu of securities.

Section 6058. Powers of commission

The commission, or its duly authorized representative, shall have free access to all the books and papers of the corporation or person which relate to its business and to the books and papers kept by any of its agents, and may administer oaths to and examine as witnesses the directors, officers, and agents of said corporation or person, and any individual or the members of any copartnership or association licensed hereunder, and any other person, relative to its affairs, transactions and condition.

Section 6059. Discontinuance of business

Whenever any corporation or person licensed under the provisions of this act shall desire to discontinue with this Commonwealth the business of the nature hereinbefore set forth and described, it may make application by petition to the court, setting forth its resources and liabilities within and without this Commonwealth, and particularly an itemized and complete list of the holders or owners of the outstanding contracts issued by such corporation or person, together with the last known address of such holders or owners, and, in each case, the total amount of the liability of such corporation or person thereon, if any, and thereupon the said court, after due hearing, of which the commission shall have such notice as the court may determine, may make such order as will permit the withdrawal of said cash or bonds deposited with the commission, or a part thereof, and will, at the same time, fully protect the rights of all persons owning or holding the contracts issued by such corporation or person.

Section 6060. Violations of act by corporation, etc.; penalty

Any corporation or person violating any of the provisions of this act, or failing to comply with any requirement imposed upon it by the commission pursuant to any of the provisions of this act, is guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). Each transaction carried on in violation of this act shall constitute a separate offense.

Section 6061. Violations of act by agents; penalty

Any individual who sells or attempts to sell within this Commonwealth any contracts of or issued by any corporation or person subject to the requirements of this act, unless such corporation or person is licensed as herein provided, is guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or to undergo imprisonment for not more than one year, or both.

Section 6062. Business to which act does not apply

The provisions of this act shall not apply to any person or corporation engaged entirely in the business of issuing, negotiating, offering for sale, or selling contracts which at the time of issuance, negotiation, offering for sale, or sale are secured by adequate property, real or personal, nor to any domestic or foreign banks, banking companies, cooperative banking associations, trust, safe deposit, real estate, mortgage, title insurance, guaranty, surety and indemnity companies, savings institutions, savings banks, and provident institutions, or to mutual savings funds, employees' savings funds, building and loan associations, or corporations doing a safe deposit business only, nor to national banking associations, nor to any corporation, copartnership, association, exchange, society, or order, subject to the supervision of the Insurance Commissioner of the Commonwealth, nor to contracts issued by a corporation or person for the purpose of raising money for its principal business, if its principal business is other than the issuing or selling of contracts or obligations described in section two of this act.

The provisions of this act shall not be construed to affect in any way the act, approved the thirteenth day of April, one thousand nine hundred twenty-seven (Pamphlet Laws, two hundred seventy-three), entitled "An act for the registration and regulation of certain individuals and entities selling, offering for sale or delivery, soliciting subscriptions to, or orders for, or undertaking to dispose of, inviting offers for, or inquiries about, or dealing in any manner in, securities defined herein, including securities issued by them; conferring powers and imposing duties on the Pennsylvania Securities Commission and otherwise providing for the administration of this act; providing for appeals to the court of common pleas of Dauphin County and the Supreme Court of Pennsylvania; prescribing penalties; and making appropriations," its amendments and supplements.

All books, papers, records, securities, and moneys of or relating to corporations and persons subject to the provisions of this act, which are in the office of the Department of Banking, shall be transferred by the Department of Banking to the commission.

**COMMISSION REGULATIONS PROMULGATED UNDER
THE SECURITIES ACT OF 1972
AND THE
TAKEOVER DISCLOSURE LAW**

**REGULATIONS ADOPTED UNDER THE
PENNSYLVANIA SECURITIES ACT OF 1972**

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§ 101.000. Statutory references.

The references in this part to statutory provisions or to provisions of the act are, unless the context otherwise requires, references to the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101–1-704). This part is keyed to the provisions of the act. For example, the provisions of §§ 203.011–203.171 (relating to nonissuer transactions; and liquidations, dividends and distributions) relate to section 203 of the act (70 P.S. § 1-203).

§ 102.031. Agent registration.

A person may not be deemed an officer, director or partner or employe of an issuer, or an individual occupying a similar status or performing similar functions, if the designation is applied for the purpose of avoiding registration as an agent under the act.

§ 102.041. Bank holding companies; banks in organization.

(a) The definition of “bank” in section 102(d) of the act (70 P.S. § 1-102(d)) does not include a holding company for a bank.

(b) The definition of “bank” in section 102(d) of the act (70 P.S. § 1-102(d)) does not include a bank-in-organization. Whether an entity is a “bank” or a “bank-in-organization” shall be determined in accordance with the interpretation of the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.

§ 102.050. Transfer agents and registrars.

(a) Persons acting as transfer agents or registrars on behalf of issuers or performing none other than ministerial duties in handling securities and maintaining lists of securityholders are not thereby deemed to be “engaged in the business of effecting transactions in securities,” as that phrase is used in section 102(e) of the act (70 P.S. § 1-102(e)) and do not come within the definition of “broker-dealer” contained in that section.

(b) Transfer agents and registrars whose duties are as described in subsection (a) are not deemed to “represent a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities,” as that phrase is used in section 102(c) of the act (70 P.S. § 1-102(c)), and do not come within the definition of “agent” contained in that section.

§ 102.060. Commission.

As used in this part, the term Commission means, unless the content otherwise requires, the Securities Commission.

§ 102.111. Institutional investor.

(a) *Institutional investor.* Institutional investor, as defined in section 102(k) of the act (70 P.S. § 1-102(k)), includes:

(1) A corporation or business trust or a wholly-owned subsidiary of the person which has been in existence for 18 months and which has a tangible net worth on a consolidated basis, as reflected in its most recent audited financial statements, of \$10 million or more.

(2) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of \$5 million or more according to its most recent audited financial statements; provided that the aggregate dollar amount of securities being sold to the person under the exemption contained in section 203(c) of the

act (70 P.S. § 1-203(c)) and this title may not exceed 5% of the endowment or trust funds.

(3) A wholly-owned subsidiary of a bank as defined in section 102(d) of the act (70 P.S. § 1-102(d)) and § 102.041 (relating to banking institution; savings and loan institution).

(4) A person, except an individual or an entity whose securityholders consist entirely of one individual or group of individuals who are related, which is organized primarily for the purpose of purchasing, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with one of the following:

(i) Has purchased \$5 million or more of the securities excluding both of the following:

(A) A purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities, but securities purchased under a leveraged buyout financing in which the person does not intend to provide direct management to the issuer, is not excluded.

(B) A dollar amount of a purchase of securities of a corporation which investment represents more than 20% of the person's net worth.

(ii) Is capitalized at \$2.5 million or more and is controlled by an individual controlling a person which meets the criteria contained in subparagraph (i).

(iii) Is capitalized at \$10 million or more and has purchased \$500,000 or more of the securities, excluding a purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities.

(iv) Is capitalized at \$250,000 or more and is a side-by-side fund as defined in subsection (b)(4).

(5) A Small Business Investment Company as the term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C.A. § 662) which either:

(i) Has a total capital of \$1 million or more.

(ii) Is controlled by institutional investors as defined in section 102(k) of the act (70 P.S. § 1-102(k)) or this section.

(6) A Seed Capital Fund, as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. §§ 395.2 and 395.6).

(7) A Business Development Credit Corporation, as authorized by the Business Development Credit Corporation Law (15 P.S. §§ 2701 - 2716).

(8) A person whose securityholders consist solely of institutional investors or broker-dealers.

(9) A person as to which the issuer reasonably believed qualified as an institutional investor under this section at the time of the offer or sale of the securities on the basis of written representations made to the issuer by the purchaser.

(10) A qualified institutional buyer as that term is defined in 17 CFR 230.144A (relating to private resales of securities to institutions), or any successor rule thereto.

(b) *Definitions.* The following words and terms, when used in this section, have the

following meanings, unless the context clearly indicates otherwise:

(1) *Individuals controlling* - A general partner and, in the case of a corporation, the president and other officers responsible for making investment decisions with respect to the purchase of the securities described in subsection (a)(4), if the person is currently engaged in that capacity.

(2) *Most recent audited financial statements* - Audited financial statements dated not more than 16 months prior to the date of the transaction in which the person proposed to purchase securities in reliance upon the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)).

(3) *Related* - A relative by marriage residing in the same household or a blood relative.

(4) *Side-by-side fund* - A person which is both of the following:

(i) Promoted and controlled by individuals controlling a person meeting the criteria contained in subsection (a)(4)(i), (ii), or (iii).

(ii) Formed exclusively for the purpose of purchasing securities of issuers in various amounts and on the same terms and conditions as the person described in subparagraph (i).

(5) *Tangible net worth* - Net worth less the amount of all items of goodwill, preoperating, deferred or development expenses, patents, trademarks, licenses or other similar accounts.

§ 102.112. SEPs, IRAs and KEOGHS as institutional investors.

Institutional investor, as defined in section 102(k) of the act (70 P.S. § 1-102(k)), includes a Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal Revenue Code of 1986 (KEOGH), an Individual Retirement Account under section 408 of the Internal Revenue Code of 1986 (IRA) and a Simplified Employee Pension under section 408(k) of the Internal Revenue Code of 1986 (SEP) if the KEOGH, IRA or SEP has one of the following:

(a) Plan assets of \$5 million or more.

(b) Retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P.S. § 1-301) or a Federally-covered adviser to render professional investment management advice and has investments of \$500,000 or more in securities.

§ 102.170. [Reserved].

§ 102.201. Franchises.

(a) The term “security” as defined in section 102(t) of the act (70 P.S. § 1-102(t)) shall be deemed to include a franchise where all of the following exist:

(1) The arrangement between the franchisor and the franchisee is such that the right to engage in the business of offering, selling or distributing goods or services is exercised under a marketing plan or system prescribed in substantial part by the franchisor.

(2) The arrangement between the franchisor and the franchisee is such that the franchisee is not required to make significant managerial efforts in the operation of the business that may be expected to affect the success or failure of the franchisee’s business.

(3) The arrangement between the franchisor and the franchisee arises as a result of an investment of money, notes or other things of value by or on behalf of the franchisee.

(b) Franchise means an agreement which involves a continuing commercial relationship by which a person (“franchisee”) is permitted by another person (“franchisor”) the right to offer the goods manufactured, processed or distributed by the franchisor, or the right to offer services established, organized, directed or approved by the franchisor, under circumstances where the franchisor continues to exert any control over the method of operation of the franchisee, particularly, but not exclusively, through trademark, trade name or service mark licensing, or structural or physical layout of the business of the franchisee.

§ 102.202. Real property.

(a) For purposes of section 102(t) of the act (70 P.S. § 1-102(t)), the term “security” is deemed to include the offer and sale of real property where any of the following exists:

(1) The purchaser of the property is required by the terms of the purchase or by reason of acquiring title either:

(i) To use the seller to perform services in connection with a sale, lease or license of the property purchased.

(ii) To hold the property available to persons other than the purchaser for the other person’s lease, license or other use for a specified period of time or for a period of time when the property is not in use by the owner.

(2) The purchaser is required by the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

(b) For purposes of this section, the term “rental pool arrangement” constitutes either:

(1) A device whereby a person, whether or not the seller, undertakes to rent the property on behalf of the owner during periods of time when the property is not in use by its owner, the rents received from all properties participating in the pool and the expenses attributable to the rents being combined with each property owner receiving a ratable share of the rental proceeds regardless of whether his particular property actually was rented.

(2) Other devices having like attributes.

§ 102.230. Construction.

(a) Part and section headings and cross references to other portions of this part are included only for convenience, and have no legal significance.

(b) References in this part to other statutes are as they may be now or hereafter altered.

(c) Unless the context otherwise requires, in this part the masculine pronoun includes the feminine and neuter, and the neuter pronoun includes the masculine and feminine.

(d) If any provisions of this part or the application of a provision to any person or circumstance is held invalid, the remainder of this part and its application to other persons or circumstances are not affected.

§ 102.241. Exchange.

For purposes of the act, the term “exchange” includes a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) (1934 Act) or a National quotation system operated by a National securities association registered with the SEC under section 15A of the 1934 Act (15 U.S.C.A. § 78o-3).

§ 202.010. Securities issued by a governmental unit.

The exemption contained in section 202(a) of the act (70 P.S. § 1-202(a)) is available for any security described in that section which is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) except for any part of an obligation evidenced by a bond, note, debenture or other evidence of indebtedness issued by any governmental unit specified in section 3(a)(2) that is deemed to be a separate security under United States Securities and Exchange Commission Rule 131 (17 CFR 230.131 (relating to definition of security issued under governmental obligations)).

§ 202.020. [Reserved].

§ 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P.S. § 1-202(c)) is available for any security which is a Federally-covered security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77c(3)) as interpreted by Release 33-4412 (26 FR 9158 (1961)) issued by the United States Securities and Exchange Commission which provides that:

(1) The commercial paper shall be prime quality of a type not ordinarily purchased by the general public.

(2) The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.

(3) The commercial paper is not payable on demand and does not contain a provision for automatic “rollover.”

(4) The commercial paper is issued to facilitate current operational business requirements.

(5) The proceeds of the commercial paper are not used to:

(i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.

(ii) Purchase or construct a plant facility.

(iii) Purchase durable machinery or equipment.

(iv) Fund commercial real estate development or financing.

(v) Purchase real estate mortgages or other securities.

(vi) Finance mobile homes or home improvements.

(vii) Purchase or establish a business enterprise.

(b) For purposes of this section, “prime quality” means that the commercial paper has been rated in one of the top three rating categories by a Nationally recognized statistical rating organization.

(c) When commercial paper is being issued by a holding company for a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), the commercial paper shall bear a prominent legend in bold face type of at least 12 points in size indicating that the commercial paper:

(1) Has not been issued by the bank for which the issuer is the holding company.

(2) Is not a deposit of the bank covered by Federal deposit insurance.

(d) No public media advertisement or mass mailing may be made in connection with soliciting offers or sales of commercial paper; provided, that nothing in this section limits mailings to institutional investors or broker-dealers, as those terms are defined in the act and this subpart.

§ 202.031. [Reserved].

§ 202.032. [Reserved].

§ 202.041. Credit union and industrial loan association securities.

(a) For the purpose of section 202(d) of the act (70 P.S. § 1-202(d)), the term, “any credit union” shall mean an institution organized as a credit union under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the credit union business;
and

(2) supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over any such institution. For the purpose of this section the “credit union business” shall be deemed to be exclusively the receipt of deposits from and the making of loans to bona fide members of the credit union. For the purpose of this section, securities issued by a credit union shall mean only those securities which are issued by an entity directly engaged in the credit union business as that term is used herein and shall not include securities issued by a credit union holding company or other similar entity.

(b) For the purpose of section 202(d) of the act, the term “industrial loan association” shall mean an institution organized as an industrial loan association under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the industrial loan business;
and

(2) examined and supervised as an industrial loan association by the appropriate Commonwealth authorities having supervision over any such institution.

(c) For the purpose of this section, the “industrial loan business” shall be deemed to be making and discounting of secured and unsecured loans to bona fide members of the association. For the purpose of this section, securities issued by an industrial loan association shall mean only those securities which are issued by an entity directly engaged in the industrial loan business as that term is used herein and shall not include securities issued by an industrial loan holding company or other similar entity.

§ 202.051. Equity securities of nonprofit organizations.

(a) For the purpose of section 202(e) of the act (70 P.S. § 1-202(e)), the exemption is not applicable to a proposed offering of nondebt securities by an issuer when:

(1) a promoter transfers, directly or indirectly, assets to the issuer at a price substantially in excess of the cost (in cash or other tangible property) to the promoter or the reasonable current value thereof;

(2) a promoter enters into or expects to enter into an employment, management or consulting arrangement with the issuer for compensation or remuneration in excess of that normally paid for services of like kind and quality in the geographical area where such services are to be rendered;

(3) a promoter, directly or through an affiliate, enters into or expects to enter into a construction or other service contract with the issuer whereby the promoter or its affiliate will or proposes to make a profit by providing the materials or services in excess of normal profit for such materials or services in the geographical area where such services are to be rendered; or

(4) a promoter will receive a substantial portion of the proceeds of the offering under circumstances which result in the conferring of substantial financial benefits on a promoter.

§ 202.052. Trade or professional association.

(a) For the purpose of section 202(e) of the act (70 P.S. § 1-202(e)), the term “trade or professional association” shall mean an association of persons having some common business or professional interest, the purpose of which is to promote, on behalf of the association’s members generally, such common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(b) For example, the activities of a “trade association,” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association’s members generally, of business conditions of one or more lines of business as distinguished from the performance of particular services for individuals or entities. Similarly, the activities of a “professional association,” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association’s members generally, of professional conditions of one or more professions as distinguished from the performance of particular services for individuals or entities. Therefore, an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a “trade or professional association” as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)).

§ 202.060. [Reserved].

§ 202.070. Securities issued in connection with employee benefit plans.

(a) An issuer may rely on the exemption in section 202(g) of the act (70 P.S. § 1-202(g)) if any of the following apply:

(1) The securities are being issued in connection with a stock option, purchase, savings, pension, profit-sharing or similar compensatory benefit plan or compensatory contract for employees.

(2) The securities are being issued in good faith reliance that the transaction qualifies for an exemption under Securities and Exchange Commission Rule 701 (17 CFR 230.701) (relating to exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation) as made effective April 7, 1999, in SEC Release 33-7645.

(3) The securities being issued meet the following conditions:

(i) Have been registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a – 77aa).

(ii) Are issued in a transaction that meets the requirements of subsections (c) and (e) of Securities and Exchange Commission Rule 701 (17 CFR 230.701(c) and (e)).

(b) The exemption contained in section 202(g) of the act may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201).

§ 202.080. [Reserved].

§ 202.090. [Reserved].

§ 202.091. Shares of professional corporations.

(a) Pursuant to the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of shares issued by a professional corporation.

(b) The meaning of “professional corporation” for this section shall be as follows:

(1) Except as provided in paragraph (2), the term “professional corporation,” means one of the following:

(i) A corporation incorporated under the 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of that act by virtue of 15 Pa.C.S. § 2904 or 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(ii) A professional association organized under the 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988). The reference in this section to “shares” shall include the interest of an associate in a professional association.

(2) For the purpose of this section, the term “professional corporation” may not include an entity which has as a principal purpose, object or activity, whether or not expressed in its articles of incorporation or other organic documents, a purpose, object or activity other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.

(c) The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201) or a transaction made in violation of the antifraud provisions of the act (70 P.S. §§ 1-401 - 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.092. Guaranties of certain debt securities exempt.

(a) The exemption established by this section applies to a guaranty of a bond, as those terms are defined in subsection (d)(1) and (2), that is offered or sold in this Commonwealth.

(b) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of the guaranty of a bond if all of the following conditions are met:

(1) The official statement or other disclosure document being utilized in connection with the offer and sale of the bonds contains either of the following:

(i) An audited balance sheet and statement of income of the guarantor dated within 120 days prior to the commencement of the offering in this Commonwealth.

(ii) Both of the following:

(A) An audited balance sheet and statement of income of the guarantor for the most recent completed fiscal year; or if the fiscal year of the guarantor ended within 90 days prior to the commencement of the offering in this Commonwealth, an audited balance sheet

and statement of income for the prior most recent completed fiscal year.

(B) A statement by a certified public accountant or the guarantor as to whether there have been adverse material changes in the financial condition of the guarantor from the date of the audited balance sheet submitted in compliance with clause (A) within 5 days prior to the commencement of the offering in this Commonwealth.

(2) The proceeds from the sale of the bonds are to be utilized for the benefit of a facility which is owned or operated — user — by either of the following:

(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in 26 U.S.C.A. § 501(c)(3) or has received an opinion of counsel that it is so exempt, and where the combined net assets of the user and guarantor is not less than 25% of the amount of the securities being offered.

(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under 26 U.S.C.A. § 501(c)(3), and where the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

(3) Under the guaranty, the guarantor is required to do the following:

(i) File with the trustee for the bondholders a copy of its audited balance sheet and statement of income within 120 days after the completion of its fiscal year.

(ii) Be responsible for expenses incurred by the trustee for the bondholders in complying with paragraph (4)(ii) and (iii) unless there are specific provisions to the contrary in the relevant financing documents.

(iii) Notify the trustee for the bondholders within 24 hours after it becomes insolvent as that term is defined in subsection (d)(4).

(4) Under the trust indenture, mortgage, deed of trust or other similar agreement, the trustee for the bondholders, as that term is defined in subsection (d)(5), is required to do the following:

(i) Maintain a current list of the names and addresses of all of the bondholders.

(ii) Provide, to the bondholder, within 30 days of receipt of a written request from a bondholder, a copy of the guarantor's most recent audited balance sheet and statement of income.

(iii) Notify the bondholders of the occurrence of any of the following events no later than 30 days after an occurrence and inform the bondholders that a copy of the bondholders list described in subparagraph (i) will be provided within 30 days of receipt of a written request for the list:

(A) The date the guarantor failed to comply with subsection (b)(3)

(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure as that term is defined in § 609.032(a) (relating to definitions).

(C) The date on which the trustee is informed that the guarantor is insolvent as that term is defined in subsection (d)(4). There is no independent duty on the part of the

trustee to determine the insolvency of the guarantor.

(c) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to audited balance sheets and statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants and accompanied by a Review Report as that term is defined in § 609.032(a).

(d) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) *Bond* - This includes only the following:

(i) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) when the issuer of the security is located in this Commonwealth.

(ii) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) but when the guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is deemed to be a separate security pursuant to United States Securities and Exchange Commission Rule 131 (17 CFR 230.131(relating to definition of security issued under governmental obligations)).

(2) *Guaranty* - A duly executed written agreement wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption prior to maturity or otherwise, and premium, if any, when and as the principal and interest shall become due and the guaranty cannot be bought, sold or traded as a security or otherwise realized upon by a bondholder separately from the bondholder's interest in the bonds.

(3) *Guarantor* - Any person who executes a guaranty.

(4) *Insolvent* — The inability of a guarantor to pay debts as they fall due in the usual course of business, or having liabilities in excess of the fair market value of assets. For purposes of this paragraph, a guarantor may not be considered insolvent if the auditor's report to the guarantor's audited balance sheet and statement of income did not contain going concern disclosure as that term is defined in § 609.032(b).

(5) *Trustee for the bondholders* — The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.

§ 202.093. Charitable contributions to pooled income funds exempt.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any securities issued or created in connection with contributions or transfers of property to, or certificates of interest or participation in, pooled income funds if the following conditions are met:

(1) A pooled income fund (Fund) as defined in section 642(c)(5) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 642(c)(5)), is established for the purpose of permitting donors to make irrevocable remainder interest gifts to the Fund.

(2) The Fund is afforded a tax deduction under section 642(a)(3) of the Internal Revenue Code of 1954.

(3) The Fund is in compliance with the Charitable Organization Reform Act (10 P.S.

§§ 161.1 - 161.19) and amendments and successor statutes thereto.

(4) Each prospective donor is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the Fund and the nature, operation and financial condition of the Fund.

(5) None of those persons responsible for solicitation of contributions to the Fund will receive commissions or other special compensation based upon the amount of property transferred except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Commission as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.

(6) Any person, who for compensation, advises the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise performs as an investment adviser is either an investment adviser registered with the Commission under section 301 of the act or is a Federally-covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the Fund in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401-409 of the act (70 P.S. §§ 1-401 – 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.094. World class issuer exemption.

Under the authority in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any security meeting the following conditions:

(1) The securities are one of the following:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase the options, warrants, convertible securities or preferred stock.

(ii) Units consisting of equity securities permitted by subparagraph (i) and warrants to purchase the same equity security being offered in the unit.

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services or another rating organization designated by order of the Commission. For purposes of this subsection, nonconvertible debt securities means securities that cannot be converted for at least 1 year from the date of issuance and then only into equity shares of the issuer or its parent.

(iv) American Depository Receipts representing securities described in subparagraphs (i)-(iii).

(2) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(3) The issuer, at the time an offer or sale is made in reliance on this section, has been a going concern engaged in continuous business operations for the immediate past 5 years and during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this paragraph, the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the 5-year requirement.

(4) The issuer, at the time an offer or sale is made in reliance on this section, has a public float of \$1 billion or more. For purposes of this paragraph:

(i) Public float means the market value of all outstanding equity shares owned by nonaffiliates.

(ii) Equity shares means common shares, nonvoting equity shares and subordinated or restricted voting equity shares but does not include preferred shares.

(iii) An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of the person.

(5) The market value of the issuer's equity shares, at the time an offer or sale is made in reliance on this section, is \$3 billion or more. For purposes of this subsection, equity shares means common shares, nonvoting equity shares and subordinated or restricted voting shares but does not include preferred shares.

(6) The issuer, at the time an offer or sale is made in reliance on this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in 17 CFR 230.901(a)(1) (relating to general statement) or successor rule promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) or designated by the United States Securities and Exchange Commission under 17 CFR 230.902(a)(2) (relating to definitions) promulgated under the Securities Act of 1933.

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

(1) The charitable gift annuity meets the terms and conditions of being exempt from the laws of this Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361 - 364) (annuity).

(2) Each prospective annuitant is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the qualified charity, as that term is defined in the Charitable Gift Annuity Exemption Act (qualified charity).

(3) None of those persons responsible for solicitation of purchasers of annuities will receive commissions or other special compensation based upon the amount of the annuity purchased except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Commission as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.

(4) A person who, for compensation, advises the qualified charity as to the advisability of investing in, purchasing or selling securities, including annuities, or otherwise performs as an investment adviser is either an investment adviser registered with the Commission under section 301 of the act (70 P.S. § 1-301) or is a Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the qualified charity in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401-409 of the act (70 P.S. §§ 1-401 - 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 203.011. Nonissuer transactions.

The exemption contained in section 203(a) of the act (70 P.S. § 1-203(a)) shall be available for transactions in a security which are not directly or indirectly for the benefit of the issuer or an affiliate of the issuer of the subject security. By way of illustration, an offering of securities is indirectly for the benefit of the issuer if any portion of the proceeds of the transaction will be received indirectly by the issuer. A transaction that is part of a single plan of distribution which involves a distribution by an issuer of its securities to the public will not be deemed a nonissuer transaction for purposes of section 203(a) of the act (70 P.S. § 1-203(a)).

§ 203.020. [Reserved]

§ 203.031. Fiduciary capacity.

Where an institutional investor purchases securities for the benefit of another person, the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)) shall be available only if the institutional investor is empowered under applicable state or Federal law to act as a corporate fiduciary and is acting as trustee, guardian, conservator, executor or administrator; provided that, section 203(c) of the act (70 P.S. § 1-203(c)) is not available for a transaction where an institutional investor is acting in the capacity of trustee, guardian, conservator, executor or administrator for the primary purpose of avoiding or facilitating the avoidance of the provisions of section 201 of the act (70 P.S. § 1-201).

§ 203.041. Limited offerings.

(a) The notice required by section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the Commission within the time period specified by that section on the form, designated by the Commission as Form E in accordance with the General Instructions thereto.

(b) The Commission will not consider that the requirement of section 203(d)(i) of the act is met unless the following steps have been taken by the issuer:

(1) A written agreement is entered into whereby the purchaser agrees not to sell the securities purchased under the exemption within 12 months after the date of purchase, except in accordance with § 204.011 (relating to waivers of the 12-month holding period), and a copy of the agreement to be signed has been filed with the Commission.

(2) A legend is placed on the security restricting its transferability for 12 months after the date of purchase except in accordance with § 204.011.

(3) The issuer instructs its transfer agent, if any, that no transfer of the securities shall be permitted except in accordance with section 203(d) of the act, § 204.011 and this section.

(c) Except where the promoters, as defined in section 102(o) of the act (70 P.S. § 1-102(o)), are registered under section 301 of the act (70 P.S. § 1-301), the condition contained in section 203(d)(iii) of the act shall be deemed to be met only if a promoter receives no underwriting, selling or finder's fee or commission or other remuneration directly or indirectly for the sale of securities under the exemption. A promoter shall be deemed to have received indirect remuneration if money or property is paid to an affiliate of a promoter as compensation for the sale of securities. The fact that the value of a promoter's investment in the issuer is increased as a result of the offering or that the promoter will receive remuneration from the issuer for services rendered to the issuer in the ordinary course of its business or for the sale of property to it does not, of itself, preclude the availability of the exemption.

(d) During the period of the offering, the issuer shall take steps necessary to ensure that the material information contained in its notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file with the Commission in accordance with § 609.011 (relating to amendments to filings with the Commission) within 5 business days of the occurrence of the event which required the filing of

the amendment.

§ 203.050. [Reserved].

§ 203.060. [Reserved].

§ 203.070. [Reserved].

§ 203.080. [Reserved].

§ 203.091. Equity securities issued by reporting company.

For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P.S. § 1-203(i.1)), the term “equity security” includes:

(1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(2) Nontransferable warrants to purchase any of the foregoing.

(3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption shall be available only if:

(1) The entire bond or other evidence of indebtedness, together with the real or chattel mortgage, deed of trust, agreement of sale or other instrument securing the same is offered and sold as one unit.

(2) The purchaser of the unit is not offered, as part of the offer of the unit or in connection therewith, a property interest that would itself be deemed to be a security under section 102(t) of the act (70 P.S. § 1-102(t)) or under other regulations adopted under the act.

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair market value of the property at the time of the transaction.

(4) No public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction.

(5) No compensation is paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

(6) The issuer, at the time of the transaction, is in compliance with any applicable licensing requirements of the Department of Banking.

(b) The exemption contained in section 203(j) may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201) or a transaction made in violation of the anti-fraud provisions of the act (70 P.S. § 1-407).

§ 203.110. [Reserved].

§ 203.120. [Reserved].

§ 203.131. Bona fide pledgee.

The phrase “bona fide pledgee” as used in subsection (m) of section 203 (70 P.S. § 1-203(m)) shall include a secured party who takes securities in pledge to secure a bona fide debt. Such phrase shall not include a secured party who takes securities in pledge either:

(1) Without any intention or expectation that they will be redeemed but merely as a step in the distribution thereof to the public.

(2) Without having secured knowledge, in the exercise of reasonable diligence, prior to the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.

§ 203.141. Sales to existing securityholders.

(a) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) shall only be available for the offer and sale of equity securities when the following exist:

(1) The offer is made to existing securityholders of a class of a series of the issuer’s issued and outstanding equity securities, although the offer need not be made to all the classes or series.

(2) The offer is made pro rata to all such securityholders who are, of record, residents of this Commonwealth.

(3) No commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting any securityholder in this Commonwealth.

(b) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) shall only be available for the offer and sale of debt securities when the following exists:

(1) The offer is made to existing securityholders of a class of a series of the issuer’s issued and outstanding equity securities, although the offer need not be made to all the classes or series.

(2) No commission or other remuneration, other than a standby commission, is paid or given, directly or indirectly, for soliciting a securityholder in this Commonwealth.

(c) For purposes of subsection (a)(2), an offer will be deemed to have been made pro rata when the following exists:

(1) The initial offer is made pro rata; and

(2) After the expiration of a reasonable period of time following the initial offer, an identified securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected securityholders.

(d) For purposes of this section, the term “securityholder” is limited to persons who at the time of offers and sales under the exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) are holders of equity securities, including by way of illustration, holders of: common stock, preferred stock, securities convertible into common or preferred stock; nontransferable warrants to purchase any of the foregoing, and transferable warrants exercisable within not more than 90 days of their issuance, to purchase any of the foregoing; provided, that the term “securityholder” shall not include persons who are holders of equity securities issued in violation of or without compliance with the act and the rules and regulations adopted thereunder.

(e) For purposes of this section, the term “class” includes equity securities of an issuer which are of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

(f) For purposes of this section, the term “standby commission” means the commission payable to a broker-dealer registered under the act for its firm commitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

(g) For purposes of this section, the term “pro rata” means the offering will be made in this Commonwealth proportionately on the basis of the number of shares owned by the existing securityholder or the securityholder’s percentage ownership interest in the issuer. By way of illustration, an offering will be deemed to have been made on a pro rata basis where the issuer offers its existing securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date or where the issuer offers an existing securityholder owning 3% of the issuer’s stock as of a record date, the opportunity to purchase 3% of the issuer’s current offering.

§ 203.151. Proxy materials.

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the Commission for review under section 203(o) of the act (70 P.S. § 1-203(o)), the materials shall conform to SEC Rule 14A, 17 CFR 240.14a-1 - 240.14b-1 (relating to solicitation of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a - 78mm).

(b) In a transaction subject to the filing requirements of section 203(o) of the act, filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals - as that term is defined in § 203.184 (relating to offerers and sales to principals) - of the entities whose securityholders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the Commission for a transaction requiring the filing of proxy materials with the Commission under section 203(o) of the act by filing the form designated by the Commission as Form 203-O in accordance with the General Instructions thereto together with the exemption filing fee specified in section 602(b.1)(v) of the act (70 P.S. § 1-602(b.1)(v)).

(d) Proxy materials filed under this section may not be distributed to securityholders until the Commission has determined that the materials are in compliance with this section and has communicated that determination to the person who filed the proxy materials.

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P.S. § 1-203(p)) shall complete and file with the Commission two copies of the form, designated by the Commission as Form 203-P in accordance with the General Instructions thereto not later than 5 business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

(b) Except in cases when the delivery of an offering document is not required by order of the Commission, every offering of debt securities pursuant to section 203(p) shall be made by an offering document containing all material information about the securities being offered and the issuer. An offering document will be deemed to meet the requirements of this section if it includes the information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by the North American Securities Administrators Association, Inc. and any successor policy thereto (NASAA Guidelines) and is in the format set forth therein. A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) shall be filed with the Commission at the same time the notice required by subsection (a) must be filed.

(c) The offering document required by subsection (b) shall meet the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m) of the act (70 P.S. § 1-207(m))).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000.

(4) Include whatever data may be necessary to establish that investors will receive a first lien on real estate of the issuer, that the issuer has not defaulted on prior obligations and that the total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

§ 203.171. Liquidations, dividends, and distributions.

The phrase “bona fide distribution” as used in section 203(q) of the act (70 P.S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration provisions of section 201 of the act (70 P.S. § 1-201).

§ 203.180. [Reserved].

§ 203.181. [Reserved].

§ 203.182. [Reserved].

§ 203.183. Agricultural cooperative associations.

(a) Pursuant to the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued by an agricultural cooperative association in transactions where all of the following conditions are met:

(1) Such securities are issued by the agricultural cooperative association.

(2) Such securities are offered and sold only to persons who are, at the time of any such offer and sale, members of the agricultural cooperative association or to persons who, upon sale of securities to them, thereby become members of the agricultural cooperative association.

(3) The transfer of such securities for value is restricted to members of the agricultural cooperative association.

(4) No person receives any commission or other compensation as a result of or based upon the sale of such securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

(b) The following words and terms, have, for the purposes of this section, the following meanings:

(1) *Agricultural cooperative association* - An association which admits to membership only persons who are engaged in agriculture and which is organized and operated for the purpose of engaging in any cooperative activity for persons engaged in agriculture in connection with:

(i) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products thereof.

(ii) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.

(iii) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes set forth in clauses (i) and (ii) on a cooperative basis. The term agricultural cooperative association shall also include a federation of agricultural cooperative associations if the federation possesses no greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

(2) *Members* - For purposes of subsection (a)(2) only, includes patrons to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patrons to be treated as members.

(3) *Securities* - Membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences:

(i) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(ii) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(4) *Engaged in agriculture* - Persons engaged in farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations shall be deemed to be engaged in agriculture.

§ 203.184. Offers and sales to principals.

(a) Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities offered and sold by an issuer to:

(1) A principal.

(2) A corporation, the outstanding voting stock of which is beneficially owned by one or more principals.

(3) A general partnership or a limited partnership, the interest in which is beneficially owned by one or more principals.

(4) A trust, the trustees of which are principals.

(5) Any other person, the interest in which is beneficially owned by one or more principals.

(b) For purposes of this section, the term "principal," means the following:

(1) The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions, of one of the following:

(i) The issuer.

(ii) A wholly-owned subsidiary of the issuer.

(iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(2) A director, general partner or comparable person charged by law with the management of one of the following:

(i) The issuer.

(ii) A wholly-owned subsidiary of the issuer.

(iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(3) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

(i) The issuer.

(ii) A corporation, partnership or other entity which serves as a general partner of the issuer.

(4) A promoter of the issuer as defined in section 102(o) of the act (70 P.S. § 1-102(o)).

(5) A relative of a person specified in paragraphs (1)-(4). For purposes of this subsection, the term "relative" means one of the following:

(i) A spouse.

(ii) A parent.

(iii) A grandparent.

(iv) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

(c) For purposes of this section, whether a person is a beneficial owner of a security or other interest will be determined in accordance with the Securities and Exchange Commission Rule 13d-3 (17 CFR 240.13d-3).

(d) The exemption set forth in this section is not applicable to any offer or sale to a person who has been appointed or elected a principal for the primary purpose of obtaining the exemption or to a offer or sale to a relative of this person. A person who is appointed or elected a principal in good faith for a purpose other than the purpose of obtaining the exemption set forth in this section to whom, or to whose relative, securities are sold without registration following the designation or election in reliance upon the exemption set forth in this section will not be deemed to have been designated or elected a principal for the primary purpose of obtaining the exemption set forth in this section.

§ 203.185. Offers prior to effectiveness of registration by qualification exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require the

registration under section 201 of the act (70 P.S. § 1-201) for securities to be offered but not sold of an applicant filing a registration statement for its securities under section 206 of the act (70 P.S. § 1-206) prior to the effectiveness of such registration statement if the applicant meets all of the following criteria:

(1) The applicant has done all of the following:

(i) Filed a registration statement under section 206 of the act (70 P.S. § 1-206) to register the securities for which offers will be made.

(ii) Filed a written opinion of management which states that the following conditions apply to the applicant:

(A) The business, including any predecessor, is an existing business which possesses a history of operations of 4 years or more.

(B) The business, including any predecessor, maintains and will continue to maintain a place of business in this Commonwealth which employs at least 25 persons.

(C) The business, including any predecessor, has averaged annual gross revenues of at least \$500,000 for the past 2 years.

(D) The business, including any predecessor, possesses at least four years of historical financial information.

(iii) Filed an intention to comply with paragraphs (4) - (7).

(2) The minimum amount of the proceeds from the securities to be sold under the registration statement described in paragraph (1)(i) is \$500,000.

(3) Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provisions of paragraph (4) shall not constitute a “sale” of a security. Neither shall moneys deposited under paragraph (5) constitute the “sale” of a security.

(4) There is a withdrawal procedure as follows:

(i) Nonbinding subscription agreements received in connection with the offer but not sale of securities made under this section shall contain withdrawal rights which permit the investor to withdraw moneys tendered under such nonbinding subscription agreements with accrued interest under one of the following circumstances:

(A) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest at any time prior to the effectiveness of the registration statement described in paragraph (1)(i).

(B) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest within two business days from the date of receipt of notification of effectiveness of the registration statement described in paragraph (1)(i), as set forth in paragraph (7).

(ii) Investors shall be deemed automatically to have withdrawn any moneys tendered under a nonbinding subscription agreement and such moneys with accrued interest shall be returned to the investors upon the occurrence of any of the following:

(A) The registration statement described in paragraph (1)(i) does not become effective within 150 days from the date of filing with the Commission, unless extended by order of the Commission.

(B) The registration statement described in paragraph (1)(i) is withdrawn by the applicant.

(C) The Commission denies the registration statement described in (1)(i), regardless of whether such denial was a result of a hearing or rehearing requested by the applicant unless the Commission permits, in its Denial Order, that the moneys remain in escrow pending any request for a rehearing on the Denial Order.

(5) Moneys tendered under nonbinding subscription agreements as a result of offers made under this section shall be placed in interest-bearing escrow accounts in a bank and shall be subject to the investor withdrawal rights set forth in paragraph (4). If, prior to the effectiveness of the registration statement described in paragraph (1)(i), the nonbinding subscription agreement is withdrawn under paragraph (4), the deposit and accrued interest shall be payable to the investor. After the effectiveness of the registration statement described in paragraph (1)(i), the deposit plus accrued interest shall be payable to the applicant except where the investor withdraws under paragraph (7), in which event the investor shall receive the deposit plus accrued interest.

(6) All offerers for securities made under this section shall be accompanied by the delivery of a preliminary prospectus which has been prepared and filed to satisfy the requirements of section 206(b) of the act (70 P.S. § 1-206(b)) and § 206.010(c) (relating to registration by qualification).

(7) All persons whose moneys have been placed in escrow as a result of the making of offers for the securities that are the subject of the registration statement described in paragraph (1)(i) shall be notified of the effectiveness of such registration statement either by certified mail or by direct delivery of such information. Concurrent with the notification of the effectiveness of the registration statement, all persons shall receive a copy of the final prospectus unless the Commission, by order, permits a supplement to the preliminary prospectus setting forth all changes and modifications to be utilized for these purposes.

(b) The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201).

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions:

(1) Where the proceeds from the sale of the securities will be used to purchase assets and operations of the existing person.

(2) Where these employees will preserve their jobs through their employment with the newly created person.

(3) When compulsory participation in the investment plan by the employee as a condition of employment is not required.

(4) When employees being solicited to purchase securities under the investment plan receive, at least 7 days prior to entering into a binding obligation to purchase or subscribe for the purchase of securities issued or to be issued under the investment plan, written offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment, and an opinion of counsel that the security when sold will be legally issued, fully paid and non-assessable and, if a debt security, a binding obligation of the issuer.

(5) When any prospective financial statements, as that term is defined in § 609.010

(relating to use of prospective financial statements), used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(d).

(b) The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act.

§ 203.187. Small issuer exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is neither in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer when:

(1) The issuer has not sold securities in or out of this Commonwealth to more than ten persons.

(2) The issuer, in connection with offers made for the sale of securities under this section, has not made offers to sell securities to more than 90 persons in this Commonwealth in a period of 12 consecutive months.

(3) The issuer is either organized under the laws of this Commonwealth or has its principal place of business in this Commonwealth.

(4) Neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing number of purchasers and offerees).

(5) No public media advertisement is used or mass mailing is made in connection with the offers and sales under this section.

(6) No cash or securities are given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless the compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P.S. § 1-301) or exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)) and a person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Integration.*

(1) Offers and sales made by the issuer under this section shall be counted as offers and sales under applicable numerical limitations set forth in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within a period of 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

(c) *Computation.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.188. Cooperative Business Associations Exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds that it is not in the public interest or necessary for the protection of investors to require registration of securities transactions under section 201 of the act (70 P.S. § 1-201) where the following conditions are met:

(1) The issuance, offer and sale of securities of a cooperative business association is made only to persons who are members of the cooperative business association or, upon the purchase of

the security offered, will become members of a cooperative business association.

(2) The transfer of the securities for value is restricted to the cooperative business association, members of the cooperative business association or a successor in interest of a transferor who qualifies for membership, as may be further limited by the articles of incorporation of the cooperative business association, if certificates evidencing the securities bear a legend setting forth the restrictions.

(3) No person receives a commission or other compensation directly or indirectly as a result of or based upon the sale of securities of a cooperative business association other than in connection with the solicitation of nonmembers for membership.

(b) When used in this section, the following terms have the following meanings:

Cooperative business association - A person which is organized exclusively as a retail or wholesale cooperative and admits to membership only persons which bona fide engage, in whole or in part, in the line of business for which the cooperative was organized.

Securities - An equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences a member's interest in a fund, capital investment or other asset of a cooperative business association or the apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.

(c) Section 209.010(b)(relating to required records; report on sales of securities and use of proceeds) is not applicable to the offer and sale of securities without registration under this section.

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of 12-consecutive months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of 12-consecutive months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of this Commonwealth or has its principal place of business in this Commonwealth.

(4) Neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) No public media advertisement is used or mass mailing is made in connection with offers and sales made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless the compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P.S. § 1-301) or exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)) and a person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(2), (3) and (5) does not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § 77(c)(b)).

(ii) The issuer has complied with section 203(h) of the act.

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 and 230.506 (relating to exemption for limited offers and sales of securities not exceeding \$5 million; and exemption for limited offers and sales without regard to dollar amount of offering)) promulgated under sections 3(b) and 4(2) of the 1933 Act.

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the United States Securities and Exchange Commission (17 CFR § 230.501(a)) (relating to definitions and terms used in Regulation D).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the United States Securities and Exchange Commission (17 CFR 230.501(a)).

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance upon section 203(d), (f) or (s) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), SEC Rule 506 (17 CFR 230.506) or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within 12-consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within 6-consecutive months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.190. Certain Internet offers exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for offers of securities by an issuer which are communicated electronically by means of a proprietary or common carrier electronic delivery system, the Internet, the World Wide Web or similar media (Internet Offer) when the issuer does not intend to offer and sell the securities in the Commonwealth and meets the following conditions:

(1) The Internet Offer indicates, directly or indirectly, that the securities are not to be

offered to persons in this Commonwealth.

(2) An offer is not otherwise specifically directed to any person in this Commonwealth, by or on behalf of the issuer.

(3) No sales of the issuer's securities are made in this Commonwealth as a result of the Internet Offer.

(b) Nothing in this section prohibits, in connection with an Internet Offer, the availability of another exemption which otherwise does not prohibit general solicitation.

§ 203.191. SEC Rule 505 Offerings.

(a) *Filing requirement.* The notice required by section 203(s)(i) of the act (70 P.S. § 203(s)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *Compensation.* The term "compensation," as used in section 203(s)(iv) of the act, is not limited to receipt of monetary consideration.

(c) *Integration.* Offers and sales made under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act (70 P.S. § 1-203(d) and (f)) and § 204.010 (relating to increasing number of purchasers and offerees).

(d) *Beneficial ownership.* For purposes of section 203(s)(v), whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3 (relating to determination of beneficial owner)).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.192. SEC Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer which are exempt from registration under the Securities Act of 1933 (15 U.S.C.A. §§ 77a - 77aa) pursuant to Rule 801 or 802 promulgated by the United States Securities and Exchange Commission (17 CFR 230.801 or 230.802) (relating to exemption in connection with a rights offering; and exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers).

§ 203.201. Accredited investor exemption.

(a) *Filing requirement.* The notice required by section 203(t)(i) of the act (70 P.S. § 203(t)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *General solicitation.* Use of general solicitation in a manner permitted by section 203(t) will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § 606(c)) and § 606.031 (relating to advertising literature) but is subject to the antifraud provisions of the act (70 P.S. §§ 1-401 - 1-409) and Subpart D (relating to fraudulent and prohibited practices).

(c) *Compensation.* The term "compensation," as used in section 203(t)(iv) of the act, is not limited to receipt of monetary consideration.

(d) *Beneficial ownership.* For purposes of section 203(t)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3) (relating to determination of beneficial owner).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security if the following requirements are met:

(1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).

(2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

§ 203.203. Certain Rule 144A exchange transactions exempt.

Under section 203(r) of the act (70 P.S. § 1-203), the Commission finds that it is neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security in a transaction if the following requirements are met:

(1) A person who owns outstanding debt securities (and any related guarantees) exchanges those securities for debt securities (and any related guarantees) of the same issuer which are the subject of an effective registration statement filed with the United States Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. §§ 77(e)) (exchange transaction).

(2) The outstanding debt securities (and any related guarantees) are “restricted securities” as that term is defined in 17 CFR 230.144(a)(3) (relating to persons deemed not to be engaged in a distribution and therefore not underwriters).

(3) No consideration is paid by the owner of the outstanding debt securities (and any related guarantees) in connection with the exchange transaction.

(4) There are no material differences in the terms of the outstanding debt securities (and any related guarantees) and the debt securities (and any related guarantees) which are the subject of the exchange transaction.

§ 204.000. [Reserved].

§ 204.010. Increasing number of purchasers and offerees.

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P.S. §§ 1-203(d) and (e)) shall be increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during a period of 12-consecutive months under section 203(e) shall be 90 persons, except that offers made to experienced private placement investors, as that term is defined in subsection (d), who actually

purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during 12-consecutive months under section 203(d) shall be 35 persons, except that sales made to experienced private placement investors, as that term is defined in subsection (d) are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305(a)(ii)-(xiii) of the act (70 P.S. § 1-305(a)(ii)-(xiii)) unless the person subject to the disqualification is registered under section 301 of the act (70 P.S. § 1-301).

(2) *Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Commission the notice required by section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required by section 602(b.1)(viii) of the act (70 P.S. § 1-602(b.1)(viii)).

(3) *Broker-dealer requirement.* All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act, except that this condition does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and 203(e) of the act, respectively.

(c) *Exceptions.*

(1) Subsection (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this Commonwealth and in the Form BD filed with the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection (b)(1), to act in a capacity other than that for which the person is registered.

(2) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Experienced private placement investor.* An individual-and spouse when purchasing as joint tenants or as tenants by the entirety-who previously has purchased a minimum of \$450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

(2) *Private placement offering of securities.* An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77) under section 3(b) or 4(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(2)).

(3) *Purchase of securities by an experienced private placement investor.* The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged

within 5 years from the date of the sale of the securities to the experienced private placement investor.

(e) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P.S. § 1-301) that sells a security to an experienced private placement investor in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(f) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are deemed to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act are applicable to offers and sales to persons permitted by this section.

§ 204.011. Waivers of the 12-month holding period.

(a) Under section 204(a) of the act (70 P.S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P.S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

(1) The restricted securities are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk) subsequent to a notice filed with the Commission under section 203(d) and § 203.041 (relating to limited offerings).

(2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.

(3) The purchaser undergoes liquidation or dissolution if the action is not undertaken for the purpose of avoiding registration.

(4) The purchaser becomes insolvent.

(5) The issuer is merged into another entity and new securities are exchanged for the restricted securities, if the merger is not undertaken for the purpose of avoiding registration of the restricted security.

(6) The restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer's securities.

(7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

(8) The restricted securities are subject to repurchase under a buy-sell agreement that is conditioned with terms of employment or other commercial, as opposed to, mere investment relationship.

(9) The restricted securities are to be exchanged for other securities of the issuer in a transaction exempt from registration under sections 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203), if the exchange is not undertaken for the purpose of avoiding registration.

(b) For purposes of this section, the following terms, have the following meanings:

(1) *Restricted securities* - Securities purchased under section 203(d) of the act where the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

(2) *Insolvent* - The inability of the purchaser to pay debts as they fall due in the usual course of business or having liabilities in excess of the fair market value of assets.

(c) For transactions undertaken in reliance on waivers provided in subsections (a)(3) and (4), the person acquiring the restricted securities shall agree with the issuer in writing at the time of sale not to resell the restricted securities prior to the expiration of the original 12-month holding period.

(d) In addition to the automatic waivers set forth in subsection (a), persons may make application to the Commission under section 204(a) of the act for a discretionary order to waive the 12-month holding period for a restricted security in a proposed specified transaction in which the applicant shall demonstrate that the sale of the restricted security is not being undertaken for the purpose of avoiding registration or otherwise would constitute a distribution in violation of the act.

§ 204.012. Waivers for pre-effective offers under section 203(h).

Under section 204(a) of the act (70 P.S. § 1-204(a)), the Commission waives the requirement in section 203(h) of the act (70 P.S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the Commission to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) has filed a registration statement with the United States Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a - 77aa) prior to the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

§ 205.021. Registration by coordination.

(a) Except as specified in subsection (b), registration by coordination may be initiated by filing with the Commission within the specified time period:

(1) A registration statement and other materials required under section 205 of the act (70 P.S. § 1-205).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits thereto.

(3) Additional information the Commission may by regulation or order require under section 205(b)(iii) of the act (70 P.S. § 1-205(b)(iii)).

(b) In addition to filing the information and form required in subsection (a), issuers in offerings being made in reliance on SEC Regulation A promulgated under Section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) shall execute and file with the Commission within the specified time period the form, designated by the Commission as Form R in accordance with the General Instructions thereto.

(c) The 10-day registration statement filing requirement in section 205(c)(2)(ii) of the act (70 P.S. § 1-205(c)(2)(ii)) shall be reduced to 5 days for the following:

(1) An offering for which a registration statement has been filed with the Commission designated as Form S-2 or S-3 by the SEC.

(2) An offering for which a registration statement has been filed with the Commission designated as Form F-7, F-8, F-9 or F-10 by the SEC.

(3) An offering for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the top three rating categories by one or more Nationally recognized statistical rating organizations.

(d) During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in its Form R remains current and accurate in all material respects. If a material statement made in the form, or any attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendments filed with the Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 205.040. Series of unit investment trusts as separate issuers.

For purposes of complying with the requirements of section 201 and 211(a) of the act (70 P.S. §§ 1-201 and 211(a)), each series underlying a unit investment trust, as that person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 - 80a-64), constitutes a separate and distinct issuer under the act and shall be required to make a separate filing with the Commission under section 211(a).

§ 206.010. Registration by qualification.

(a) Except as specified in subsection (b), registration by qualification shall be initiated by filing with the Commission:

(1) A registration statement and other materials required under section 206(b)(1) - (16) of the act (70 P.S. § 1-206(b)(1) - (16)).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits.

(3) Additional information the Commission may by regulation or order require under section 206(b)(17) of the act.

(b) In addition to the information and form required in subsection (a), issuers in the following offerings shall execute and file with the Commission Form R as set forth in § 205.021 (relating to registration by coordination):

(1) Offerings made in reliance on section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(4)).

(2) Offerings made in reliance on section 3(a)(11) of the Securities of 1933.

(3) Offerings made in reliance on Rule 504 of SEC Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on SEC Regulation A promulgated under section 3(b) of the Securities Act of 1933.

(c) Financial statements used in connection with an offering under section 206 shall meet the requirements of section 609(c) of the act (70 P.S. § 609(c)) and Chapter 609 (relating to regulations, forms and orders) or as the Commission shall, by order, require.

(d) During the period of the offering, the issuer required to file Form R shall take steps necessary to ensure that all material information contained in its Form R remains current and accurate. If a material statement made in the form or any attachment thereto becomes incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendments filed with the Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 206.020. Tax opinion in offerings of limited partnership interests.

(a) Under the authority contained in section 206(b)(17) and (d) of the act (70 P.S. § 1-206(b)(17) and (d)), the Commission has determined that it is necessary:

(1) To require that a registration statement filed under section 206 of the act for the registration of limited partnership interests contain a tax opinion or discussion of tax aspects prepared or reviewed under subsection (c).

(2) To require as a condition for the registration of limited partnership interests under section 206 of the act that the prospectus include tax opinion or tax aspects contained in the registration statement and a statement identifying the preparer or reviewer of the tax opinion or discussion of tax aspects.

(b) Material tax issues in relation to the facts, including but not limited to, whether the limited partnership will be treated as a partnership for Internal Revenue Code tax purposes under 26 CFR 301.7701-2 shall be addressed in the registration statement.

(c) The tax opinion or discussion of tax aspects shall be prepared or reviewed by an independent attorney, certified public accountant or other qualified professional who shall be identified in the registration statement.

(d) For purposes of this section, an attorney, certified public accountant, or other qualified professional may not be considered to be “independent” if the professional or a member of the professional’s firm is either:

(1) A promoter, underwriter, general partner, or employe of the issuer.

(2) An affiliate of a promoter, underwriter, general partner, or employe of the issuer.

(e) The requirement of subsection (c) does not apply where the limited partnership has received a favorable ruling from the Internal Revenue Service on all of the tax issues addressed in the tax opinion or discussion of tax aspects contained in the registration statement.

§ 206.030. [Reserved].

§ 206.041. Use of preliminary prospectuses prohibited.

If a registration statement has been filed under section 206 of the act (70 P.S. § 1-206) in reliance on section 3(a)(11) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)11) and the rules and regulations adopted thereunder but has not yet become effective, no person may make offers to sell nor solicit offers to buy nor may there be a sale of the securities covered by the registration statement except as otherwise provided under the act (70 P.S. §§ 1-101 - 1-704) or under this chapter. Use of a proposed or preliminary form of the prospectus submitted with the registration statement or proposed to be submitted to facilitate offers or sales, as set forth in this section, is prohibited.

§ 207.010. [Reserved].

§ 207.020. [Reserved].

§ 207.030. [Reserved].

§ 207.040. [Reserved].

§ 207.050. Reports by engineers, appraisers and others.

(a) The Commission may, under section 207(e) of the act (70 P.S. § 1-207(e)), by order, require

as a condition of registration that the issuer or other person seeking to register securities for sale submit a technical report, prepared and certified by an engineer, appraiser, accountant or other professional person with respect to the value of an asset held by the issuer or other material matter deemed by it to be reasonably related to the conduct of the issuer's business. The cost of preparation of the report will be borne by the applicant for registration.

(b) The Commission may require that the report referred to in subsection (a) be prepared by an employe of the Commonwealth. In such event the Commission will notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses. Prior to commencement of preparation of the report, the applicant shall deposit with the Commission funds sufficient to cover costs with instructions authorizing disbursement of such funds as expenses are incurred. If it appears additional costs will be incurred in preparing the report, the applicant will be notified and required to deposit with the Commission the additional moneys necessary to permit completion of the work.

(c) A person who prepares for submission or submits a technical report to the Commission in response to the Commission's request, and a person who prepares for submission or submits a technical report intended to be included or referred to in any part of the registration statement, shall attach to the report a statement as to the person's qualifications and experience and a further statement as to a material relationship or other factor which would bear upon the person's independence with respect to the subject matter to which or the person to whom the report relates.

§ 207.060. [Reserved].

§ 207.071. Escrow of promotional securities.

(a) The Commission will, where it deems necessary for the protection of investors, or in the public interest, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), require as a condition to the registration of securities, whether to be sold by the issuer or another person, that promotional securities be placed in escrow. The escrow depository shall be a bank or trust company approved by the Commission, provided, that, if the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the Commission an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

(b) For the purposes of this section, the term "promotional securities" includes securities which are:

(1) Issued within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

(2) Issued in consideration for services.

(3) Issued in consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(4) Issued within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

(5) The subject of an order by the Commission which includes findings that the securities are promotional securities.

(c) The escrow of promotional securities shall be covered by an agreement which shall be subject to the approval of the Commission. One manually signed copy of the agreement shall be filed with the Commission prior to the effectiveness of a registration of the issuer's securities.

§ 207.072. Escrow of proceeds.

(a) The Commission, when it deems necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds from the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere; or that the proceeds from the sale of the registered security be escrowed for a specific use as set forth in the prospectus. The escrow depository shall be a bank or trust company acceptable to the Commission.

(b) The escrow of proceeds shall be covered by an agreement acceptable to the Commission which, at a minimum, meets the following conditions:

(1) The specified amount of proceeds shall be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph (7).

(2) The escrow depository may not be affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) The agreement shall provide that the escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer pursuant to the terms of the agreement.

(4) A manually signed copy of the agreement shall be filed with the Commission and shall become part of the registration statement.

(5) The agreement shall be signed by an authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository.

(6) A summary of the principal terms of the agreement shall be included in the properties.

(7) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

§ 207.081. [Reserved].

§ 207.090. [Reserved].

§ 207.091. Subscription contracts.

(a) With respect to securities proposed to be sold under one of the following registration statements, a copy of a subscription or sale contract proposed to be used shall be filed with the Commission, as an exhibit, prior to its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) when the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P.S. § 1-206) when the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under

section 3(a)(4) or (11), Regulation A promulgated under section 3(b) of the Securities Act of 1933, or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act where the securities to be sold are interests in a direct public participation program.

§ 207.101. Effective period of registration statement.

(a) A registration statement which has become effective under section 205(c) of the act (70 P.S. § 1-205(c)) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act, except as provided in subsection (d).

(2) Securities included in the registration statement have been sold or the distribution terminated in this Commonwealth, or both.

(3) The Commission issues an order under section 208 of the act (70 P.S. § 1-208) denying, suspending or revoking effectiveness of the registration statement.

(b) A registration statement which has become effective by order of the Commission under section 206 of the act (70 P.S. § 1-206) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act.

(2) Securities included in the registration statement are sold or the distribution terminated in this Commonwealth, or both.

(3) The Commission issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the Commission has required more than one filing for a registration statement, a separate Form 207-J is required for each filing.

(d) Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64), the effective period of a section 205 registration statement may be extended beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the form designated as Form 207-J in accordance with the General Instructions thereto with the Commission prior to the expiration of the currently effective period of registration. The provisions of this section are not available if the issuer, during the 3 year period from the initial effectiveness date of the registration statement in this Commonwealth, is required to file a new registration statement with Securities and Exchange Commission.

§ 207.110. [Reserved].

§ 207.120. [Reserved].

§ 207.130. Notice to purchasers under section 207(m).

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P.S. § 1-206) and to securities transactions which are exempt from registration under sections 203(d) and (p) of the act (70 P.S. §§ 1-203(d) and (p)) and, if required by rule of the Commission, section 203(r) of the act.

(b) The notice to purchasers required by section 207(m)(1) of the act (70 P.S. § 1-207(m)(1))

shall be given in accordance with all of the following:

(1) It shall be in writing.

(2) Reference to the notice shall be made on the cover page of the prospectus used in connection with the offer and sale of the securities.

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to be followed in exercising the right, shall be given in the text of the prospectus.

(4) Reference to the right of withdrawal shall be made in any subscription agreement used.

(5) The reference to the right of withdrawal described in paragraph (2) shall be conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers required by section 207(m)(2) of the act shall be given in accordance with all of the following:

(1) It shall be in writing.

(2) An explanation of the right of withdrawal contained in section 207(m)(2), including the procedure to be followed in exercising the right, shall be given.

(3) The explanation of the right of withdrawal shall be conspicuous, by setting it apart from other text and by underlining or capitalization.

(d) Timely notice of withdrawal of the purchase shall be deemed to have been given by a purchaser within the 2-business day period set forth in section 207(m) of the act if, during the 2-business day period, a written notice to withdraw from the purchase:

(1) Is actually received by the issuer or its affiliate.

(2) Is sent electronically, including by E-mail or facsimile.

(3) Is deposited in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

(4) Is delivered to a messenger or courier service for delivery with applicable fees paid by the sender.

(e) The following language illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act.

“If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a written notice explaining your right to withdraw your acceptance pursuant to section 207(m) of the Pennsylvania Securities Act of 1972, you may elect, within two business days after the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a full refund of all moneys paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw.”

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

“If you have accepted an offer to purchase these securities and have received a written notice

explaining your right to withdraw your acceptance pursuant to section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.”

§ 207.140. Signatures on electronic filings.

Under section 207(n) of the act (70 P.S. § 1-207(n)), the Commission authorizes the acceptance of a typed signature in lieu of any requirement for a manual signature on any notice required to be filed with the Commission under section 211 of the act (70 P.S. § 1-211) which is filed with the Commission electronically through its home page on the World Wide Web.

§ 208.000. [Reserved].

§ 209.010. Required records; report on sales of securities and use of proceeds.

(a) An issuer who sells securities for their own account, directly or through an underwriter, in an offering registered or required to be registered under section 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) or in an offering exempt from registration under sections 202(e), 203(d), (p) or (r) of the act (70 P.S. §§ 1-202(e), 1-203(d), (p) or (r)) shall preserve the following records during the period of the offering and for a period of 3 years following the last sale of securities in this Commonwealth or 1 year after the disposition of all proceeds, whichever is longer:

(1) Ledgers, journals or other records showing payments received from the sale of securities, including date of receipt, amount and from whom received; and disbursements of the payments, including date paid, purpose, amount and to whom made.

(2) A record showing money borrowed and money loaned together with a record of the collateral therefor.

(3) Checkbooks, bank statements, copies of deposit slips, cancelled checks and bank record reconciliations.

(4) Minute books and stock ledgers, including stock transfer records.

(5) A copy of filings with the Commission, correspondence and exhibits related thereto.

(6) Copies of communications sent or originated by the issuer pertaining to the offer, sale or transfer of securities, including subscription agreements, purchase contracts and confirmations.

(7) A list of the names and addresses of persons to whom the securities were offered or sold; the type and amount of securities sold to each; the consideration paid or promised by each; the method of payment, that is, cash, check, property, services, note or other; and the name of the broker-dealer or other persons who represented the issuer in effecting each sale.

(b) Except as set forth in paragraph (3), filing requirements are as follows:

(1) Issuers which have an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64), shall file a report with the Commission by completing Parts I and II of the form in subsection (c) within 55 days after 1 year from the effective

date of the registration statement filed under section 206 of the act.

(2) An issuer which is an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940, shall file with the Commission an annual report on sales of securities in this Commonwealth on Form NF adopted by the North American Securities Administrators Association, Inc. (or a successor form thereto) within the following time periods:

(i) With respect to an open-end or closed-end investment company or face amount certificate company, the report required by this subsection shall be filed with the Commission within 120 days after its fiscal year end.

(ii) With respect to a unit investment trust, the report required by this subsection shall be filed with the Commission within 60 days after 1 year from the date the registration statement relating to the securities sold in the Commonwealth became effective with the United States Securities and Exchange Commission.

(3) The following issuers are not required to file the form in subsection (c) or Form NF (or successor form thereto):

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the maximum fee specified in section 602(b.1)(iv) of the act (70 P.S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the form, designated by the Commission as Form 209 in accordance with the General Instructions thereto.

§ 210.010. Retroactive registration of certain investment company securities.

(a) An open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 - 80b-21), which, during the effective period of registration under section 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206, may apply to the Commission on Form 210 in accordance with the General Instructions thereto to register the securities retroactive to the date of the initial registration.

(b) No application filed on Form 210 may be granted if, at the time the application is filed with the Commission, a civil, criminal or administrative proceeding is pending alleging violations of section 201 of the act (70 P.S. § 1-201) for the sale of securities in this Commonwealth or the securities were sold more than 24 months prior to the date Form 210 was filed with the Commission.

(c) An application filed on Form 210 shall be accompanied by a check made payable to the "Commonwealth of Pennsylvania" in an amount which equals the applicable oversale assessment in section 602.1(d) of the act (70 P.S. § 1-602.1(d)).

§ 211.010. Notice filings for Federally covered securities.

(a) The notices required under section 211(a) of the act (70 P.S. § 211(a)) to be filed by an open-end or closed-end investment company, unit investment trust or face amount certificate company, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-65) (investment companies) shall be made on the Uniform Investment Company Notice Filing Form (Form NF) and shall be accompanied by the applicable filing fees and administrative assessments in sections 602(b.1)(iv) and 602.1(a)(5) of the act (70 P.S. §§ 1-602(b.1)(iv) and 1-602.1(a)(5)).

(b) No documents filed by Investment Companies with the SEC need be filed with the notice described in subsection (a) except for those documents filed with the SEC relating to mergers, acquisitions or reorganizations. In that case, copies of registration statements, prospectuses or posteffective amendments filed with the SEC are required to be filed with the Commission at the time the notice required by subsection (a) is filed.

(c) The notice required by section 211(b) of the act shall be filed with the Commission on Form D promulgated by the SEC and effective as of September 1, 1996, not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth and shall be accompanied by the filing fee in section 602(b.1)(vii) of the act.

§ 301.010. [Reserved].

§ 301.020. Agent transfers.

An agent who wishes to terminate employment with one registered broker-dealer and thereafter commence employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the Commission if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of the National Association of Securities Dealers, Inc.

(2) The transfer is effected in accordance with the terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

§ 301.021. [Reserved].

§ 301.030. [Reserved].

§ 301.040. [Reserved].

§ 301.051. [Reserved].

§ 302.051. Agent registration: bona fide officers, directors and employees.

Whether a person may be deemed a bona fide officer, director, partner or employe of an issuer, or other individual occupying similar status or performing similar functions is dependent upon the particular facts and circumstances, including by way of illustration:

- (1) The duties of the person in addition to those connected with the sale of the issuer's securities.
- (2) The arrangements regarding the person's compensation.
- (3) The parties' intentions as to the persons employment prior and subsequent to the securities offering.

§ 302.060. Dual registration of agents in certain instances.

A controlling person of two otherwise unaffiliated, registered broker-dealers simultaneously may be an agent of both the broker-dealers; provided that, during the period in which the person simultaneously is an agent:

- (1) The person's functions and activities on behalf of one broker-dealer are limited exclusively to dealings and transactions with issuers and involve no function or activity in any sales or offers of sales to investors of any securities.
- (2) Neither the person's functions and activities on behalf of the other broker-dealer nor the activities of the other broker-dealer involve the sale or offer of sale of a security of an issuer for whom the first broker-dealer conducted, or participated in the conduct of, a transaction at a time when the controlling person was the agent of the first broker-dealer.

§ 302.061. Auctioneers exemption from broker-dealer and agent registration.

(a) Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Commission deems it appropriate and in the public interest to exempt persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if all of the following conditions are met:

- (1) The person meets one of the following conditions:
 - (i) Is licensed as an auctioneer, apprentice auctioneer, auction company or auction house under the Auctioneers License Act (AALA) (63 P.S. § 734.1 – 734.34).
 - (ii) Is exempt from registration under section 3(h) of the AALA (63 P.S. § 734.3(h)).
 - (iii) Holds a special license to conduct an auction under section 3(i) of the AALA.
- (2) The person effects transactions in securities solely at an "auction" or at a "sale at auction" as these terms are defined in the AALA.
- (3) The person engages only in effecting transactions in securities at an auction or for sale at auction which constitute a "nonissuer transaction" as that term is defined in section 102(m) of the act (70 P.S. § 1-102(m)).
- (4) The person does not effect transactions in securities at an auction or for sale at auction more than three times in any consecutive period of 24 months.

(5) The person and any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

- (i) An order described in section 305(a)(iv) of the act (70 P.S. § 1-305(a)(iv)).
- (ii) An injunction described in section 305(a)(iii) of the act.
- (iii) A criminal conviction described in section 305(a)(ii) of the act.
- (iv) An order of the Commission issued under section 512 of the act (70 P.S. § 1-512).
- (v) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).
- (vi) An order of the Commission imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(b) Solely for purposes of subsection (a)(3), a transaction where a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), acting as a fiduciary under a trust agreement, estate administration or other similar relationship, causes the bank's securities to be offered and sold at auction from such accounts shall be deemed to be a nonissuer transaction.

§ 302.062. [Reserved].

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

(a) Under section 302(f) of the act (70 P.S. § 1-302(f)), the Commission deems it appropriate and in the public interest to exempt financial institutions and individuals representing financial institutions from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301), if the activities of the financial institution and individuals representing the financial institutions are conducted under a networking arrangement or brokerage affiliate arrangement.

(b) For purposes of this section, the following terms have the following meanings:

Financial institution - A Federal or State chartered bank, savings and loan association, savings bank or credit union and any service corporation affiliated with these entities.

Networking arrangement or brokerage affiliate arrangement - A contractual arrangement between a broker-dealer registered under section 301 of the act and a financial institution whereby the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public which transactions are effected on, or emanate from, the premises of a financial institution.

§ 302.064. Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Commission deems it appropriate and in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P.S. § 1-301), if all the following requirements are met:

- (1) The agent is representing a broker-dealer which meets the following requirements:
 - (i) Registered under section 301 of the act.

(ii) A member of a National securities exchange registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk).

(2) The agent's only customers are broker-dealers registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 or section 301 of the act.

(3) The agent is not subject to a currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration or an order of the Commission issued under section 512 of the act (70 P.S. § 1-512).

§ 302.065. Canadian broker-dealer exempt.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the Commission deems it appropriate and in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) when effecting transactions in securities in this Commonwealth with persons described in paragraph (1), if the broker-dealer meets the conditions of paragraph (2).

(1) The customer is one of the following:

(i) A person from Canada who temporarily is present in this Commonwealth with whom the Canadian broker-dealer had a *bona fide* business-customer relationship before the person entered this Commonwealth.

(ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.

(2) The Canadian broker-dealer meets the following conditions:

(i) Is a member in good standing of a self-regulatory organization or stock exchange in Canada at the time it is effecting transactions into this Commonwealth in reliance on this section.

(ii) Is registered as a broker or dealer in good standing in the Province or Territory of Canada from which it is effecting transactions into this Commonwealth in reliance on this section.

(iii) Discloses to its customers in this Commonwealth at the time of a transaction made in reliance on this section that it is not registered under the act.

§ 303.011. Broker-dealer registration procedures.

(a) An application for initial registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Application for Broker-Dealer Registration (Form BD), or a successor form, and shall be made in the following manner:

(1) An applicant which is not a member of the National Association of Securities Dealers, Inc. (NASD) or a member of a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk) shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)), and financial statements in the form required by subsections (b) and (c).

(2) An applicant which is not a member of the NASD but is a member of a National securities exchange registered with the SEC under the Securities Exchange Act of 1934 shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(3) An applicant which is a member of NASD shall file Form BD in the manner set forth in § 603.011(f) (relating to filing requirements) accompanied by the filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(b) Except for applicants described in subsections (a)(2) and (3), every application shall be accompanied by a statement of the financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year. If the date of the most recent audited statement of financial condition is more than 45 days prior to the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing. As part of the statement, the Commission may require the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(c) Except for applicants described in subsections (a)(2) and (3), an applicant that has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of income for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year.

(d) An applicant described in subsection (a)(2) or (3) shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(e) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Commission an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.012. Investment adviser registration procedure.

(a) An application for initial registration as an investment adviser shall contain the information requested in and shall be made on the Uniform Application for Investment Adviser Registration (Form ADV), or a successor form. The applicant shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of the form accompanied by the filing fee in section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment in section 602.1(a)(4) of the act and any exhibits required by this section.

(b) Except as set forth in subsection (f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser:

(1) An applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file an audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard audit report containing an unqualified opinion of

an independent certified public accountant. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant.

(2) An applicant that has discretionary authority over client funds or securities, but not custody, shall file a balance sheet which need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet, which must be prepared in accordance with generally accepted accounting principles as of a date within 45 days of filing the application. Each balance sheet required by this paragraph may be unaudited and prepared by management of the applicant. Each balance sheet required by this paragraph also shall contain a representation by the applicant that the balance sheet is true and accurate.

(3) An applicant whose proposed activities do not come within paragraph (1) or (2) need not file a statement of financial condition.

(c) As part of the requirements relating to the statements of financial condition set forth in subsection (b), the Commission may require the following:

(1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.

(2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) In the case of a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business, an affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business.

(d) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the Commission an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

(e) For purposes of this section, the following terms have the following meanings:

Principal place of business – The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1 – 80b-21).

(f) An applicant that maintains its principal place of business in a state other than this Commonwealth need not comply with subsection (a) if the applicant meets the following:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at

any time during the preceding 12-month period.

§ 303.013. Agent registration procedures.

(a) An application for initial registration as an agent of a broker-dealer or issuer shall contain the information requested in and shall be made on Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form. Except as provided in subsection (b), the agent and the broker-dealer or issuer shall complete and file with the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and evidence of passage of the examinations required by § 303.031 (relating to examination requirements for agents).

(b) An applicant for registration as a agent of a broker-dealer which is a member firm of the National Association of Securities Dealers (NASD) shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

- (1) A completed and executed Form U-4 and exhibits thereto.
- (2) The filing fee required by section 602(d.1) of the act.
- (3) The compliance assessment required by section 602.1(a)(1) of the act.
- (4) Evidence of passage of the examinations required by § 303.031.

(c) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.014. Investment adviser representative registration procedures.

(a) An application for initial registration as an investment adviser representative of an investment adviser or Federally-covered adviser shall contain the information requested in and shall be made on the Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form. The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and the results evidencing passage of the examinations required by § 303.032 (relating to qualification of and examination requirement for investment advisers and investment adviser representatives).

(b) An investment adviser representative and an investment adviser or Federally-covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or Federally-covered adviser shall file with the Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.015. Notice filing for Federally-covered advisers.

(a) *Initial Filing.* The notice required to be filed by Federally-covered advisers under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall be the uniform application for investment adviser registration (Form ADV) or successor form thereto as filed with the United States Securities and Exchange Commission. Prior to the Federally-covered adviser conducting advisory business in this Commonwealth, a completed Form ADV accompanied by the notice filing fee required by Section 602(d.1) of the act (70

P.S. § 1-602(d.1)) shall be filed with the Commission or with an investment adviser registration depository designated by order of the Commission.

(b) *Renewals.* Every Federally-covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in Section 602(d.1) of the act. Payment of the notice filing fee should be made directly with the Commission or with an investment adviser registration depository designated by order of the Commission.

§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally-covered adviser.

(a) The following apply with respect to broker-dealers:

(1) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act (70 P.S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(a) promulgated under the Securities Exchange of 1934, except that the successor broker-dealer shall file the amendments to Form BD with the Commission,

(2) When a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under section 301 of the act and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (successor broker-dealer) for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Commission.

(b) The following shall apply to investment advisers:

(1) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under section 301 of the act (successor investment adviser) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser may file an initial application for registration by amending Form ADV of the predecessor and, under section 303(b) of the act (70 P.S. § 1-303(b)), succeed to the unexpired portion of the predecessor's term of registration.

(2) When an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under section 301 of the act for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall file Form ADV with the Commission. Upon registration, the successor investment adviser, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's term of registration.

(c) When a Federally covered adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a registered investment adviser or of another Federally-covered adviser (successor Federally-covered adviser), the successor Federally-covered adviser shall file with the Commission either Form ADV or an amendment to Form ADV as required under SEC Release No. IA-1357 (December 28, 1992) and, under Section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's notice period.

§ 303.031. Examination requirement for agents.

(a) An individual may not be registered as an agent under the act unless the individual has met the requirements of subsections (b) and (c):

(b) The applicant has received a passing grade on the securities examination for principals or registered representatives administered by the National Association of Securities Dealers, Inc., the New York Stock Exchange or the United States Securities and Exchange Commission within 2 years prior to the date of filing an application for registration. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a waiver of the examination requirement by the NASD.

(iii) The applicant has received a Commission order waiving the examination requirement.

(c) The applicant has received a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or, alternatively, the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by the NASD within 2 years prior to the date of filing an application for registration. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the Series 63 or, alternatively, the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a Commission order waiving the requirement to take the Series 63 or, alternatively, the Series 66 and Series 7.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

(a) *Examination requirements.* An individual may not be registered as an investment adviser or investment adviser representative under the act unless the person has met one of the following qualifications:

(1) Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on the General Securities Representative Examination (Series 7) administered by the National Association of Securities Dealers, Inc. and the Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) Received, on or after January 1, 2000, a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations and has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately prior to the date of filing an application with the Commission.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following

qualifications:

(i) Prior to January 1, 2000, the individual had received a passing grade on the Series 2, 7, 8, or 24 examination for registered representatives or supervisors administered by the National Association of Securities Dealers, Inc. and the Series 65 or Series 66 examinations.

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative or principal or agent of a broker-dealer for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Commission.

(2) An individual need not comply with subsection (a) if the individual meets the following qualifications:

(i) Prior to January 1, 2000, the individual was registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives.

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Commission.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following qualifications:

(i) Has no disciplinary history which requires an affirmative response to Items 23A-E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

(ii) Has been awarded any of the following designations which, at the time of filing of the application with the Commission, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(B) Chartered Financial Consultant (ChFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialists (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the Commission that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the Commission that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received an order from the Commission waiving compliance with subsection (a).

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in subsection (e), every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of \$25,000. The aggregate indebtedness of a registered broker-dealer may not exceed 1500% of its net capital. For purposes of this section, the terms “net capital” and “aggregated indebtedness” have the meanings set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a - 78mm).

(b) As a condition of the right to continue to transact business, every broker-dealer registered under the act that is not registered as a broker-dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act immediately shall notify the Commission if the broker-dealer’s aggregate indebtedness exceeds 1500% of its net capital or if its total net capital is less than the minimum required. Within 24 hours after transmitting the notice, the broker-dealer shall file a report of its financial condition with the Commission including the following:

(1) A proof of money balances of ledger accounts in the form of a trial balance.

(2) A computation of net capital and aggregate indebtedness as those terms are used in this section and a computation of the ratio of aggregate indebtedness to net capital.

(3) An analysis of the aggregate market value of fully paid securities in customers’ security accounts which are not segregated.

(4) A proof of ledger net credit balances of moneys borrowed from banks, trust companies and from other financial institutions, and from others, which are fully or partially secured by securities carried for the account of a customer.

(5) A computation of the aggregate amount of customers’ ledger debit balances.

(6) A computation of the aggregate amount of customers’ ledger credit balances.

(7) A statement as to the approximate number of customer accounts.

(c) The term “customer” of a broker-dealer as used in this subsection includes every person except the broker-dealer.

(d) The Commission may by order permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the SEC to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).

(e) Every broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the SEC shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in Rule 15c3-1 (17 CFR 240.15c3-1)(relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934.

§ 303.042. Investment adviser capital requirements.

(a) Every investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall maintain at all times the following net worth requirements:

(1) The following applies when an investment adviser has its principal place of business in a state other than this Commonwealth.

(i) If the investment adviser currently is licensed as an investment adviser in the state in which it maintains its principal place of business and is in compliance with the state's net worth requirements, the net worth required by this section shall be the same as the net worth requirement imposed by that state.

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth required by this section shall be the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection (e), an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 301 of the act shall maintain at all times a minimum net capital of \$25,000.

(3) An investment adviser that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 unless the investment adviser meets any of the following:

(i) The investment adviser has custody solely as a result of receiving fees directly deducted from clients' funds or securities if the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(ii) The investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities if:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle prior to forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party which describe the amount of the fees (including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based), expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(iii) The investment adviser has custody solely as a result of acting as trustee for a beneficial trust in which the beneficial owners of the trust are a parent or step-parent; grandparent or step-grandparent; spouse, brother or step-brother, sister or step-sister; or grandchild or step-

grandchild of the investment adviser.

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000. An investment adviser will not be deemed to be exercising discretion and subject to the requirements of this paragraph when it places trade orders with a broker-dealer under a third party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its clients that acknowledges that a third-party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(iii) A third-party trading agreement is executed between the investment adviser, the client and the broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than \$1,200 per client shall maintain at all times a positive net worth.

(b) As condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify, by the close of business on the next business day, the Commission if the investment adviser's total net worth is less than the minimum required net worth. Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

- (1) A proof of money balances of ledger accounts in the form of a trial balance.
- (2) A computation of net worth.
- (3) An analysis of clients' securities and funds which are not segregated.
- (4) A computation of the aggregate amount of clients' ledger debit balances.
- (5) A computation of the aggregate amount of clients' ledger credit balances.
- (6) A statement as to the number of client accounts.

(c) For the purpose of this section, the following terms have the following meanings:

Custody - A person is deemed to have custody of client funds or securities if the person directly or indirectly holds clients funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

Independent party - A person who meets all of the following requirements:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Within the preceding consecutive 12 month period, did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement.

Net capital - The meaning set forth in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk).

Net worth - The excess of assets over liabilities as determined by generally accepted accounting principles reduced by the following:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of an intangible nature.

(iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to stockholders and officers in the case of a corporation; members and managers in the case of a limited liability company; and advances or loans to partners in the case of a partnership.

Pooled investment vehicle -

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64)

Principal place of business - The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A §§ 80b-1 – 80b-21).

Qualified custodian - The following shall be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act (70 P.S. § 1-301).

Supervised person - A person who meets the definition in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(25)).

(d) For investment advisers registered or required to be registered under the act, the

Commission may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(e) The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, SEC Rule 15c3-1.

(2) A member of a National Securities Exchange whose members are exempt from SEC Rule 15c3-1 under subsection (b)(2) thereof and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

§ 303.051. Surety bonds.

(a) The following applies with respect to the filing of a surety bond with the Commission by an investment adviser:

(1) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) may, by order of the Commission, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest \$5,000. The surety bond shall be filed with the Commission on Uniform Surety Bond Form (Form U-SB) or successor form thereto; shall be subject to the claims of all clients of the investment adviser regardless of the client's state of residence; and shall be issued by a person licensed to issue surety bonds in this Commonwealth.

(2) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with paragraph (1) unless the investment adviser meets the following qualifications:

(i) Is registered as an investment adviser in that state.

(ii) Is in compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(3) For purposes of this section, the term "*principal place of business*" has the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Adviser Acts of 1940 (15 U.S.C.A. §§ 80b-1 – 80b-21).

(b) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk) may, by order of the Commission, be permitted to have and maintain for the registration period a surety bond in the amount of the net capital deficiency rounded up to the nearest \$5,000. The surety bond shall:

(1) Be filed with the Commission on Form U-SB or successor form thereto.

(2) Be subject to the claims of all clients of the broker-dealer regardless of the client's state of residence.

(3) Be issued by a person licensed to issue surety bonds in this Commonwealth.

(c) Upon request of the Commission, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

§ 304.011. Broker-dealer required records.

(a) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk).

(b) A broker-dealer registered under the act that is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) immediately shall notify the Commission if the broker-dealer fails to make and keep current the books and records required by this section. Within 24 hours after filing the notice with the Commission, the broker-dealer shall file with the Commission a report stating what steps have been taken and are being taken to fully comply with this section.

(c) Every broker-dealer registered under the act shall make, keep and preserve either a separate file of written complaints of customers and actions taken by the broker-dealer in response thereto, or a separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer. A “complaint” shall be deemed to include a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer. A registered broker-dealer that also is registered as a broker or dealer with the SEC shall be deemed to be in compliance with the requirements of this subsection if it maintains records of customer complaints as prescribed by applicable SEC rules.

(d) The records required to be maintained under this section shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar medium; electronic or digital storage medium; computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly upon reasonable request of the Commission or its representatives.

§ 304.012 Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the

investment adviser.

(5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) All trial balances, financial statements, net worth computation, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement. The net worth computation means the net worth required by § 303.042 (relating to investment adviser capital requirements), if any.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to one or more of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) Any receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of any order to purchase or sell any security, except that an investment adviser:

(A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(B) With respect to any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than 10 persons (including transmission by electronic means), the investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent except, that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record shall state:

(I) The title and amount of the security involved; the date and nature of the transaction (that is, purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative* - A partner, officer or director of the investment adviser; any employe who participates in any way in the determination of which recommendations shall be made; any employe of the investment adviser who, in connection with assigned duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control* - The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(v) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction

acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control.

(B) In securities which are direct obligations of the United States.
The record shall state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (that is, purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of the following:

(A) Its total sales and revenues.

(B) Its income (or loss) before income taxes and extraordinary items, from other business or businesses.

(v) For purposes of this paragraph, the following terms have the following meanings:

(A) *Investment adviser representative* - When used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, the term means any partner, officer, director or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employe who, in connection with assigned duties, obtains information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations as follows:

(I) Any person in a control relationship to the investment adviser.

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.

(B) *Control* - The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A person who owns beneficially, either directly or through one or more controlled

companies, more than 25% of the voting securities of a company shall be presumed to control the company.

(vi) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure rule), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser shall maintain the following:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of the fee.

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor.

(iii) A copy of the solicitor's written disclosure statement if required by § 404.012 (relating to cash payment for client solicitation).

(iv) For purposes of this paragraph, the term "solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser) except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in paragraph (12), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(b) If an investment adviser subject to subsection (a) has custody or possession of securities or funds of any client, the records required to be made and kept by subsection (a) also shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(c) Every investment adviser subject to subsection (a) that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

(d) Books or records required by this section may be maintained by the investment adviser so that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Every investment adviser subject to subsection (a) shall preserve the following records in the manner prescribed:

(1) The books and records required to be made under subsections (a), (b) and (c) (1) (except for books and records required to be made under subsection (a)(11) and (a)(16)), shall be maintained and preserved in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (18) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(4) Books and records required to be made under subsection (a)(19) and (22) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 years being

in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsection (a)(3), (7)-(10), (14)-(15), (17)-(19), (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address or telephone number.

(f) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where the books and records will be maintained during the period.

(g) The requirements for the storage of records are as follows:

(1) Records required to be maintained and preserved under this section may be immediately produced or reproduced by photograph on film or, as provided in paragraph (2) on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record.

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request.

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required.

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction.

(v) With respect to records stored on photographic film, at all times have available for the Commission's examination of its records under section 304(a) of the act (70 P.S. § 1-304(a)) facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) An investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this section, the following terms have the following meanings:

Client - Any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

Investment supervisory services - The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client. Discretionary power does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Principal place of business - The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1 - 80b-21).

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained and preserved in compliance with this section.

(j) The requirements of this section do not apply to an investment adviser registered under section 301 of the act that meets the following conditions:

- (1) Has its principal place of business in a state other than this Commonwealth.
- (2) Is licensed as an investment adviser in the state where it has its principal place of business.
- (3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 304.021. Broker-dealer required financial reports.

(a) Every broker-dealer registered under the act which is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk) shall file annually with the Commission a report consisting of a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) The annual report of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The accountant shall submit as a supplementary opinion comments, based upon the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) A broker-dealer registered under the act which also is registered as a broker or dealer with the SEC shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(d) The report required by this section shall be filed within 120 days following the end of the broker-dealer's fiscal year.

§ 304.022. Investment adviser required financial reports.

(a) Except as provided in subsections (b) and (c), the following investment advisers registered under section 301 of the act (70 P.S. § 1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of \$1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(2) An investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commission a balance sheet as of the end of its fiscal year. The balance sheet need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall contain a representation by the investment adviser that it is true and accurate.

(b) The requirements of subsection (a) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser meets the following conditions:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12 month period.

(c) When an investment adviser registered under section 301 of the act inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third party checks within 24 hours, the investment adviser will not be deemed to have custody and subject to the requirements of subsection (a) if the investment adviser maintains records which contains the following information about the securities or funds returned to the client:

(1) If a security:

(i) The name of the issuer.

(ii) The type of security.

(iii) The date of issuance.

(iv) A certificate number or other identifying information.

(v) The denomination, interest rate and maturity date applicable to a debt security.

(vi) The name in which the securities are registered.

(2) If funds:

(i) The name of the payee or beneficial owner.

(ii) The check number, transmittal number, payor name and address and any other identifying information.

(3) The date on which the funds or securities were received by the investment adviser.

(4) The date on which the funds or securities were sent by the investment adviser to the client.

(5) The form of delivery used by the investment adviser to transmit the funds or securities to the client and a copy of written confirmation of receipt of the funds or securities by the client.

(d) For purposes of this section, the following term has the following meaning:

Principal place of business - The meaning set forth in 17 CFR 275-203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1--80b-21).

§ 304.041. Examinations of broker-dealers and investment advisers.

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act shall honor all requests by representatives of the Commission to have physical access to all areas of the office which is the subject of the examination and, upon request, shall permit them to review and examine the files in the physical place where the files routinely are maintained. In complying with a request, a representative of the broker-dealer or investment adviser may accompany the representatives of the Commission.

(b) Files referred to in subsection (a) include, but are not limited to, books, ledgers, accounts, records, and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the United States Securities and Exchange Commission or rules of a National Securities Exchange or National securities association registered with the United States Securities and Exchange Commission, and any document reasonably related to these required records.

§ 304.051. Broker-dealer compensation.

No broker-dealer registered under the act may charge or receive commissions or other compensation in connection with the purchase or sale of securities unless the compensation is fair and reasonable and is determined on an equitable basis, adequately disclosed to each customer in writing at or prior to final confirmation. Compensation which complies with the Conduct Rules of the National Association of Securities Dealers, Inc. shall be deemed fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, need not be disclosed in writing.

§ 304.052. Investment adviser compensation.

No investment adviser registered under the act may charge or receive commissions or other compensation in connection with the giving of investment advice unless the compensation is fair and reasonable and is determined on an equitable basis.

§ 304.061. Free credit balances.

No broker-dealer registered or required to register under the act may use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer unless the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every 3 months, a written statement informing the customer of the amount due to the customer by the broker-dealer on the date of the statement and containing a written notice that:

- (1) Funds are not segregated and may be used in the business of the broker-dealer.
- (2) Funds are payable on the demand of the customer.

For the purpose of this section, the term “customer” means every person other than the broker-dealer.

§ 305.011. Supervision of agents, investment adviser representatives and employees.

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees.

(1) Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the act and this title and to detect and prevent any violations of statutes, rules, regulations or orders described in section 305(a) (v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix)), the Conduct Rules of the National Association of Securities Dealers, Inc., or any applicable fair practice or ethical standard promulgated by the United States Securities and Exchange Commission or by a National Securities Exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk).

(2) Final responsibility for proper supervision shall rest with the broker-dealer and investment adviser.

(b) Every issuer who employs agents registered under section 301 of the act shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) Methods to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) Methods to be used to determine the good character, business repute, qualifications, and experience of any person prior to making application for registration of that person with the Commission and hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced. In acquitting their obligations under this section, registrants are to consult NASD Notice to Members 98-38 (May 1998) and SEC Release No. 34-38174 (January 15, 1997). In accordance with NASD Notice to Members 98-38, unannounced visits may be appropriate where there are indicators of misconduct such as receipt of significant customer complaints; personnel with disciplinary records; or excessive trade corrections, extensions, liquidations, or variable contract replacements.

(i) An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and nonbranch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer's written supervisory procedures.

(ii) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(iv) For purposes of this section, the terms "office of supervisory jurisdiction" and "branch office" shall have the same meaning as those terms are defined in NASD Conduct Rule 3010(g) or any successor thereto. The term "nonbranch location" means any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

(d) Records required to be maintained under this section shall be maintained for 5 years, the first 2 years being in an easily accessible place. The retention and preservation of records may be on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(e) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act (70 P.S. § 1-301), the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

- (1) Has its principal place of business in a state other than this Commonwealth.
- (2) Is licensed as an investment adviser in the state where it has its principal place of business.
- (3) Is in compliance with the recordkeeping requirements of the state in which it has

its principal place of business.

§ 305.012. Convicted.

The term “convicted,” as used in section 305(a)(ii) of the act (70 P.S. § 1-305(a)(ii)), includes a verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not sentence has been imposed.

§ 305.019 Dishonest and unethical practices.

(a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and has a duty to act primarily for the benefit of its customers. Further, these persons shall observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

(b) Under section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)), the Commission may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate thereof, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(c) The Commission, for purposes of section 305(a)(ix) of the act, will consider the actions in paragraphs (1) - (3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer. The conduct described in paragraphs (1) - (3) is not exclusive. Engaging in other conduct inconsistent with the standards in subsection (a), such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices or taking unfair advantage of a customer or former customer in any aspect of a tender offer also constitute grounds for denial, suspension, conditioning or revocation of any registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative.

(1) *Broker-dealers.* Includes the following actions:

(i) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(ii) Inducing trading in a customer’s account which is excessive in size or frequency in view of the financial resources and character of the account.

(iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs and other relevant information known by the broker-dealer.

(iv) Executing a transaction on behalf of a customer without authorization to do so.

(v) Exercising discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.

(vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(vii) Failing to segregate customers' free securities or securities held in safekeeping.

(viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.

(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership thereof.

(B) Entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. Nothing in this subsection prohibits a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer

believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of this practice would be a distribution of nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of a prospectus or disclosure.

(xviii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(xix) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member.

(xx) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents.* Includes the following actions:

(i) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(ii) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(iv) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents.

(v) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(vi) Engaging in conduct specified in paragraphs (1)(ii)-(vi), (ix), (x), (xiv)-(xvii) (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives.* Includes the following actions:

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(iii) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(iv) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(v) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employe of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

(x) Charging a client an unreasonable advisory fee.

(xi) Failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employe of the investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from the clients for the services.

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the

investment adviser, the investment adviser representative or an employe of the investment adviser.

(xii) Guaranteeing a client that a specific result will be achieved - gain or no loss - with advice which will be rendered.

(xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1 - 80b-21).

(xiv) Disclosing the identity, affairs or investments of a client unless required by law to do so, or unless consented to by the client.

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, where the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of § 404.013 (relating to investment adviser custody or possession of funds or securities of clients).

(xvi) Entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract.

(xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-4a) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act (70 P.S. § 1-301) notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3).

(xix) To indicate, in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the provisions of this act or any rule, regulation or order issued thereunder.

(d) This section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act (70 P.S. § 1-401(a) or (c) or 1-404).

§ 305.061. Withdrawal of registration or notice filing.

(a) The following applies to investment advisers that want to withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301):

(1) For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser has become a Federally-covered adviser subject to exclusive registration with the United States Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission.

(2) For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser no longer transacts business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W), or a successor form with the Commission or with an investment adviser registration depository designated by order of the Commission.

(b) An application to withdraw from registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form.

(c) To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission within 30 days from the date of termination.

(d) To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall file Form U-5 or successor form thereto with the Commission within 30 days from the date of termination.

(e) To withdraw a notice filing, a Federally-covered adviser shall file a notice with the Commission or with an investment adviser registration depository designated by order of the Commission.

§ 401.010. [Reserved].

§ 401.020. Professional responsibility.

For the purposes of any action or proceeding initiated by the Commission, under 2 Pa.C.S. § 503 (relating to discipline), 1 Pa. Code § 31.28 (relating to suspension and disbarment) or under any other applicable rules of practice adopted by the Commission, the phrase “act, practice or course of business” as used in this chapter shall include a statement, opinion, report or service by an attorney, accountant, engineer, appraiser or other professional person who examines, renders or produces a statement, opinion, report or service if such professional person knew or in the exercise of reasonable care should have known that the statement, opinion, report or service materially aided or abetted a violation of the act or the regulations adopted thereunder.

§ 401.030. Underwriting commitment letters and letters of intent.

(a) It shall be unlawful for any person to circulate, quote, present, publish or otherwise use any underwriting commitment letter, letter of intent to underwrite, or other document evidencing the present or future intent of any person to underwrite or otherwise conduct a public offering of securities, whether presently or in the future, on behalf of any issuer when such circulation, quotation, presentation, publication or other use is intended to fraudulently induce prospective public investors to purchase the securities of that issuer or any related issuer, except that this section shall not be

applicable to customary disclosures to institutional investors or to the employees of a commercial bank or other financial institution for the purpose of the issuer's obtaining financing from such institution or to disclosures among underwriters or prospective members of an underwriting group.

(b) Nothing in subsection (a) shall be deemed to prevent the normal disclosure of an underwriting agreement in a prospectus issued pursuant to a registration statement under the Securities Act of 1933 (15 U.S.C.A. §§ 77a -- 77z-3), or this act.

§ 401.040. [Reserved].

§ 402.000. [Reserved].

§ 403.010. Prohibited transactions and practices.

(a) Each broker-dealer or agent shall not enter into any transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security, if such market exists.

(b) Each broker-dealer or agent who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe that the recommendation is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by or made available to such broker-dealer or agent.

(c) Each broker-dealer or agent shall not exercise any discretionary power or authority for any customer who is not an institutional investor as defined in these regulations unless such customer has given prior written authorization to exercise such power or authority to a stated individual or entity who is a broker-dealer or agent. This subsection shall not be applicable to customer limit orders for the purchase or sale of securities.

(d) With respect to the activities of each broker-dealer or agent, the phrase "manipulative, deceptive or other fraudulent scheme, device or contrivance," as used in section 403 of the act (70 P.S. § 1-403) is hereby defined to include, without limitation, the following:

(1) Any act of a broker-dealer or agent designed to effect with or for the account of any customer who is not an institutional investor as defined in these regulations with respect to which such broker-dealer or agent is vested with any discretionary power or authority or with respect to which such broker-dealer or agent is able by reason of the trust and confidence of the customer and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account. This subsection shall not be applicable to customer limit orders for the purchase or sale of securities.

(2) Any representation made to a customer by a broker-dealer or agent that any security is being offered to such customer "at the market" or at a price reasonable related to the market price shall not be made unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated, or by any person controlled by, controlling, or under common control with the broker-dealer.

(3) Any acceptance by a broker-dealer or agent participating in any primary or secondary distribution of securities, other than a firm commitment underwriting of any part of the sale price of any security being distributed unless:

(i) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(ii) The money or other consideration received is promptly transmitted to a bank or other financial institution which has agreed in writing to hold such funds in escrow for the persons who have the beneficial interest therein and to transmit or return such funds directly to the persons entitled thereto upon the occurrence of a specified event or contingency.

(4) Any act of a broker-dealer or agent designed to effect with or for the account of any customer any transaction in, or to induce the purchase or sale by such customer of any security in the primary or secondary distribution of which such broker-dealer or agent is participating or is otherwise financially interested unless such broker-dealer or agent, at or before the settlement date, notifies such customer of the existence of such participation or interest.

(5) Any act of a broker-dealer or its agent controlled by, controlling or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of such security unless such broker-dealer or its agent, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the settlement date.

§ 404.010. Advertisements by investment advisers and investment adviser representatives.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P.S. § 1-404), for any investment adviser or investment adviser representative, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind by any customer concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service rendered to the customer by the investment adviser or investment adviser representative.

(2) Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this does not prohibit an advertisement which sets forth or offers to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the 12-month period immediately preceding the date of the publication of the advertisement, and which:

(i) Includes the name of each security recommended, the date and nature of each such recommendation (for example, whether to buy, sell or hold) the market price at the time, the price at which the recommendation was to be acted upon, and the current market price of each such security.

(ii) Contains the following cautionary legend prominently displayed on the first page thereof in print or type as large as the largest print or type used in the body or text stating: "IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST."

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use.

(4) Which contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is

or will be furnished absolutely without condition or obligation.

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation (including free or discounted securities) received directly or indirectly in connection with making a recommendation concerning a specific security.

(6) Which recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person upon request a tabular presentation of:

(i) The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for clients.

(ii) The price or price range at which the securities listed in subparagraph (i) were purchased.

(iii) The date or range of dates during which the securities listed in response to subparagraph (i) were purchased.

(b) For the purpose of this section, the term “advertisement” includes any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

(1) Any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(2) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(3) Any other investment advisory service with regard to securities.

(c) For the purpose of this section, the term “client” means any person to whom the investment adviser or investment adviser representative has given investment advice for which the investment adviser or investment adviser representative has received compensation.

(d)
This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. § 1-401(a) or (c) or 1-404).

§ 404.011. Investment adviser brochure disclosure.

(a) Failure of an investment adviser to provide each advisory client or prospective advisory client the disclosure required by this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as required by this section. The brochure and supplements shall contain the information required by Part 2 of Form ADV (CFR 279.1).

(c) An investment adviser shall deliver to each client and prospective client all of the following:

(1) A current firm brochure.

(2) Current brochure supplements for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements required by this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client.

(2) At the time of entering into a contract, if the advisory client has a right to terminate the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by subsection (b). If a client accepts a written offer, the investment adviser shall send to that client the current brochure and supplements within 7 days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members or the trust's beneficial owners as a client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if the information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Except as provided by paragraph (1), if the investment adviser is a sponsor of a wrap fee program, the brochure required to be delivered by subsection (b) to a client or prospective client of the wrap fee program shall be a wrap fee brochure containing all the information required by Form ADV. Any additional information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(1) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information specified in Part 2A Appendix 1 to Form ADV.

(2) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under this section.

(i) In accordance with Part 2 of Form ADV, the investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients promptly when any information contained in the brochure or brochure supplement becomes materially inaccurate. The amendments shall be promptly filed with the Commission or with an investment adviser registration depository designated by the Commission.

(j) Delivering a brochure or supplement in compliance with this section does not relieve the investment adviser of any other disclosure obligations which the investment adviser may have to its clients or prospective clients under the act or this title.

(k) For the purposes of this section, the following terms have the following meanings:

(1) *Client* - A person to whom the investment adviser has given investment advice and for which the investment adviser has received compensation.

(2) *Entering into* - In reference to an investment advisory contract, the term does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

(3) *Portfolio manager* - The process of determining or recommending securities transactions for any portion of a client's portfolio.

(4) *Sponsor* - Any investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

(5) *Wrap fee program* - A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

§ 404.012. Cash payment for client solicitation.

(a) Failure of an investment adviser to comply with the requirements of this section concerning cash payments for client solicitation constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser may not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) The investment adviser is registered under the act.

(2) The solicitor, unless exempted, is registered under the act.

(3) The cash fee is paid pursuant to a written agreement to which the investment adviser is a party.

(4) The written agreement required by paragraph (3) shall:

(i) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor.

(ii) Contain an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the rules thereunder.

(iii) Require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the following:

(A) The investment adviser's written disclosure statement required by § 404.011 (relating to investment adviser brochure disclosure).

(B) A separate written disclosure document which contains the following:

(I) The name of the solicitor.

(II) The name of the investment adviser.

(III) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser.

(IV) A statement that the solicitor will be compensated for the solicitation services by the investment adviser.

(V) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor.

(VI) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of the advisory fees charged by the investment adviser if the differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(5) The investment adviser receives from the client prior to, or at the time of, entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement required by § 404.011 and the solicitor's written disclosure document required by paragraph (4)(iii)(B).

(c) For purposes of subsection (b)(4), this section does not apply to an investment adviser when the cash fee is paid to a solicitor as follows:

(1) With respect to solicitation activities for the provision of impersonal advisory services only.

(2) A solicitor who is one of the following:

(i) A partner, officer, director or employe of the investment adviser.

(ii) A partner, officer, director or employe of a person which controls, is controlled by, or is under common control with the investment adviser if the status of the solicitor as a partner, officer, director or employe of the investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) Nothing in this section relieves a person of a fiduciary or other obligation to which the person may be subject under the law.

(e) For purposes of this section, the following terms have the following meanings:

(1) *Client* - Any prospective client.

(2) *Impersonal advisory services* - Investment advisory services provided solely by means of one of the following:

(i) Written materials or oral statements which do not purport to meet the objectives or needs of the specific client.

(ii) Statistical information containing no expressions of opinions as to the investment merits of particular securities.

(iii) Any combination of the foregoing services.

(3) *Solicitor* - A person or entity who, for compensation, directly or indirectly, solicits a client for, or refers a client to, an investment adviser.

§ 404.013. Investment adviser custody or possession of funds or securities of clients.

(a) Failure of an investment adviser not registered as a broker dealer that has custody or possession of funds or securities in which any client has a beneficial interest to comply with the requirements of this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody or possession of funds or securities in which any client has any beneficial interest shall:

(1) Notify the Commission in writing that the investment adviser has or may have custody. The notification shall be given on Form ADV.

(2) Segregate the securities of each client marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) Deposit all client funds, in one or more bank accounts containing only clients funds.

(4) Maintain the accounts described in paragraph (3) in the name of the investment adviser as agent or trustee for the clients.

(5) Maintain a separate record for each account described in paragraph (3) showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

(6) Immediately after accepting custody or possession of funds or securities from a client, notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client.

(7) At least once every 3 months, send each client or the client's authorized representative as defined in this section an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during that period or have a reasonable basis for believing that a qualified custodian will send an itemized statement to each client or the client's authorized representative during the same time interval containing substantially the same information.

(8) At least once every calendar year, engage an independent certified public accountant to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, must be filed with the Commission within 30 days after each examination.

(c) When an independent certified public accountant makes an examination described in subsection (b)(8) and, upon examination, finds material discrepancies, the accountant shall notify the Commission within 1 business day of the finding by means of facsimile transmission or electronic mail, followed by first class mail, directed to the Commission's Division of Licensing.

(d) For purposes of this section, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(e) For the purpose of this section, the following terms have the following meanings:

Authorized representative - The person specified in a written authorization which the client has signed and filed with the investment adviser or qualified custodian authorizing the investment adviser or qualified custodian to deliver the client's account statements to that person.

Qualified custodian - The following will be considered qualified custodians for purposes of this section:

- (i) A bank as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)).
- (ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.
- (iii) A broker dealer registered with the Commission under section 301 of the act.

§ 404.020. [Reserved].

§ 405.000. [Reserved].

§ 406.000. [Reserved].

§ 407.000. [Reserved].

§ 501.011. Criminal referrals.

(a) The Commission may take such action as it deems necessary to institute a prosecution or obtain a conviction for offenses as set forth in section 511 of the act (70 P.S. § 1-511). The Commission may refer such evidence as is available concerning any violation of the act or any rule or order thereunder or any other applicable statute to the appropriate authorities, Federal and State, who may, with or without such a reference, institute appropriate criminal proceedings.

(b) Neither the act nor the rules and regulations adopted thereunder shall in any way limit the power of the Commonwealth to punish any person for any conduct which constitutes a crime under any other statute.

§ 501.020. [Reserved].

§ 501.030. [Reserved].

§ 501.040. [Reserved].

§ 501.050. [Reserved].

§ 502.000. [Reserved].

§ 503.000. [Reserved].

§ 504.060. Rescission offers.

(a) A person proposing to make an offer under section 504(d) or (e) of the act (70 P.S. § 1-504(d) or (e)) shall follow the procedure for the registration of securities by qualification, as described in sections 206 and 207 of the act (70 P.S. §§ 1-206 and 1-207). The forms required to be filed and time periods for Commission action shall be those applicable to registration by qualification, except that it shall be noted at the top of Form R that the offer is a rescission offer. The Commission may, upon petition by the proposed offeror, waive or modify any requirement for the registration if it finds the requirement burdensome and not necessary for the protection of investors.

(b) Compliance with the procedures in subsection (a) is waived:

(1) For a person making a rescission offer for possible violations of the act if the securities which are the subject of the rescission offer were sold to and purchased by no more than 35 persons in this Commonwealth during 12 consecutive months. The person making the rescission offer must file the form designated by the Commission as Form RO in accordance with the General Instructions requesting waiver of the procedures in subsection (a) accompanied by disclosure materials prepared to satisfy the anti-fraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)) which will be given to each rescission offeree, and the waiver request is not denied within one of the following time periods:

(i) Five business days from the date a filing is made with the Commission which contains the items required in this paragraph if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P.S. § 1-201) and neither the issuer nor a promoter, general partner, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing number of purchasers and offerees).

(ii) Ten business days from the date a filing is made with the Commission which contains the items required in this paragraph for all other rescission offers made under this subparagraph. If a rescission offer is being made under section 504(e) of the act (70 P.S. § 1-504(e)), the offer shall comply with section 201 of the act as section 102(r)(vi) of the act (70 P.S. § 1-102(r)(vi)) states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

(2) For a person making a rescission offer for possible violations of section 301 or 401 - 409 of the act (70 P.S. §§ 1-301 and 1-401 - 1-409) if the following apply:

(i) The transactions subject to the rescission offer were effected in compliance with section 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203) which did not require any filing to be made with the Commission.

(ii) The rescission offer is not being made to more than five investors in this Commonwealth, exclusive of investors which purchased under section 203(c) of the act (70 P.S. § 1-203(c)).

(iii) Neither the person making the rescission offer nor, if the person is the issuer, a general partner, promoter, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b).

(iv) The rescission offer is being made under section 504(d) of the act (70 P.S. § 1-504(d)) or if a rescission offer is being made under section 504(e) of the act, the offeror shall comply with section 201 of the act in that section 102(r)(vi) of the act states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

(v) No public media advertising or general solicitation was utilized in connection with the offer or sale of the securities subject to the rescission offer.

(vi) No mass mailings were utilized in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of SEC Regulation D.

(vii) The person making the rescission offer provides each offeree the disclosure required by the anti-fraud provisions of section 401(b) of the act (70 P.S. §1-401(b)).

(viii) The person making the rescission offer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

(3) For an issuer which, after offering rescission for possible violations of section 201 of the act under this paragraph, will not have made rescission offers to more than five investors in this Commonwealth within the past 24 months, exclusive of investors which purchased under section 203(c) of the act and the following apply:

(i) No person directly or indirectly received commissions for the sale of the securities subject to the rescission offer.

(ii) Neither the issuer nor a promoter, general partner, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b).

(iii) The issuer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

(iv) The issuer provides to each offeree the disclosure required by the anti-fraud provisions of section 401(b) of the act.

(v) No public media advertising or general solicitation was utilized in connection with the offer or sale of the securities subject to the rescission offer.

(vi) No mass mailings were utilized in connection the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of SEC Regulation D.

(c) A person making a rescission offer under this section shall keep and maintain a complete set of books, records and accounts of the rescission offers made - including copies of the rescission offers given or mailed to rescission offerees in this Commonwealth, records of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer - for 3 years following the expiration of each rescission offer period. Records concerning a rescission offer made in this Commonwealth under this section shall be furnished promptly to the Commission upon request.

(d) For purposes of this section, the following terms have the following applications:

(1) The term “executive officer” applies to, and includes, each person who serves as chief executive offer, chief operating officer or chief financial officer of a person.

(2) The term “general partner” applies to one of the following:

(i) A person who, under the terms of the limited partnership agreement, is designated a general partner of a limited partnership.

(ii) A person who, under the terms of the limited partnership agreement, is designated as a managing general partner of a limited partnership.

(e) This section also applies if rescission offers are being made as follows:

(1) The purchaser of securities which are the subject of a rescission offer under this section no longer owns the securities prior to receipt of the rescission offer and, under section 504(d)(i) of the act, is being offered an amount in cash equal to damages, if any, as computed in accordance with section 501(a) of the act (70 P.S. § 1-501(a)).

(2) A person who purchased a security in violation of the act no longer owns the security and, under section 504(e)(ii) of the act, offers to pay the seller an amount in cash equal to damages, if any, computed in accordance with section 501(b) of the act.

§ 505.000. [Reserved].

§ 506.000. [Reserved].

§ 507.000. [Reserved].

§ 508.000. [Reserved].

§ 509.000. [Reserved].

§ 510.000. [Reserved].

§ 511.000. [Reserved].

§ 513.010. **Rescission orders.**

When the Commission, under section 513 of the act (70 P.S. § 1-513), orders an issuer or control person of an issuer to effect a rescission offer, the rescission offer shall be effected in accordance with § 504.060(a) (relating to rescission offers) unless the Commission, by order, otherwise prescribes.

§ 601.010. **Commission quorum; action; disqualification.**

(a) For the purpose of computing the quorum required for actions, determinations or dispositions by the Commission: when a single Commissioner has disqualified himself or is otherwise not available, a quorum shall consist of the two remaining Commissioners; when two Commissioners have disqualified themselves, a quorum shall consist of the single remaining Commissioner; where all three members of the Commission have disqualified themselves, a hearing examiner shall be designated by the Commission and the hearing examiner's findings, conclusions and recommended order, determination or disposition shall be adopted by the Commission.

(b) Hearings shall be held before the Commission, a member or members thereof, or a Hearing Examiner as provided in this chapter; Commission action, determinations or dispositions as a result of any hearing shall be made at any meeting of the Commission at which a quorum, determined as set forth in subsection (a) is present. Where a hearing has been conducted before less than the full three-member Commission, all Commissioners not present at any such hearing shall render their decision on the basis of a review of all pleadings, briefs and other papers filed in the matter and on the basis of the transcript and exhibits produced at such hearing.

(c) Commissioners may disqualify themselves from participating in any hearing or decision thereon or in any other action, determination or disposition on grounds of prejudice and bias in a particular matter, or for other good cause.

§ 601.020. **Secretary, Assistant secretaries.**

(a) The Secretary of the Commission shall attend all meetings of the Commission; keep the minutes of such meetings in one or more books provided for that purpose; be custodian of the public records of the Commission and of all orders or other documents and instruments, the execution of which on behalf of the Commission under its seal is duly authorized in accordance with the provisions of the act and this part, sign orders, subpoenas, other documents and instruments the issuance and execution of which on behalf of the Commission shall have been duly authorized in accordance with the provisions of the act and the regulations adopted thereunder or as provided in an order, approval or other direction of the Commission; have general charge of the public files and public records of the Commission; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Commission. The Secretary shall keep in safe custody the seal of the Commission.

(b) The Assistant Secretaries as thereunto authorized by the Commission may sign (under seal) orders, subpoenas and other documents and instruments the issuance and execution of which on behalf of the Commission is duly authorized in accordance with the provisions of the act and

the regulations adopted thereunder or as provided in any order, approval, or other direction of the Commission.

§ 601.030. [Reserved].

§ 601.040. [Reserved].

§ 601.050. [Reserved].

§ 602.010. [Reserved].

§ 602.021. [Reserved].

§ 602.022. **Denial for abandonment.**

The Commission may order an application for registration of securities or an application for registration as a broker-dealer, investment adviser, agent or investment adviser representative denied upon the failure of the applicant, within 60 days after written notice warning such applicant that an application will be denied and deemed abandoned, to respond to any request for additional information required under the act or the provisions thereunder or otherwise to complete the showing required for action upon the application; or the applicant may with the consent of the Commission withdraw the application. Upon denial for abandonment, there shall be no refund of any filing fee paid prior to the date of abandonment.

§ 602.023. [Reserved].

§ 602.024. [Reserved].

§ 602.025. [Reserved].

§ 602.030. [Reserved].

§ 602.040. [Reserved].

§ 602.050. [Reserved].

§ 602.060. **Charges for Commission publications.**

Under section 602(f) of the act (70 P.S. § 1-602(f)), the Commission has fixed the following charges for publications, issued under its authority:

(1) Compendium of Commission and Staff Positions, Summary of Significant Commission Orders and Compilation of Staff No-Action Letters (Compendium), including annual supplement service for the calendar year in which Compendium was purchased: \$95.

(2) Compendium Annual Supplement Service: \$20 per annual subscription.

(3) Orders for specific Compendium Supplements: \$10 per Supplement.

§ 602.070. [Reserved].

§ 602.080. [Reserved].

§ 603.011. **Filing requirements.**

(a) Except as set forth in subsection (f), documents and other communications to be filed with the Commission shall be filed in the Harrisburg office of the Commission.

(b) If mailed, all documents and communications should be sent registered or certified mail, postage prepaid, return receipt requested.

(c) A document or communication, if complete and properly executed in all material respects, will be deemed filed when it is received by the Commission.

(d) No notice, statement, form or other document will be accepted for filing; no request for copies of documents will be granted; and no action will be taken by the Commission unless the filings and request are accompanied by the required fees or charges as provided by the act and this section.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be made payable to the order of "Commonwealth of Pennsylvania" and delivered or mailed to: Secretary, Pennsylvania Securities Commission; 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410.

(f) The Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Request for Withdrawal from Registration as a Broker-Dealer (Form BDW), or successor forms, and amendments thereto required to be filed with the Commission by a member firm of the National Association of Securities Dealers, Inc. (NASD) with respect to an initial registration, renewal, amendment or withdrawal from registration as a broker-dealer shall be made solely with the Central Registration Depository (CRD) maintained by the NASD under an agreement and guidelines established by North American Securities Administrators Association, Inc. and shall be mailed to: NASAA/NASD Central Registration Depository; Post Office Box 9401, Gaithersburg, Maryland 20898-9401. Documents and other communications required to be filed with the Securities Commission by a member firm of the NASD with respect to the initial registration, renewal, transfer or withdrawal from registration as an agent shall be made solely with the CRD at this address. Checks for payment of fees required by sections 602(d) and 602.1(a) of the act (70 P.S. §§ 1-602(d) and 602.1(a)) for the filing of a document described in this subsection shall be made payable to the order of "National Association of Securities Dealers, Inc." and mailed with the documents to the address listed in this subsection. Filings made with the CRD under this subsection will be deemed as filed with the Commission.

(g) In connection with notice filings relating to a Federally-covered security under section 211 (70 P.S. § 1-211), notice forms may be filed electronically with the Commission as permitted by order of the Commission. In conjunction with an electronic filing, fees or assessments required under sections 602 or 602.1 of the act (70 P.S. §§ 1-602 or 1-602.1) shall be paid by means of an Automated Clearing House transfer of funds to the Commission's depository bank.

(h) Required forms will be available on the Commission's website at www.psc.state.pa.us. In addition, forms are available in paper format from the Commission.

§ 603.031. Public inspection of records.

(a) During the regular business hours of the Commission, members of the public may, upon written request to do so, inspect at the Commission's Harrisburg Office those documents which are public records. The written request required by this subsection shall set forth the public records to be inspected.

(b) The Commission may withhold from public inspection those records which it determines are excluded from the definition of public records in section 1 of the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. § 66.1(2)), known as the Right-to-Know Law.

(c) A request for the confidential treatment of information contained in a statement, application, notice or report submitted to the Commission may accompany the statement, application, notice or report and specify the reasons for the request; the material which is the subject of the request should be separated from other parts of the filing. Upon proper showing, the Commission will treat as confidential the material which is the subject of the request.

(d) Nothing in this section may be deemed to make available for public inspection books, papers, correspondence, memoranda, agreements or other documents or records contained in an investigative file maintained by the Commission. In addition, no minutes, documents or other memoranda of the Commission or of the staff which deal with or concern the institution, maintenance or termination of an investigation may be available for public inspection.

(e) Except as set forth in paragraphs (1) and (2), financial statements required to be filed under §§ 303.011, 303.012, 304.021 and 304.022, shall be public.

(1) Statements of income required to be filed under §§ 303.011 and 304.021 (relating to broker-dealer registration procedures; and broker-dealer required financial reports) and nonrequired statements of income filed under §§ 303.011, 303.012, 304.021 and 304.022 shall be confidential if the income statements are bound separately from the accountant's report, the statement of financial condition and the accompanying notes.

(2) Financial statements which are deemed confidential under paragraph (1) shall be available for official use by an official or employe of the government of the United States or a state, by a National Securities Exchange or registered National securities association of which the person filing the financial statements is a member, and by other persons whom the Commission authorizes disclosure of the information as being in the public interest. Nothing in this subsection may be deemed to be in derogation of the rules of a registered National Securities Exchange or registered National securities association which give customers of a member broker or dealer the right, upon request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The Commission has determined to treat confidential the following information which will not be available for public inspection under any provision of the act and which the Commission deems excluded from the definition of public records in section 1(2) of the Right-to-Know Law:

(1) Social Security number, date of birth and home address of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the uniform application for securities industry registration or transfer (Form U-4) or successor form thereto required to be filed with the Commission under § 303.013 or 303.014 (relating to agent registration procedures; and investment adviser representative registration procedures).

(2) The Social Security number, date of birth and home address of an individual registered or applying for registration as an investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for investment adviser registration (Form ADV) or successor form thereto required to be filed with the Commission or an investment adviser registration depository designated by order of the Commission under § 303.012 or 303.015 (relating to investment adviser registration procedure; and notice filing for Federally covered advisers).

(3) The Social Security number, date of birth and home address of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for broker-dealer registration (Form BD) or Form ADV or successor forms thereto. For purposes of this section, the term "principal" has the meaning as set forth in § 303.012(e).

§ 603.040. Charges for Commission services.

The following fees will be charged by the Commission and remitted to the General Fund of the Commonwealth:

- (1) Photocopies of documents on file with the Commission-\$0.50 per page.
- (2) Certification of documents on file with the Commission-\$5 per certification.
- (3) Facsimile transmission of copies of documents on file with the Commission-\$2

per page.

§ 604.010. Interpretative opinions - statement of policy.

Each request for an interpretative opinion of the Commission shall be made in writing and shall set forth:

- (1) The particular statutory provision for which an interpretation is requested.
- (2) The questions presented.
- (3) The relevant statutory or decisional authority relied upon.
- (4) The names of persons and entities concerning whom an interpretative opinion is requested.
- (5) All relevant facts and circumstances pertinent to the request.

§ 604.011. Filing of copies--by facsimile or otherwise--of submittals, pleadings and other nonoriginal documents--statement of policy.

(a) For purposes of this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Nonoriginal document -- A copy of an original document.

Original document -- An original submittal, pleading or other document, signed in ink by the party in interest or by its attorney.

Pleading -- An application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

Submittal -- An application, amendment, exhibit or other similar document filed in an ex parte or other nonadversary proceeding.

(b) A document filed with the Commission, whether as an original document or as a nonoriginal document, is subject to section 407(a) of the act (70 P.S. § 1-407(a)).

(c) A facsimile transmission of an original document is a nonoriginal document.

(d) The filing of a facsimile transmission of an original document or other nonoriginal document which is subject to 1 Pa. Code § 33.11 (relating to execution) without the same day filing of the original document constitutes a deficient filing which does not satisfy the act (70 P.S. §§ 1-101 -- 1-704) or the Takeover Disclosure Law (70 P.S. §§ 71 -- 85) or regulations promulgated thereunder, or applicable rules contained in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), including those relating to the time fixed or the time period prescribed for the filing.

(e) Only the filing of the original document with the Commission shall satisfy the requirements in subsection (d) and the filing of a nonoriginal document does not extend the time fixed nor the time period prescribed for the filing of the original document.

(f) Subsections (d) and (e) do not apply to documents filed with the NASAA/NASD Central Registration Depository under § 603.011(f) (relating to filing requirements).

§ 604.012. Nonresponse or affirmative rejection of offers made under section 504(d) or (e) of the act and § 504.060 (relating to rescission offers) - statement of policy

(a) Section 504(d) and (e) of the act (70 P.S. § 1-504(d) and (e)) requires that an offer made under those subsections remain open for acceptance for a period of not less than 30 days from receipt of the offer and § 504.060 (relating to rescission offers) sets forth the minimum amount of information to be contained in the offer.

(b) A nonresponse to an offer made under section 504(d) or (e) of the act and § 504.060 within 30 days of receipt thereof or an affirmative rejection of the offer within 30 days of receipt thereof terminates the offeree's right to remedy under the act.

§ 604.013. [Reserved]

§ 604.014. [Reserved]

§ 604.015. [Reserved]

§ 604.016. Guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser Law Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2) - statement of policy.

(a) Under § 606.041(b)(2) (relating to delegation and substitution), the Commission has delegated to the Director of the Division of Licensing the authority to waive the requirement of §§ 303.031 and 303.032 (relating to examination requirements for agents; and qualification of and examination requirements for investment advisers and investment adviser representatives) to take and pass the Series 63, Series 65 and Series 2 examinations administered by the National Association of Securities Dealers (collectively, the "examination") or successor examinations.

(b) Without otherwise restricting the discretionary authority granted to Commission staff by § 606.041, the staff persons will consider the factors listed in this subsection in determining whether a waiver from the examination requirements of § 303.031 or § 303.032 would be granted. These factors are set forth for illustrative purposes only and do not constitute the entire range of considerations that may form the basis for granting or denying a waiver request.

(1) Whether the applicant has disciplinary history for which staff persons would place the applicant under the Commission's Special Investment Adviser Representative or Agent Review Program.

(2) Whether the applicant has certified to Commission staff persons that the applicant has reviewed the act and this title.

(3) Whether the applicant has substantial long-term and continuous experience as a principal, agent or employe, other than in a clerical capacity, of a broker-dealer or investment adviser. Staff persons also will consider whether the applicant has similar experience in any responsible position, other than in a clerical capacity, in the securities, banking, finance or other related business.

(4) Whether the applicant has some continuous experience in a responsible position, other than in a clerical capacity, in the securities, banking, finance or other related business and also possesses educational credentials or professional designations such as one of the following:

(i) An advanced degree obtained through graduation from a formal degree program of an accredited educational institution with a concentration in economics, finance, mathematics, business, business administration or similar subjects.

(ii) A professional designation, such as Chartered Financial Analyst (CFA), Chartered Investment Counselor (CIC), Certified Financial Planner (CFP), Chartered Financial

Consultant (ChFC) or Masters of Science in Financial Services (MSFS).

(iii) A license as a certified public accountant and is in good standing with the relevant licensing authority.

(5) Whether the applicant is admitted to the bar of any state to practice law and is a member of the bar in good standing.

(6) Whether the applicant previously has passed the examination and has remained continuously employed in the securities industry or possesses some employment experience in the securities industry and has not had a significant lapse of this employment as of the date of filing of the application for registration with the Commission.

§ 604.017. Guidelines concerning the continuance of hearings by hearing officers - statement of policy.

(a) It is the policy of the Commission to afford persons charged with violating the Pennsylvania Securities Act of 1972 with a just and speedy hearing as well as to minimize inconvenience and expense to parties and witnesses. The Commission's hearing officers are to utilize the following guidelines concerning the continuance of hearings. In every instance, however, the granting or denial of a motion for continuance is a matter for the exercise of sound discretion by the hearing officer. In the exercise of sound discretion, the hearing officer may make any decision consistent with the policy of this section or as otherwise required by law.

(b) Except as provided for in subsection (c), a motion for continuance is to be made in writing and filed with the Secretary of the Commission and copies provided to the hearing officer and served on all parties or their attorneys, including the staff attorney in charge of the case. The signature of a party or of an attorney constitutes a certification of the accuracy of the statements made in, and in connection with, the motion.

(c) After the hearing has begun, a motion for continuance may be orally presented unless the hearing officer requires that the motion be reduced to writing and filed separately.

(d) The filing of a motion for continuance, without an order granting the motion, does not act to delay the start of the hearing, and all parties shall be prepared to proceed as scheduled in the event the motion is denied.

(e) A motion for continuance is to be filed as far in advance of the hearing as practicable. If it is filed less than 10 days in advance, the motion may be denied unless it is shown that one of the following applies:

(1) The facts on which the motion is based occurred within the immediately preceding 10-day period.

(2) Although the facts occurred prior to that 10-day period they did not become known to, and by the exercise of reasonable diligence could not have been discovered by, the moving party more than 10 days before the hearing date.

(f) A motion for continuance of a hearing may be granted by the hearing officer for one or more of the following reasons:

(1) Agreement of all parties or their attorneys.

(2) Illness or injury of counsel of record or a party. If requested by the hearing officer a certificate of a physician shall be furnished, stating that the illness or injury is of sufficient severity and will probably be of a duration that prevents the ill or injured person from participating in the hearing as scheduled.

(3) Engagement of counsel in a court of record or attachment of counsel by the court, in which event the motion for continuance is to be filed with the Secretary of the Commission and copies provided to the hearing officer and served on all parties or their attorneys, including the staff attorney in charge of the case, as promptly as possible before the date and time the hearing is scheduled to commence. The motion shall state the name and location of the court in which counsel is engaged or attached, the name of the judges before whom the matter is pending, the caption of the matter, the date upon which the matter is expected to be concluded and the statement by counsel that no partner, associate or co-counsel is sufficiently prepared to be able effectively to represent the party at the hearing.

(4) Absence of a material witness whose testimony is essential to the matter pending, if the motion states:

- (i) The reason for the absence of the witness.
- (ii) The facts to which the witness would testify if present or if the witness's deposition were to be taken.
- (iii) The grounds for believing that the absent witness would so testify at the hearing or deposition.
- (iv) The efforts made to procure the attendance or deposition of the absent witness.
- (v) The reasons for believing that the witness will attend the hearing at a subsequent date or that the witness's deposition can and will be obtained.
- (vi) The reasons for believing that the testimony of the witness is both material and essential to the pending matter.

(g) If the witness could have been subpoenaed or if the adverse party agrees to the testimony that the witness would have given, the motion described in subsection (f) may be refused.

(h) In the absence of a material witness whose testimony is essential to the pending matter, the hearing officer, upon motion or otherwise, may recess the hearing after all other witnesses have testified and continue the hearing to a subsequent date, subject to the time limitations in subsection (k) to allow for the obtaining of the deposition or the attendance of the witness.

(i) A hearing officer may deny a continuance motion based upon recent change of counsel or recent initial retaining of counsel where a party has been given at least 30 days notice of the date, time and place of hearing.

(j) Except for cause shown in special cases, no reason enumerated in subsection (f) for a continuance of a hearing other than continuances granted on the basis of agreement of all parties or their attorneys, is to be of effect beyond one application made in behalf of one party or group of parties having similar interests.

(k) A continuance is to be to a date and time certain, rarely for more than 60 days, unless the circumstances in the matter make it impractical to so specify.

(l) The hearing officer may not refer appeals of rulings on motions for continuances to the Commission except in extraordinary circumstances where a prompt decision by the Commission is necessary to prevent detriment to the public interest.

§ 604.018. Imposition of administrative assessments under section 602.1(c) - statement of policy.

(a) Section 602.1(c) of the act (70 P.S. § 1-602.1(c)) authorizes the Commission, after giving notice and opportunity for a hearing, to impose administrative assessments against a broker-dealer, agent, investment advisor or associated person registered under section 301 of the act (70 P.S. § 1-301) or an affiliate of the broker-dealer or investment advisor if the Commission finds that the person either willfully has violated the act or a rule or order of the Commission under the act or has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(b) Section 602.1(c)(2) of the act requires the Commission to consider certain factors in making a determination to impose an administrative assessment, including factors the Commission finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

(c) Under section 21B of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78u-1), the United States Securities & Exchange Commission (SEC) may impose civil administrative penalties for violations of the Federal securities laws.

(d) Section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) forbids the SEC to register an exchange as a national securities exchange unless the rules of the exchange provide that its members and associated persons are subject to certain disciplinary rules of the exchange, including imposition of fines.

(e) Section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3) forbids the SEC to register an association of brokers and dealers as a national securities association unless the rules of the association provide that its members and associated persons are subject to certain disciplinary rules of the association, including imposition of fines.

(f) Therefore, the general policy of the Commission will be not to adopt an order under section 602.1(c) of the act to impose an administrative assessment on a person who, for the same conduct, already has been assessed a civil administrative penalty by the SEC under section 21B of the Securities Exchange Act of 1934 or has been fined by a national securities exchange or a national securities association registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78mm).

(g) This section does not preclude the Commission from issuing an order accepting an offer of settlement submitted by a party to an administrative proceeding, the terms of which provide for payment to the Commission of a sum of money designated as an administrative assessment under section 602.1(c) of the act.

§ 604.019. Requests for oral argument - statement of policy.

(a) *Criteria.* While the following outlines general criteria to be applied to requests for oral argument filed with the Commission under 1 Pa. Code § 35.214 (relating to oral argument on exceptions), it is not to be construed as limiting any commissioner's discretion in voting whether to grant a request for oral argument:

(1) The Commission usually will find oral argument is unnecessary or inappropriate when:

- (i) The request has not been filed timely.
- (ii) The request is frivolous.
- (iii) The request does not set forth the issue with clarity and specificity.
- (iv) The issue is tightly constrained, not novel, and the briefs adequately

cover the arguments.

(v) The issue in controversy clearly has been decided by the courts.

(vi) The facts and legal arguments have been presented adequately in the record and accompanying briefs and oral argument would not be of significant assistance to the Commission in the decisional process.

(2) A commissioner usually will vote for granting a request for oral argument when:

(i) The request presents a substantial or novel, or both, legal issue.

(ii) The resolution of the issue presented will be of institutional or precedential value.

(iii) The Commission has asked counsel to clarify an important legal, factual or procedural point. In lieu of, or in combination with, the granting of a request for oral argument, the Commission may request the participants to address these points in writing.

(iv) A court decision, legislation, regulation or an event subsequent to the filing of the last brief may bear significantly upon the matter. In lieu of, or combination with, the granting of a request for oral argument, the Commission may request the participants to address these issues in writing.

(v) An important public interest may be affected.

(b) *Timing.* The Commission generally will respond to a request for oral argument after the following conditions have been met:

(1) The Commission has reviewed the record, the recommended decision and the post-hearing pleadings.

(2) Each commissioner has communicated the commissioner's views on the request for oral argument to the other commissioners.

(c) *Notice to Parties.* Upon receipt of a filing of a request for oral argument:

(1) The Secretary to the Commission will issue a letter to the party filing the request acknowledging receipt of the request and advising that the Commission will consider the request after it has reviewed the record, the recommended decision and all post-hearing pleadings.

(2) The letter issued by the Secretary to the Commission should not be construed to constitute or serve as a waiver of possible deficiencies in the request, including, but not limited to, time periods for filing, to the extent that the deficiencies, if any, may be applicable.

(d) *Consideration by the Commission.*

(1) The Commission will consider a request for oral argument at a Commission meeting.

(2) As with other decisions made by the Commission, an affirmative vote of a majority of the commissioners participating in the consideration of a request for oral argument is necessary for the Commission to act favorably upon the request.

§ 604.020. Broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services - statement of policy.

(a) Section 301(a) of the act (70 P.S. § 1-301(a)) provides that “[i]t is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act.”

(b) Section 301(c) of the act provides that “[i]t is unlawful for any person to transact business in this State as an investment adviser unless the person is so registered or registered as a broker-dealer under this act or unless the person is exempted . . . “ Section 301(c) further provides that: [i]t is unlawful for any person to transact business in this State as an investment adviser representative unless the person is so registered or exempted from registration . . . “

(c) The Commission acknowledges that the Internet, the World Wide Web and similar proprietary or common carrier electronic systems (collectively, the “Internet”) have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and associated persons of investment advisers to advertise and otherwise disseminate information on products and services to prospective customers and clients.

(d) The Commission also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on “Home Pages” or similar methods (hereinafter, “Internet Communications”).

(e) The Commission further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications available to persons in this Commonwealth, broker-dealers, investment advisers, agents and associated persons, as defined under section 102 of the act (70 P.S. § 1-102), could be construed as “transacting business” for purposes of section 301(a) and (c) of the act so as to require registration in this Commonwealth under Section 301 of the act, since the Internet Communications would be received in this Commonwealth regardless of the intent of the person originating the communication.

(f) Broker-dealers, investment advisers, broker-dealer agents (hereinafter, BD agents) and investment adviser representatives (hereinafter, IA reps) who use the Internet to distribute information on available products and services through Internet Communications directed generally to anyone having access to the Internet, will not be deemed to be “transacting business” in this Commonwealth for purposes of section 301(a) and (c) of the act based solely on that fact if all the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this Commonwealth if first registered, excluded or exempted from State broker-dealer, investment adviser, BD agent or IA rep registration requirements.

(ii) Follow-up, individualized responses to persons in this Commonwealth by the broker-dealer, investment adviser, BD agent or IA rep that involve either effecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation, will not be made absent compliance with State broker-dealer, investment adviser, BD agent or IA rep registration requirements, or an applicable exemption or exclusion.

(2) The Internet Communication contains a mechanism, including and without limitation, technical “fire walls” or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this Commonwealth, the broker-dealer, investment adviser, BD agent or IA rep is first registered in this Commonwealth or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph relieves a broker-dealer, investment adviser, BD agent or IA rep registered in this

Commonwealth from any applicable securities registration requirement in this Commonwealth.

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities or the rendering of personalized investment advice for compensation in this Commonwealth over the Internet, but is limited to the dissemination of general information on products or services.

(4) In the case of a BD agent or IA rep, the following apply:

(i) The affiliation of the BD agent or IA rep with the broker-dealer or investment adviser is prominently disclosed within the Internet Communication.

(ii) The broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep.

(iii) The broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication.

(iv) In disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(g) The position expressed in this section extends to broker-dealer, investment adviser, BD agent and IA rep registration requirements within this Commonwealth only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(h) Nothing in this statement of policy affects the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this Commonwealth that is not subject to the jurisdiction of the Commission under the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290, 110 Stat. 3416), which will be codified in various sections of 15 U.S.C.

§ 604.021. Denial of allegations - statement of policy.

The Commission has adopted a policy that in a civil lawsuit brought by the Commission or in an administrative proceeding of an accusatory nature pending before the Commission, it is important to avoid creating, or permitting to be created an impression that a decree is being entered or a sanction is being imposed, when the conduct alleged did not, in fact, occur. Accordingly, it is the policy of the Commission not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or the Commission's order instituting an administrative proceeding of an accusatory nature. The Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.

§ 604.022. Offers of settlement and consent injunctions - criminal referrals and investigations - statement of policy.

(a) In the course of Commission investigations, civil lawsuits and administrative proceedings, Commission staff may discuss with persons involved the disposition of these matters by consent, by settlement or in some other manner.

(b) It is the policy of the Commission that the disposition of a matter may not, expressly or impliedly, extend to criminal charges that have been, or may be, brought against the person or a recommendation by the Commission under § 501.011 (relating to criminal referrals) with respect thereto.

(c) A person involved in an enforcement matter before the Commission who consents, or agrees to consent, to a judgment or order does so solely for the purpose of resolving claims against the person with respect to that investigative, civil or administrative matter and not for the purpose of resolving criminal charges that have been, or might be, brought against the person.

(d) This statement of policy reflects the fact that neither the Commission nor its staff have the authority or responsibility for instituting, conducting, settling or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Office of Attorney General and the district attorneys of the several counties.

§ 604.023. No-action letters - statement of policy.

(a) A person may request in writing a no-action letter from Commission staff that, based on the facts stated in the written request, staff will not recommend enforcement action against certain specified persons engaging in the activities described in the request. Commission staff is not obligated to respond to each request, particularly when the matter in question is well-settled law.

(b) Each request for a no-action letter shall be in writing and shall be filed with the Office of Chief Counsel at the Commission's Harrisburg Office address. Each request shall include the following:

(1) The particular statutory provision or rule upon which the request is based.

(2) The names of all persons involved. Letters relating to unnamed persons or to hypothetical situations will not be answered.

(3) A detailed statement of the facts necessary to reach a legal conclusion in the matter. Letters should be concise and to the point and should not attempt to include every possible type of situation which may arise in the future so that the request is overly broad or calls for a speculative response.

(4) A detailed discussion and analysis of the law as it relates to the facts. The writer must indicate why the writer believes a problem exists and must give or provide a legal opinion in the matter, including the basis for the opinion.

(5) A statement of the reasons why a no-action letter is appropriate.

(6) A representation that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth in the no-action letter request.

(7) A representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.

(c) If issued, a no-action letter expresses only the current position of Commission staff with respect to recommendation of administrative enforcement action against specific persons engaging in specific transactions; may be relied upon only by the requesting party; and does not bind the Commission or third parties.

(d) There is no fee required for issuance of a no-action letter.

§ 605.010. [Reserved].

§ 605.020. Conflict of interest.

(a) For the purpose of protecting the public interest and avoiding conflicts of interest, the Commission has determined, pursuant to section 605(b) of the act (70 P.S. § 1-605(b)), that the provisions of section 605(a) of the act (70 P.S. § 1-605(a)) shall not prohibit the holding or purchasing of any securities by any employee of the Commission if:

(1) the employee did not perform a principal review of the application for the registration of such securities or any other securities of the same issuer registered with the Commission under sections 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) or was not involved in an investigation, audit, or examination of the registration; or

(2) the securities to be held or purchased are those of an open-end or closed-end investment company, face amount certificate company, or unit investment trust, as those terms are defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-2) which have been registered with the Commission under sections 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206).

(b) If, under sections 605(a) and 605(b) of the act, there may be a conflict of interest with an employe of the Commission not permitted by subsection (a), such employe may present a formal request to the Commission for permission to hold or purchase such securities. Such a request shall set forth the type and amount of securities to be held or purchased, the issuer of the securities, any other relationship between the employe and the issuer, the functions which the employe performed relative to the registration of the issuer, and all other pertinent reasons as to why the employe feels the Commission should grant the employe's request. The Commission may grant the employe's request if it finds that in doing so it would be protecting the public interest and avoiding conflicts of interest.

(c) No employe of the Commission shall hold or purchase a security which would otherwise be permitted by subsections (a) and (b) if the holding and purchasing of such security would be violative of any other applicable conflict-of-interest statute or regulation.

§ 605.030. [Reserved].

§ 606.011. Financial reports to securityholders.

(a) In the case of securities issued under section 203(d) or (p) of the act (70 P.S. § 1-203(d) or 203(p)), or registered under sections 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements shall comply with section 609(c) of the act (70 P.S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securities were issued in a transaction subject to this section wherein none of the financial statements delivered to offerees were required to be audited or if no financial statements were required to be given to the offerees, the financial statements need not be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)) and, within 120 days of that date, has made a filing with the United States Securities and Exchange Commission in accordance with either of those sections.

§ 606.031. Advertising literature.

(a) *Advertisements.* Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish any advertisement concerning any security in this Commonwealth unless all of the following are met:

(1) The advertisement is either:

(i) Permitted by this section and complies with any requirements imposed by this section.

(ii) Specifically excluded from application of this section by subsection (f).

(2) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections or forecasts).

(3) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) *Registered offerings: permitted advertisements after filing but prior to effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has been filed with the Commission under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Commission under section 205 or 206 of the act for the sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), a person may publish any of the following in this Commonwealth prior to effectiveness of the registration statement under the act:

(i) Advertisements which comply with section 2(a)(10)(b) of the Securities Act of 1933 (15 U.S.C.A. § 77b(a)(10)(b)).

(ii) Advertisements which comply with Rule 134 (17 CFR 230.134)(relating to communications not deemed a prospectus) promulgated by the United States Securities and Exchange Commission (SEC).

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the SEC under section 5 of the Securities Act of 1933 which complies with Rule 430 (17 CFR § 230.430)(relating to prospectus for use prior to effective date) promulgated by the SEC.

(iv) A summary prospectus which is part of a registration statement that has been filed with the SEC under section 5 of the Securities Act of 1933 which complies with Rule 431 (17 CFR 230.431) (relating to summary prospectus) promulgated by the SEC.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the SEC under Regulation A (17 CFR 230.251 - 230.263), relating to conditional small issues exemption, promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and with the Commission under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth that complies with Rule 251(d)(1)(ii)(C) (17 CFR 230.251(d)(1)(ii)(C)) (relating to scope of exemption) promulgated by the SEC prior to effectiveness of the offering circular under the act if the advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(3) In connection with a registration statement filed with the Commission under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the SEC in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) (relating to exemption for limited offerings and sales of securities not exceeding \$1,000,000) promulgated by the SEC under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth prior to effectiveness of the registration statement under the act if all of the following are met:

(i) The advertisement contains no more than the following:

- (A) The name and address of the issuer of the security.
- (B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield, and the per unit offering price to the public.
- (C) A brief, generic description of the issuer's business.
- (D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.
- (E) A statement providing the name and address of the underwriter or where a prospectus may be obtained.
- (F) A statement in the following form: "A registration statement has been filed with the Pennsylvania Securities Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This advertisement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in the Commonwealth of Pennsylvania prior to registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(c) *Registered offerings: permitted advertisements after effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has become effective under section 205 or 206 of the act.

(1) In connection with a registration statement filed with the Commission under section 205 or 206 of the act for the offer and sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 which has become effective, a person may publish an advertisement in this Commonwealth if it is preceded or accompanied by a copy of the final prospectus.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth that has been filed with the SEC pursuant to Regulation A (17 CFR 230.251 - 230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the Commission under section 205 or 206 of the act and has been qualified by the SEC under Regulation A and has become effective under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth if the advertisement is accompanied or preceded by a copy of the final offering circular.

(3) In connection with a registration statement filed with the Commission under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the SEC in reliance on section 3(a)(4) or 3(a)(11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) promulgated by the SEC under section 3(b) of the Securities Act of 1933 that has become effective under the act, a person may publish in this Commonwealth an advertisement if all of the following are met:

- (i) The advertisement contains no more than the following:
 - (A) The name and address of the issuer of the security.
 - (B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield, and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement, if applicable, that funds accompanying the subscription agreement are subject to escrow and the terms of the escrow.

(F) The name and address where the final prospectus may be obtained if delivery of the final prospectus does not precede or accompany the advertisement.

(G) A statement in the following form: "This advertisement does not constitute an offer to sell nor a solicitation of an offer to buy any of the securities. The offering is made only by the prospectus."

(ii) The advertisement is filed with the Commission 5 days before publication in this Commonwealth and, prior to the expiration of the 5-day period, the Commission does not issue a letter disallowing publication in this Commonwealth.

(4) A person may not publish an advertisement in this Commonwealth in connection with the offer and sale of any security registered under section 205 or 206 of the act at any time after the expiration of the effective period of the registration statement relating to that security as determined by section 207 of the act (70 P.S. § 1-207).

(d) *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and 202(i).* Except as provided in paragraphs (2) and (3), a person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202 of the act (70 P.S. § 1-202).

(2) *Section 202(a).* In connection with the offer or sale of any security in this Commonwealth made in reliance on section 202(a) of the act which is issued by the Commonwealth, any political subdivision, or any agency or corporate or instrumentality thereof and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation shall appear prominently in bold face type of at least 12 points in size on the face page of any preliminary offering statement, official offering statement or advertisement published in this Commonwealth.

(3) *Section 202(i).* A person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202(i) of the act except where the Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions.* The following apply:

(1) *Advertisements permitted.* Except as provided in paragraph (2), a person may publish any advertisement in this Commonwealth in connection with a securities transaction in this Commonwealth which is exempt from registration under section 203 of the act.

(2) *Advertisements prohibited.* A person may not publish any advertisement in this Commonwealth in connection with the following securities transactions which are effected in this Commonwealth:

(i) A sale of a security made in reliance on section 203(d) of the act.

(ii) An offer of a security made in reliance on section 203(e) of the act which

results in a sale under section 203(d) of the act.

(iii) An offer or sale of a security made in reliance on section 203(j) of the act.

(iv) An offer or sale of a security made in reliance on section 203(s) of the act.

(v) An offer or sale of a security made in reliance on § 203.187 (relating to small issuer exemption).

(vi) An offer or sale of a security made in reliance on § 203.189 (relating to isolated transaction exemption).

(vii) An offer or sale of a security which is exempt under section 203(r) of the act when the Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements.* The following apply.

(1) This section does not apply to advertisements described in paragraph (2) if all of the following are met:

(i) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections or forecasts).

(ii) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The following advertisements are excluded from the provisions of this section if the requirements of paragraph (1) have been met:

(i) The use of general solicitation in connection with the offer or sale of a security in reliance on section 203(t) of the act.

(ii) Advertisements which comply with Rule 135 promulgated by the SEC (17 CFR 230.135) (relating to notice of proposed registered offering).

(iii) Advertisements which comply with Rule 135c promulgated by the SEC (17 CFR 230.135c)(relating to notice of certain proposed unregistered offerings).

(iv) Advertisements in connection with an offer of a security in reliance on § 203.190 (relating to certain Internet offers exempt) which comply with the legend requirement of § 203.190(a)(1).

(g) *Definitions.* For purposes of this chapter, the following terms have the following meanings:

Advertisement – The meaning in section 102(a) of the act (70 P.S. § 1-102(a)). The term “communication” as used in that definition includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security. The term “publicly disseminated” as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish – The meaning in section 102(p) of the act and includes any form of electronic

communication, including Internet and e-mail.

(h) *SEC interpretive advice on use of electronic media.* A person who uses electronic media to publish an advertisement in this Commonwealth in connection with a security which is the subject of a registration statement filed with the Commission under section 205 or 206 of the act and with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) may rely on the interpretive advice of the SEC in SEC Release No. 33-7856 (April 28, 2000) and subsequent advice given pursuant to that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Commission will not take any enforcement action if the person complies with the interpretive advice.

§ 606.032. [Reserved].

§ 606.033. [Reserved].

§ 606.034. [Reserved].

§ 606.041. Delegation and substitution.

(a) The Commission delegates to the Director and Assistant Directors of the Division of Enforcement, Litigation and Compliance:

(1) The powers in section 510(a)(i) – (iii), (b), except for hearings, and (c) of the act (70 P.S. § 1-510(a)(i) – (iii), (b) and (c)) and the authority to close, vacate, modify or amend an action authorized under this paragraph.

(2) The power to commence an administrative proceeding against a person under 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause) and the authority to vacate, modify or amend an order to show cause issued under this paragraph. A hearing will not be held, nor will a remedial or disciplinary order issue following upon the institution of the proceedings, except upon the express order of the Commission.

(3) The power exercisable by the Commission under section 606(c) of the act (70 P.S. § 1-606(c)) to issue a summary order to cease advertising and the authority to vacate, modify or amend a summary order to cease advertising issued under this paragraph.

(4) The power exercisable under section 606(c.1) of the act to issue a cease and desist order against a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by Commission staff acting under the examination authority in section 304(d) of the act (70 P.S. § 1-304(d)), the records specified in §§ 304.011 or 304.012.

(5) The power to institute a proceeding under sections 512 - 514 of the act (70 P.S. §§ 1-512 - 1-514) to do one of the following:

- (i) Impose a statutory bar under section 512 of the act (70 P.S. § 1-514).
- (ii) Mandate a rescission offer under section 513 of the act (70 P.S. § 1-513).
- (iii) Compel the return of sales commissions under section 514 of the act (70 P.S. § 1-514).

(b) The Commission delegates to the Director of the Division of Licensing:

(1) The power exercisable under section 303(a)(ii) of the act (70 P.S. § 1-303(a)(ii)) to order applications for registration filed under section 303 of the act to become effective on any day

earlier than the 45th day after the filing of the application or material amendment thereto as the Director may determine. For purposes of this paragraph, the term “application” means an application for either an initial or renewal license.

(2) The power exercisable under section 609(a) of the act (70 P.S. § 1-609(a)) to waive the provisions of §§ 303.031 and 303.032 (relating to examination requirement for agents; and examination requirements for investment advisers and investment adviser representatives).

(3) The power exercisable under section 305(f) of the act (70 P.S. § 1-305(f)) to order applications to withdraw from the status of a registered broker-dealer, agent, investment adviser or investment adviser representative to become effective on any day earlier than the 30th day after filing of the application.

(4) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 303 of the act.

(5) The power exercisable under section 609(f) of the act (70 P.S. § 1-609(f)) with respect to applications for registration of a broker-dealer, agent, investment adviser or investment adviser representative. For purposes of this paragraph, the term “application” means an application for either an initial or renewal license.

(6) The power exercisable under section 303(a)(i) of the act to grant a waiver of any requirement imposed under section 303(a)(i) of the act or section 304 of the act (70 P.S. § 1-304) or any regulation promulgated thereunder and impose conditions on, or limit the scope of, an initial or renewal license of a broker-dealer, agent, investment adviser or investment adviser representative.

(7) The power exercisable under section 603(c) of the act (70 P.S. § 1-603(c)) and § 606.031(c) (relating to public inspection of records) to treat documents filed with the Division of Licensing as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(8) The power exercisable under section 609(a) of the act to order a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 of the act (70 P.S. § 1-301) to furnish material information reasonably related to the registration.

(9) The power exercisable under sections 303(a)(i) and 609(a) of the act to order an applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative under section 301 of the act to furnish material information reasonably related to the application.

(10) The power exercisable under § 303.051(a) and (b) (relating to surety bonds).

(11) The power exercisable under section 305(d) of the act to issue a summary order with respect to an application for registration.

(c) The Commission delegates to the Director of the Division of Corporation Finance:

(1) The power exercisable under section 206(c) of the act (70 P.S. § 1-206(c)) to order effective a registration statement filed under section 206 of the act for securities that have met the requirements for registration under the Mid-Atlantic Regional Review Protocol for Small Corporate Offering Registrations.

(2) The power exercisable under section 204(b) of the act (70 P.S. § 1-204(b)) to:

(i) Issue summary orders denying or revoking exemptions from registration under section 202 or 203 of the act (70 P.S. § 1-202 or § 1-203).

(ii) Modify or vacate the summary orders.

(3) The power exercisable under section 609(f) of the act (70 P.S. 1-609(f)) with respect to applications for registration of securities.

(4) The power exercisable by the Commission to waive the provisions of § 504.060(a) and (b) (relating to rescission offers) when:

(i) The securities which are the subject of the rescission offer being made in this Commonwealth were sold to and purchased by no more than 35 persons during 12 consecutive months.

(ii) Disclosure satisfying the anti-fraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)) will be given to a rescission offeree.

(5) The power exercisable under section 206(c) of the act to order effective a registration statement under section 206 of the act for securities of an issuer which meets all of the following:

(i) The issuer is an entity described in section 202(e)(i) of the act (70 P.S. § 1-202(e)(i)).

(ii) The issuer has not registered the securities with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) in good faith reliance on section 3(a)(4) thereof (15 U.S.C.A. § 77c(4)).

(iii) The issuer, within the immediately preceding 18 months, had an effective registration statement with the Commission for similar securities.

(iv) The registration statement complies with the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (April 17, 1994) or any successor statement of policy.

(v) The issuer has not requested a waiver of any provision of the act or rule or order thereunder that otherwise would apply to the registration statement.

(vi) The issuer or any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(A) An order described in section 305(a)(iv) of the act.

(B) An injunction described in section 305(a)(iii) of the act.

(C) A criminal conviction described in section 305(a)(ii) of the act.

(D) An order of the Commission issued under section 512 of the act (70 P.S. § 1-512).

(E) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(F) An order of the Commission imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(6) The power exercisable under section 210 of the act (70 P.S. § 1-210) to grant effectiveness to an application filed under § 210.010 (relating to retroactive registration of certain investment company securities).

(7) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 202, 203, 205 or 206 of the act.

(8) The power exercisable under section 603(c) of the act and § 603.031(c) to treat documents filed with the Division of Corporation Finance as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(9) The power exercisable under section 206(c) of the act to order effective a registration statement filed with the Commission under section 206 of the act by an issuer which also has a currently effective registration statement for the same securities on file with the SEC.

(10) The power exercisable under section 211 of the act (70 P.S. § 1-211) to:

(i) Issue a stop order suspending the offer or sale of any security described in section 211(b) or (c).

(ii) Modify or vacate a stop order.

(11) The power exercisable under section 207(l) of the act (70 P.S. § 1-207(l)) to declare effective an amendment to any currently effective registration statement relating to the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the applicable filing fee, if any, required by section 602(b.1) of the act (70 P.S. § 1-602(b.1)) has been paid.

(12) The power, exercisable under § 606.031(b)(2), (3)(ii) and (c)(3)(ii) (relating to advertising literature) to issue a letter disallowing publication of an advertisement in this Commonwealth in connection with the offer or sale of a security [in] this Commonwealth.

(d) The Commission delegates to the Chief Accountant the power to waive, in a filing with the Commission, a nonmaterial technical financial statement noncompliance with a provision relating to the form and content of financial statements.

(e) The Commission authorizes the following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.

§ 609.010. Use of prospective financial statements.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Feasibility study - An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast - A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position. A financial forecast is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

Financial projection - A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations and changes in financial position. A financial projection is sometimes prepared to present one or more hypothetical courses of action for evaluation,

as in response to questions such as “What would happen if . . .?” A financial projection is based on the responsible party’s assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Hypothetical assumption - An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

Independent - A person-regardless of whether the person is a Certified Public Accountant-may not be considered independent if the person is not independent under Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accounts, Inc. or under the interpretations adopted thereunder.

Prospective financial statement - A financial forecast or financial projection including the summaries of significant assumptions and accounting policies.

(b) Except as set forth in subsection (c), the use of prospective financial statements, including those contained in feasibility studies, are prohibited in connection with offerings registered under sections 205 and 206 of the act (70 P.S. §§ 1-205 and 1-206) or in offerings exempt from registration under section 202(a) or 203(d) of the act (70 P.S. § 1-202(a) or 1-203(d)), unless the prospective financial statements utilized or distributed comply with the act and this section.

(c) The use or distribution of prospective financial statements in connection with the following securities offerings is permissible if it complies with section 401 of the act (70 P.S. § 1-401):

(1) Offers or sales of securities of reporting companies as the term is defined in section 102(q) of the act (70 P.S. § 1-102(q)).

(2) Offers and sales of securities made under an exemption not set forth in subsection (b).

(3) Offers and sales of securities made to experienced private placement investors as that term is defined in § 204.010(d)(1)(relating to increasing number of purchasers and offerees).

(4) Offers and sales of securities to an individual - and spouse when purchasing as joint tenants or as tenants by the entirety - where the minimum amount of securities to be purchased in the offering by the individual is \$500,000 or more and the purchase of the securities is for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities.

(5) Offers and sales of securities to a person which is organized primarily for the purpose of purchasing, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and one of the following exists:

(i) The person has purchased \$450,000 or more of the securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities, excluding a purchase of securities of a corporation in which the affiliates of the person directly or beneficially own more than 50% of the corporation’s voting securities.

(ii) The person is purchasing \$500,000 or more of the securities being offered for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities being purchased.

(6) Offers and sales of securities made to accredited investors as that term is defined in Rule 501(a) (17 CFR 230.501(a) (relating to definitions and terms used in Regulation D)) in Regulation D of the Securities Act of 1933 (15 U.S.C.A. §§ 77a - 77z-3).

(d) Except as set forth in subsections (e) and (f), prospective financial statements utilized or distributed in connection with the securities offerings described in subsection (b) shall comply with the following requirements:

(1) *Assumptions.* Assumptions includes:

(i) Prospective financial statements shall be based upon reasonable assumptions and shall clearly set forth in the assumptions made with respect to all material features of the presentation.

(ii) With respect to financial projections, the hypothetical assumptions used shall be clearly identified and shall be consistent with the purpose of the presentation. With respect to multiple presentations there shall be a preponderance of information to suitably support the amount presented being within the range of the hypothetical assumptions.

(2) *Preparation.* Preparation includes:

(i) Prospective financial statements shall either be prepared by an independent qualified person-preparer-or reviewed by an independent qualified person-reviewer. The preparer or reviewer may rely on another preparer or reviewer for the preparation or review of the underlying assumptions or other aspects of the prospective financial statement if the report complies with paragraph (3).

(ii) The Commission will not recognize a person as a qualified independent reviewer or preparer unless that person can demonstrate that the person has adequate knowledge of the industry and the accounting principles and practices of the industry portrayed in the prospective financial statements.

(3) *Report.* Report shall include:

(i) Prospective financial statements shall be accompanied by a report of each preparer or reviewer of the following:

(A) The prospective financial statements.

(B) The underlying assumptions.

(C) Other material aspects of the prospective financial statements.

(ii) With respect to prospective financial statements, the preparer or reviewer's report shall include a statement of the work performed-which shall include a review of the assumptions. The report may not contain a disclaimer with respect to the reasonableness of the assumptions or the reasonableness of the prospective financial statements. The report may not contain language that suggests or implies that the preparer or reviewer vouches for the achievability of the prospective financial statements.

(iii) A report on the preparation or review of the financial projections should explicitly describe the hypothetical assumptions on which the projection is based, for example, "assuming the granting of the requested loan for the purpose of expanding the Company's plant as described in the summary of significant assumption(s)."

(4) *Contents of reports with more than one preparer or reviewer.* Collectively, the reports described in paragraph (3) shall include a statement of the work performed by each preparer or reviewer and the degree of responsibility each is taking.

(5) *Professional responsibility.* A preparer or reviewer of a prospective financial statement or of the underlying assumptions shall be mindful of § 401.020 (relating to professional

responsibility).

(6) *Fair presentation.* Prospective financial statements shall include material information necessary for a fair presentation including, by way of illustration, if applicable:

- (i) Sales or gross revenue by sources for each period presented.
- (ii) Expenses by classifications for each period presented.
- (iii) Provision for income taxes for each period presented.
- (iv) Net income for each period presented.
- (v) Primary and fully diluted earnings per share of common stock for each period presented.
- (vi) A cash flow analysis or a statement of significant changes in financial position for each period presented, including the sources and uses of cash.
- (vii) Balance sheets at the beginning and end of the entire period for which prospective financial statements are presented.
- (viii) Forecasted or projected annual taxable income or loss with a discussion of the assumptions affecting tax benefits and, if appropriate, alternative forecasted or projected results based on alternative tax treatment.
- (ix) Significant accounting principles and policies followed.

(7) *Minimum period.* Prospective financial statements shall ordinarily cover a minimum period of 3 years. The period shall be extended where appropriate to evaluate properly the investment consequences.

(8) *Explanatory notes.* Prospective financial statements shall be accompanied by explanatory notes describing significant assumptions made and, if appropriate, referenced to tabular and numerical data and risk factors.

(9) *Conspicuous statement.* Prospective financial statements shall be clearly distinguished from historical financial statements and shall contain a conspicuous statement indicating that it is based on assumptions of the future.

(e) Prospective financial statements examined in accordance with the Statement of Standards for Accounts' Services on Prospective Financial Information promulgated by the American Institute of Certified Public Accountants, Inc. (AICPA Statement) shall be deemed to comply with this section where a standard report on an examination prepared in accordance with the AICPA Statement, is issued by an independent person.

(f) The primary responsibility for prospective financial statements utilized or distributed under this section rests with management.

§ 609.011. Amendments to filings with Commission.

Whenever an application, notice, statement, report or any other document (Document) has been filed with the Commission and the person who filed the Document wishes to amend or otherwise ensure that the Document is current and accurate in all material respects, the person shall make a filing with the Commission constituting the amendment which also shall identify the Document being amended including, with respect to an amendment to a form promulgated by the Commission, the name of the form, the date the form originally was filed with the Commission and the items or schedules of the form which are being amended.

§ 609.012. Computing the number of offerees, purchasers and clients.

(a) Under section 609(a) of the act (70 P.S. § 1-609(a)), the Commission, for the purpose of providing a consistent method of computing the number of offerees, purchasers and clients under relevant provisions of the act and regulations promulgated thereunder, has determined that the following apply:

(1) A person who is offered or purchases securities or becomes a client shall count as a separate offeree, purchaser or client, unless the person is otherwise specifically excluded under this section.

(2) Where more than one person, related by blood or marriage, are offerees, purchasers or clients, the persons shall be counted as one offeree, purchaser or client if they either:

(i) Reside in the same household.

(ii) Are under the age of 18.

(3) As used in this section, the term "entity" means a corporation, partnership, association, joint stock company, trust, estate or unincorporated association.

(4) An entity shall be counted as one person, and a direct or beneficial owner of equity interests or equity securities in the entity shall not be counted as an offeree, purchaser or client, unless one of the following applies:

(i) With respect to computing offerees and purchasers, the entity was organized for the specific purpose of acquiring the securities being offered or purchased.

(ii) With respect to computing clients, where the services provided by the person effecting transactions in securities for the account of the entity or providing investment advice to the entity are based upon the investment decisions of the direct or beneficial owners rather than upon the investment objectives of the entity.

(5) Notwithstanding the provisions of paragraph (4)(i), in the case of a trust where the settlor and the beneficiaries are related by blood or marriage, the trust and the trustee - when acting on behalf of the trust or simultaneously on his own behalf - shall count only as one offeree, purchaser or client. Multiple trusts shall be counted as one offeree, purchaser or client if all of the beneficiaries are related by blood or marriage.

(6) Notwithstanding the provisions of paragraph (4)(i) in an entity in which all owners of equity interests or equity securities, excluding contingent interests and director's qualifying shares, are persons related by blood or marriage residing in the same household, the entity shall be counted as one person and the owners of the interests or securities in the entity shall not be counted as offerees, purchasers and clients.

(b) This section does not apply if a section of the act or a regulation promulgated thereunder sets forth another method of computing offerees, purchasers or clients.

§ 609.031. Application.

(a) This chapter, together with the constructions and interpretations hereof as the Commission may issue from time to time, set forth the minimum requirements for financial statements included, under the act, as part of the following:

(1) Registration Statements under section 206 of the act (70 P.S. § 1-206).

(2) Registration Statements under section 205 of the act (70 P.S. § 1-205) which are

exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

- (3) Proxy materials under section 203(o) of the act (70 P.S. § 1-203(o)).
- (4) Reports distributed to securityholders under section 606(a) (70 P.S. § 1-606(a)).
- (5) Broker-Dealer and Investment Adviser Financial Reports.
- (6) Exempt transactions under section 203(p) of the act (70 P.S. § 1-203(p)).

(b) Offerings of securities registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a – 77z-3), or filings of proxy materials under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78mm) which meet the requirements of Reg. S-X, 17 CFR 210.8-01 - 210.8-03 (1974), adopted by the United States Securities and Exchange Commission (“S-X”) or broker-dealer reports filed under the Securities Exchange Act of 1934 under regulations adopted thereunder shall be exempted from this chapter, except where otherwise indicated.

(c) References to “registration” under the Securities Act of 1933 are to be construed strictly. By way of illustration the procedure of “notification” under the Regulation “A” of that act will not be recognized as “registration.”

§ 609.032. Definitions.

(a) Unless the context otherwise requires, or unless specific language otherwise controls, the following terms apply any time financial information is required to be filed under the act or under this title:

Accountant’s report — A document in which an independent certified public accountant indicates the scope of the audit the accountant has made and sets forth the accountant’s opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

Amount — When used in regard to securities, the principal amount if relating to evidence of indebtedness, the number of shares if relating to shares and the number of units if relating to any other kind of security.

Audit - Audited and reported upon with an opinion expressed by an independent certified public accountant.

Audit or examination — An audit of the statements by a certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Bank holding company — A person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Comparative financial statements - Financial statements in which data for 2 or more years are presented in adjacent columnar form.

Date of filing — The date on which the financial statements or any material amendment thereto are received in the Harrisburg office of the Commission .

Development stage company — A company devoting substantially all of its efforts to establishing a new business with either of the following conditions existing: planned principal operations have not commenced, or planned principal operations have commenced but there has been no significant revenue therefrom.

Equity security — Any stock or similar security (including interests in a limited liability company); or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

Fifty-percent, owned person — In relation to a specified person, a person approximately 50% of whose outstanding voting shares is owned by the specified person either directly or indirectly through one or more intermediaries.

Fiscal year — The annual accounting period, or if no closing date has been adopted, the calendar year ending on December 31.

Going concern disclosure - The disclosure of substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year contained in the auditor's report based upon the criteria contained in the Statement on Auditing Standard 59 promulgated by the American Institute of Certified Public Accountants.

Insurance holding company — A person who is engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Majority-owned subsidiary — A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent's other majority owned subsidiaries, or both.

Material — When used to qualify a requirement for the furnishing of information as to any subject, means or refers to the magnitude of an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgement of an average prudent investor would have been changed or influenced by the omission or misstatement.

Note or footnote — When used in regard to financial statements, a clear and concise disclosure of information, including information necessary to make any item or entry contained in the financial statement not misleading, cross referenced specifically, if practicable, to an item or entry in a financial statement. A note shall be prepared in conformity with generally accepted accounting principles and practices.

Parent — An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Principal holder of equity securities — When used in respect of a registrant or other person named in a particular statement or report, a holder of record or a known beneficial owner of more than 10% of any class of equity securities of the registrant or other person, respectively, as of the date of the related balance sheet filed.

Registrant — The issuer of the securities for which an application, a registration statement, or a report is filed.

Related parties — The registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, "principal owner" means the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity, and "management" means a person having responsibility for achieving the objectives of the organization and the concomitant authority to

establish the policies and to make the decisions by which the objectives are to be pursued.

Review - A review of the statements by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Review Report - An accountant's review report, which is a document in which the certified public accountant indicates that a review has been performed, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Share — A share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary —A subsidiary, or a subsidiary and its subsidiaries, which meet any of the conditions described in this definition based on the most recent annual financial statements, including consolidated financial statements, of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed:

(i) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

(ii) The parent's and its other subsidiaries' proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries; however, if the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last five fiscal years, the average income may be substituted in the determination.

Subsidiary of a specified person — An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Tangible book value of a company's common shares — The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) Liquidating value, including any premium of excess over par or stated value, payable upon involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) Deferred charges including debt issue costs.

(iv) Prepaid expenses except as to items properly classified as current assets

under generally accepted accounting principals.

(v) All other assets of an intangible nature including, but not limited to, goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks, and organization costs.

Totally-held subsidiary — A subsidiary substantially all of whose outstanding equity securities are owned by its parent or the parent's other totally-held subsidiaries or both, and which is not indebted to any person other than its parent or the parent's other totally-held subsidiaries or both, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and excluding indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment or otherwise.

Voting shares — The sum of all rights, other than as affected by events of default, to vote for election of directors or the sum of all interests in an unincorporated person.

Wholly-owned subsidiary — A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent's other wholly-owned subsidiaries, or both.

§ 609.033. Accountants.

(a) Qualifications of accountants shall be in accordance with the following:

(1) The Commission will not recognize any person as a certified public accountant who is not registered and in good standing as such under the laws of the place of such person's residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(2) The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, any accountant will be considered not independent with respect to any person, or any of its parents, its subsidiaries or other affiliates in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he or his firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employe of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of this subsection the term "member" means all partners and principals in the firm; and all professional employes participating in the audit or located in an office of the firm participating in a significant portion of the audit.

(3) In determining whether an accountant is in fact independent with respect to a particular registrant, the Commission will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and the registrant or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

(b) Accountant's reports shall be in accordance with the following:

(1) *Auditor's report format.* The format of the auditor's report shall be in accordance

with the reporting standards established by generally accepted auditing standards including Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(2) *Accountant's review report format.* The format of the accountant's review report shall be in accordance with the reporting standards established by Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

(3) *Accountant's compilation report format.* The format of the accountant's compilation report shall be in accordance with the reporting standards established by Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

(4) *Certain accountant's reports.* Auditor's reports, accountant's review reports or accountant's compilation reports issued by public accountants are not permitted for reports required by § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

(a) When an issuer proposes to register its securities for sale under section 205 or section 206 of the act (70 P.S. §§ 1-205 and 1-206), and for which a registration statement has been filed with the United States Securities & Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall comply with the financial statement requirements as set forth in the rules and regulations of the SEC (17 CFR 210.1-01 - 210.12-29), all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form.

(b) Except as provided in subsection (c), when an issuer proposes to register its securities for sale under section 206 of the act, when an issuer proposes to sell its securities under the exemption contained in Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and proposes to register the securities under section 205 of the act, or when an issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P.S. § 1-203(p)), or when an issuer is required to file proxy materials under section 203(o) of the act (70 P.S. § 1-203(o)), it shall file the following financial statements, all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form:

(1) A balance sheet of the issuer, dated within 120 days of the date of filing with the Commission. If the balance sheet is not audited, there shall be filed, in addition, an audited balance sheet as of the issuer's last fiscal year, unless such last fiscal year ended within 90 days of the date of filing, in which case there shall be filed an audited balance sheet as of the end of the issuer's next preceding fiscal year.

(2) Statements of income, stockholders' equity and cash flows for each of 2 fiscal years or less, if the issuer and its predecessors have been in existence for less than 2 years preceding the date of the latest balance sheet filed, and for the period, if any, between the close of the latest of the fiscal years and the date of the latest balance sheet filed, except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years. These statements shall be audited up to the date of the latest audited balance sheet filed. However, if changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of stockholders' equity need not be filed.

(3) Consolidated balance sheets, statements of income, stockholders' equity, and cash flows complying with the audit requirements in paragraphs (1) and (2) should be filed for the issuer and its subsidiaries in accordance with this section.

(4) If the issuer is about to undergo a reorganization which will effect substantial

changes in its assets, liabilities or capital accounts, include a balance sheet of the issuer prior to the reorganization, a column showing the changes to be effected in the reorganization, and a pro forma balance sheet after the reorganization. Explain in a footnote the adjustments made. If a reorganization has taken place at any time covered by the statements of income filed, explain in a footnote the effect thereof.

(5) If the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation or otherwise, describe the plan of succession, show, in columnar form, the balance sheets of the parties to the transaction, the changes effected or to be effected and the balance sheet of the issuer as a result of the transaction, and statements of income for each of the businesses for the periods covered by paragraph (2), to include a consolidating pro forma statement of income. This paragraph does not apply to the issuer's succession to the business of any totally-held subsidiary or to the acquisition of subsidiaries not constituting, in the aggregate, a significant subsidiary.

(6) If the issuer has acquired any business (or the securities of any person giving the issuer control over such person) after the date of its latest balance sheet filed pursuant to paragraph (1), or if the issuer proposes to acquire such a business or securities, include financial statements for such business as would be required if it were an issuer. There shall also be filed pro forma statements of income in columnar form. The acquisition of securities which will extend the issuer's control over another person shall be deemed the acquisition of a business if the securities being registered under section 206 of the act (70 P.S. § 1-206) are to be offered for the securities to be acquired, or if the purpose of the proxy statement is to effectuate such acquisition. No financial statements need be filed under this paragraph for any acquisition from a totally-held subsidiary. Statements of businesses may be omitted if, considered in the aggregate as a single subsidiary, they would not constitute a significant subsidiary, except that such statements may not be omitted when the securities being registered under section 206 of the act (70 P.S. § 1-206) are to be offered in exchange for the securities to be acquired, or if the purpose of the proxy statement is to effectuate such acquisition.

(7) For an issuer proposing to register its securities under section 206 of the act, the registration statement shall contain summary statements for each of the 3 most recent fiscal years and for the period from the date of the end of the latest fiscal year to the date of the latest balance sheet filed. The summary statements of income required in this paragraph are in addition to the financial statements required under paragraph (2).

(c) When an issuer proposes to register its equity securities for sale under section 206 of the act, which securities are exempt from registration under section 5 of the Securities Act of 1933 under an exemption contained in section 3(a)(11) of the Securities Act of 1933, or Regulation A or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933, the issuer shall file the financial statements required by subsection (b) except that the financial statements may be reviewed by an independent certified public accountant in accordance with the standards established by the American Institute of Certified Public Accountants or the Canadian equivalent if:

(1) The amount of the present offering does not exceed \$1 million.

(2) The issuer previously has not sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation or any other method directed toward the public.

(3) The issuer previously has not been required under Federal, State, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(4) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) does not exceed \$1 million.

(d) The financial statements required by subsections (b) and (c) shall be included in the prospectus or offering circular distributed to offerees in this Commonwealth.

(e) For purposes of this subsection, the corporate form of financial statement title has been used. Financial statement title terminology may differ for other types of accounting entities, including not-for-profit organizations. In this case, the analogous financial statements of those entities should be included.

(f) When consistent with the protection of investors, the Commission may permit the omission of one or more of the financial statements required by this section or the filing in substitution therefor of appropriate statements of comparable character. The Commission, by order, also may require the filing of other financial statements in addition to, or in substitution for, the financial statements required by this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

§ 609.035. [Reserved].

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) When an issuer is required under the act and this title to distribute financial information to securityholders, it shall include the following financial statements as a part thereof:

(i) Financial statements to include balance sheets, statements of income, stockholders' equity and cash flows all in comparative form, for the issuer's last 2 fiscal years.

(ii) Consolidated financial statements of the issuer and its parent or its subsidiaries, or both, in comparative form, for the issuer's last 2 fiscal years.

(2) The financial statements shall be audited and prepared in conformity with generally accepted accounting principles applied consistently with past periods or noting any changes. The financial statements need not be audited where the issuer is permitted by this title or by order of the Commission to distribute unaudited financial information to securityholders.

(b) *Form of financial statement.* For purposes of this section, the corporate form of financial statement title is used. Financial statement title terminology may differ for other types of accounting entities including not-for-profit organizations. In this case, the analogous financial statements of those entities should be included.

§ 609.037. Foreign financial statements.

(a) Under section 609(c) of the act (70 P.S. § 1-609(c)), the Commission has determined that financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be distributed to the public if:

(1) A registration statement has been filed with the Commission under Section 205 or 206 of the act (70 P.S. §§ 1-205 and 206) which registration statement has been designated as Form F-7, F-8, F-9 or F-10 by the United States Securities and Exchange Commission (SEC).

(2) The securities which are the subject of the registration statement designated as Form F-9 by the SEC are either nonconvertible preferred stock or nonconvertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(3) The securities which are the subject of a registration statement designated as Form F-7 by the SEC are offered for cash upon the exercise of rights granted to existing securityholders.

(4) The securities which are the subject of a registration statement designated as

Form F-8 by the SEC are securities to be issued in an exchange offer.

(5) The securities which are the subject of a registration statement designated as Form F-10 by the SEC are offered and sold pursuant to a prospectus in which the SEC has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(b) For purposes of this section, preferred stock and debt securities which are not convertible for at least 1 year from the date of effectiveness of the registration statement will be deemed to meet the requirement of subsection (a)(2).

§ 610.010. Destruction of documents and records.

(a) The Commission may destroy registration filings, exemption filings, notices or statements and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act (70 P.S. § 1-603(b)) and any Commission action taken related to these filings.

(b) The Commission may destroy an application for registration of broker-dealers, investment advisers, agents or investment adviser representatives and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act and any Commission action taken related to these filings.

(c) Documents relating to investigations, hearings and proceedings shall be retained in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record any Commission action relating to investigations, hearings and proceedings, transcripts of hearings and summary information relating to investigations authorized under section 510 of the act (70 P.S. § 1-510).

(d) Information required to be retained by the Commission under this section may be maintained in paper, microfilm or electronic format. Copies of destroyed documents retained in a microfilm or electronic format shall be accepted as original documents when certified by the Secretary of the Commission.

§ 701.010. [Reserved].

§ 901.011. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code, Part II, (relating to general rules of administrative practice and procedure), is applicable to the activities of and proceedings before the Securities Commission.

§ 1001.010. Takeover offeror report regarding participating broker-dealers.

The Commission has determined that, to carry out the purposes of the Takeover Disclosure Law (70 P.S. §§ 71–85), it is necessary to require the offeror to file, as an exhibit to the registration statement filed under section 4 of the law (70 P.S. § 74), Commission Form TDL-1 in accordance with the General Instructions thereto.

**COMMISSION AND STAFF POSITIONS
AND COMMISSION RELEASES
PUBLISHED IN THE PENNSYLVANIA BULLETIN,
PSC BULLETIN, OR ON THE COMMISSION'S
INTERNET HOME PAGE AT
WWW.PSC.STATE.PA.US**

COMMISSION AND STAFF POSITIONS

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**COMMISSION
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PART A. DEFINITIONS

70 P.S. §§1-101

64 PA. CODE §§101.000--102.000

Section 102(d) U.S. Branch Offices of Foreign Banks Deemed “Banks” under Section 102(d), Interpretive Opinions.

The Division of Corporation Finance receives many requests for the Commission to issue an Interpretive Opinion under Section 604 of the 1972 Act to declare a U.S. office of a foreign bank to be a “bank” within the meaning of Section 102(d) of the Pennsylvania Securities Act of 1972 (Act). The Division of Corporation Finance generally will recommend to the Commission issuance of a Interpretive Opinion under Section 604 where the U.S. office of the foreign bank is subject to the same degree of regulation and supervision by either state or federal agencies as domestic banks. To date, the following U.S. offices of foreign banks are deemed to be “banks” under Section 102(d) of the Act.

<u>Institution</u>	<u>Date of Opinion</u>
Algemene Bank Nederland, N.V. (Atlanta Agency)	9/9/85
Allied Irish Banks, plc (Chicago Branch)	2/7/90
Banca Nazionale del Lavoro (Chicago Branch)	12/16/87
Banco di Roma (Caribbean) Co., Ltd. (N.Y. Branch)	12/9/88
Bank Hapoalim B.M. (Phila. Branch)	6/20/79
Bank Leumi Le-Israel B.M. (Phila. Branch)	1/31/79
Bank of Nova Scotia (N.Y. Branch)	12/10/84
Bank Paribas (Los Angeles Agency)	6/5/85
Bank of Scotland (N.Y. Branch)	5/2/90
Bank of Tokyo (San Francisco Branch)	11/28/84
Banque Indosuez (N.Y. Branch)	12/4/85
Banque National de Paris (N.Y. Branch)	12/2/87
Barclays Bank Int’l, Ltd. (N.Y. Branch)	11/28/84
Barclays Bank PLC (N.Y. Branch)	3/22/95
Bayerische Hypotheken- und Wechsel - Bank A. G. (N.Y. Branch)	9/22/93
Bayerische Landesbank (N.Y. Branch)	4/2/86
Bayerische Verinsbank A.G. (N.Y. Branch)	10/3/84
Caisse Nationale de Credit Agricola	6/24/87
Canadian Imperial Bank of Commerce (N.Y. Agency)	11/2/92
Commonwealth Bank of Australia (N.Y. Branch)	12/18/85
Coutts & Co. AG (N.Y. Branch)	5/29/96
Credit Commercial de France (N.Y. Branch)	11/20/91
Credit Local de France (N.Y. Branch)	12/4/91
Credit Lyonnaise (N.Y. Branch)	9/9/85
Credit Suisse (N.Y. Branch)	11/7/83
Dai Ichi Kangyo Bank (N.Y. Branch)	9/29/82
Deutsch Bank (N.Y. Branch)	2/10/87
Dresdner Bank, A.G. (N.Y. Branch)	2/20/85
Fuji Bank, Ltd. (N.Y. Branch)	9/29/82
Industrial Bank of Japan (N.Y. Branch)	11/19/84
Kyowa Bank (N.Y. Branch)	10/16/85

Lloyds Bank International Limited (N.Y. Branch)	12/10/84
Long Term Credit Bank of Japan, Ltd. (N.Y. Branch)	9/29/82
Mitsubishi Bank, Ltd. (N.Y. Branch)	9/29/82
Mitsubishi Trust and Banking Corporation	12/30/85
Mitsui Trust & Banking Co., Ltd. (Los Angeles Branch)	8/21/90
National Australia Bank Limited (Chicago Branch)	7/8/85
National Westminster Bank PLC (N.Y. Branch)	11/28/84
Rabobank Nederland (N.Y. Branch)	10/3/84
Sakura Bank, Limited	6/17/92
Sanwa Bank, Ltd. (N.Y. Branch)	10/3/84
Societe Generale (N.Y. Branch)	5/29/85
State Bank of India (N.Y. Branch)	11/10/88
Sumitomo Bank, Limited (N.Y. Branch)	12/10/84
Sumitomo Trust and Banking Co., Ltd. (N.Y. Branch)	4/2/86
Swiss Bank Corporation (N.Y. Branch)	4/24/85
The Tokai Bank, Limited (N.Y. Branch)	9/21/87
Toronto Dominion Bank (N.Y. Branch)	7/8/85
Toyo Trust and Banking Company, Limited (N.Y. Branch)	1/18/89
Union Bank of Switzerland (N.Y. Branch)	5/22/85
United Mazrahi Bank, Ltd. (N.Y. Branch)	2/24/81
Westdeutsche Landesbank Gironzentrale	7/9/96
Westpac Banking Corporation (Chicago Branch)	12/10/84
Yasuda Trust and Banking Company (N.Y. Branch)	1/29/90

(PSC Bull. Dec. 1985, Dec. 1987, Feb. 1990, July 1993, April 1995)

Section 102(d) - Commingled Funds for IRA Trusts by Banks

STAFF POSITION

The Commission, at its November 2, 1987 meeting, considered a request submitted by the PNC Financial Common Trust Fund for Retirement Assets and permitted the staff to publish the following no-action position:

Commingled Funds for IRA Trusts

In the context of offering trust funds which commingle the assets of individual retirement account trusts which are exempt from federal income taxation under Section 408 of the Internal Revenue Code of 1986, as amended (the "Code") (hereinafter referred to as "Commingled IRA Trust Funds") by banks as that term is defined in Section 102(d) of the Pennsylvania Securities Act of 1972 (the "1972 Act"), the staff of the Pennsylvania Securities Commission ("Commission") would not recommend enforcement action to the Commission for the failure of the bank or its employees to comply with the registration requirements of Section 301 of the 1972 Act provided all the following factors are present:

1. The interests in the Commingled IRA Trust Funds are either registered under the 1972 Act or are exempted from registration by virtue of a provision in Sections 202 or 203 of the 1972 Act other than Section 202(b) of the 1972 Act.
2. The employees of the bank do not receive any additional compensation for selling the interests in the Commingled IRA Trust Funds.
3. The Commingled IRA Trust Funds are not advertised or otherwise marketed as mutual funds.
4. The Commingled IRA Trust Funds are offered solely as an additional trust product of the bank.

No specific request for a no-action position is needed to be filed by any bank whose activities are in accordance with the above criteria. This staff position is limited to the issue of compliance with the requirements of Section 301 of the 1972 Act and does not specifically address issues relating to the provisions contained in Section 102(t) or 202(b) of the 1972 Act with regard to the Commingled IRA Trust Fund. The staff would likewise take the same no-action position where interests are offered and sold in a single trust fund formed for the collective investment of the assets of trusts established to comply with Sections 408 and 401(a) of the Code where the offering meets the above criteria.

(PSC Bull. Nov. 1987)

Section 102(e) Persons engaged in multiple syndications of securities

The staff of the Commission is of the opinion that where promoters of some tax-sheltered offerings (such as, interests in limited partnerships and fractional interests in oil and gas leases, etc.) offer and sell these securities on a recurring basis in this State without utilizing a registered broker-dealers, such activities may bring them within the definition of a broker-dealer as contained in subsection 102(e) of the 1972 Act. And further, the exclusion for “issuers” contained in 102(e)(ii) may not be relied upon in that their recurring activities are not within the context of this exclusion.

In determining whether such persons may be deemed broker-dealers, the staff cautions persons engaged in syndicating three or more of such offering within a 24-month period (without utilizing a registered broker-dealer) that registration may be required. The following factors may also be considered by the staff in determining that a person is to be deemed a broker-dealer, that such person (and/or its employees): have a background of engaging in the sale of securities; are receiving compensation in connection with the offer and sale of securities; are conducting the sale of securities as a significant portion of their activities; or are soliciting new investors in each offering. Where more than three offerings are syndicated in a 24-month period the presumption of broker-dealer status is further enhanced.

This guideline applies to sales of securities registered under Sections 205 and 206 of the 1972 Act as well as to securities being sold in reliance upon the exemptions contained in Sections 203(d) and 203(f) of the 1972 Act.

(PSC Bull. Oct., Dec. 1974; Feb. 1975)

Section 102(e) Persons engaged in the business of effecting transactions in municipal bonds

Persons engaged in the business of effecting transactions in municipal bonds and other securities exempted under the 1972 Act and have a place of business in this State, must be registered under Section 301; there is no exemption available notwithstanding the fact that the securities are exempted and/or the person's only customers may be broker-dealers or institutional investors. Persons with no place of business in this State must be registered unless excluded by subdivision 102(e) or exempted by subsection 302(a) of the 1972 Act.

(PSC Bull. Oct., Dec. 1974; Feb 1975)

Section 102(e)(v) Philadelphia Stock Exchange Members: Interpretive Opinion on Availability of §102(e)(v) Exclusion.

The Pennsylvania Securities Commission (Commission) pursuant to Section 604 of the Pennsylvania Securities Act of 1972 (1972 Act) hereby issues the following Interpretive Opinion relating to Philadelphia Stock Exchange (Exchange) members (Members) with respect to the availability of the exclusion from the definition of “broker-dealer” contained in Clause 102(e) (v) of the 1972 Act and the requirements for paying the forty dollar (\$40) fee for maintaining any office in this State pursuant to Section 602(d) of the 1972 Act.

AVAILABILITY OF THE CLAUSE 102(E)(V) EXCLUSION

Clause 102(e)(v) provides the following:

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his own account.¹ “Broker-dealer” does not include:

(v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors. (Emphasis supplied.)

It is the position of the Commission that:

(1) any Member who transacts securities business in this State with any person other than issuers, other broker-dealers or institutional investors may not utilize the definitional exclusion from “broker-dealer” status under Clause 102(e)(v);

(2) any Member who has a post or booth on the Exchange has a “place of business” in Pennsylvania and may not utilize the definitional exclusion from “broker-dealer” status under Clause 102(e)(v);

(3) any Member who has principals or personnel present on the floor of the Exchange for the purpose of effecting transactions in securities for their own account or for the account of others on the average of more than one day each week throughout the year has a “place of business” in Pennsylvania and may not utilize the definitional exclusion from “broker-dealer” status under Clause 102(e)(v), however, this position should not be interpreted to preclude the finding of a “place of business” where use is less frequent when circumstances indicate otherwise; and

(4) any Member who has any other facilities in this State for engaging in securities activities has a “place of business” in Pennsylvania and may not utilize the definitional exclusion from “broker-dealer” status under Clause 102(e)(v).

(PSC Bull. Nov. 1986)

Sections 102(e); 305(a) and (d); 510; and 1 Pa. Code 35.14

Guidelines with respect to certain affiliations of broker-dealers with non-related banks

These guidelines of the Commission relate to broker-dealers registered under the 1972 Act which have entered into agreements with banks² for the purpose of having the Pennsylvania clients of such banks open and participate in individual trading accounts for securities transactions with such broker-dealers.

The Commission in appropriate circumstances may avail itself of the following procedures with regard to complaints³ received from or concerning clients of a bank involving securities activities in instances where such a bank had entered into an affiliation by contract with a registered broker-dealer for the purpose, inter alia⁴, of that broker-dealer obtaining individual securities accounts through the efforts

1 The request for this Interpretive Opinion was submitted by Members of the Exchange trading for their own account. As of the date of this Interpretive Opinion the Commission has not received any requests for the promulgation of a Regulation exempting such persons from the registration requirements for broker-dealers contained in Section 301 of the 1972 Act.

2 Section 102(d) of the 1972 Act defined “bank” as “any bank, banking and trust company, savings bank, trust company or private bank, as defined in the Banking Code of 1965, Act of November 30, 1965 (P.L. 847), or any savings and loan association, as defined in the Savings Association Code of 1967, Act of December 14, 1967 (P.L. 746), or any successor statutes thereto, or any banking institution, trust company or savings and loan institution organized under the laws of the United States, or of any state, territory or the District of Columbia, or a receiver, conservator or other liquidating agent of any of the foregoing.”

3 The Commission is especially concerned about these arrangements in that the various banking authorities have not promulgated regulations for banks which are analogous to those promulgated by securities regulatory authorities for the protection of customers engaging in securities transactions.

4 Under certain of these agreements the bank is limited to channeling clients to the broker-dealer. Under other agreements the activities of the bank expand to include, among other things, processing of orders, providing credit for securities transactions, etc.

of employees⁵ of the bank:

1. Authorize an investigation or inquiry into the matter.
2. Authorize the issuance of an order to show cause in the matter.
3. Hold a hearing to determine if the bank has engaged in either fraudulent conduct with respect to the client in connection with these securities activities, or has engaged in a course of conduct of taking unfair advantage of a client in securities activities.⁶
4. In the event of a determination that the bank has committed either of the misconduct described in the above paragraph, issue and publish an order, inter alia⁷, notifying broker-dealers that are or become a party to these agreements regarding securities activities with such bank that any such broker-dealer's registration may be suspended by the Commission pursuant to the provisions contained in Section 305(a) and (d) of the 1972 Act for as long as such affiliation continues to exist and such order remains in effect.

(13 Pa.B. 2175; PSC Bull. July/Aug. 1983)

Section 102(e); Section 201 Cash tender offers

The Commission has been asked what steps need to be taken in order to comply with the 1972 Act by the persons making cash tender offers. There are no registration of securities requirements under Section 201. In the event the person making the cash tender offer is engaged in the business of effecting numerous transactions in securities in addition to this cash tender offer, the person may be a broker-dealer within the meaning of Section 102(e) of the 1972 Act. However, a person whose transactions in securities are limited to the proposed cash tender offer would not likely be deemed a broker-dealer. To effect the transactions on his behalf, the broker-dealer must comply with the registration requirements under Section 301 of the 1972 Act.

(PSC Bull. June/Aug. 1973)

Sections 102(e) and 102(j) Persons advising and/or effecting securities transactions on behalf of non-profit institutions

The staff has received numerous inquiries with respect to the registration requirements of Section 301 of the 1972 Act for persons assisting non-profit institutions (in particular churches, hospitals, nursing homes, etc.) in connection with the offer and sale of such non-profit institutions' securities. Persons performing the following activities may be deemed to be broker-dealers:

1. Persons (other than agents unaffiliated with the issuer) directly offering or selling such securities;
2. In the case of church bond offerings, persons communicating directly with the congregation and soliciting its members with respect to the purchase of securities;
3. Persons organizing or supervising the institution's agents, members, officers and employees with respect to the offer and sale of securities.

NOTE: With respect to items 1, 2 and 3, such activities will also be those of an "underwriter" as that term is defined in subsection 102(v) of the 1972 Act.

In addition persons performing the following activities may be deemed to be investment advisers: Persons who give advice for compensation to the principals of non-profit institutions with respect to the means, manner and advisability of selling securities in order to raise funds (including but not limited to giving advice with respect to the type and terms of the securities to be offered, the size of the offering,

⁵ The Commission has not ruled on whether employees of the bank may, in certain instances, be deemed to be agents of the broker-dealer.

⁶ Where appropriate, the broker-dealer may also be named as a respondent in the order to show cause and as a party to the hearing.

⁷ In the event of the finding of securities fraud, the Commission may also impose any other sanctions authorized by the 1972 Act for such violations.

the plan of distribution, the use of proceeds, the employment of trustees and fiscal agents, and/or the preparation of the prospectus). With respect to the exclusion contained in Section 102(j)(vii), persons will be deemed to be holding themselves out generally to the public as investment advisers if they represent that their services are generally available to non-profit institutions (or other clients) whether or not these institutions (or clients) are located in the State.

(PSC Bull. Oct., Dec. 1974; Feb. 1975)

Section 102(j) Offeree representatives in Regulation D Offerings

Persons receiving compensation for acting as offeree representatives in transactions designed to meet the requirements of Regulation D under the Securities Act of 1933, unless otherwise exempted or excluded, must comply with the registration requirements for investment advisers contained in Section 301 of the 1972 Act. The compensation received must be for the rendering of investment advice and not for the sale of securities.

(PSC Bull. Oct., Dec. 1974; Feb. 1975; March/April 1978)

Section 102(j)(vii) Limited partnerships as constituting one client for the purpose of defining an investment adviser

In a No-Action Letter approved October 22, 1984, the Commission permitted the staff to take the position that a limited partnership constituted one client for purposes of applying the exemption from registration for investment advisers with fewer than five (5) clients within the preceding twelve (12) months.

(PSC Bull. Dec. 1984)

The Commission staff generally will follow SEC Rule 203(b)(3)--1(b) promulgated under the Investment Advisers Act of 1940 in counting the number of limited partners as clients of a person acting as an investment adviser.

(PSC Bull. June 1986)

Section 102(j)(ii) Interpretive Advice Regarding Registration of Certain Lawyers, Accountants, Engineers and Teachers Acting as Investment Advisers

The Pennsylvania Securities Commission is publishing the following interpretive opinion relating to the exclusion from the definition of investment adviser contained in Section 102(j)(ii) of the Pennsylvania Securities Act of 1972 ("1972 Act") for lawyers, accountants, engineers, and teachers who, solely incidental to the practice of their professions, give advice concerning securities to their clients in this State.

Registration Requirements

Section 301(c) of the 1972 Act provides that "[it is unlawful for any person to transact business in this State as an investment adviser unless he⁸ is so registered or registered as a broker-dealer⁹ under this act unless he is exempt under Section 302(d)."¹⁰

Section 301(c.1) of the 1972 Act provides that "[it is unlawful for any investment adviser to

⁸ The term his/or himself used in this announcement also refers to her/or herself and it/or itself in the case of a firm.

⁹ A registered agent of a registered broker-dealer is not required to register as an investment adviser if both: (1) the agent engages in all advisory activities exclusively on behalf of the registered broker-dealer and (2) the transactions are effected exclusively through the books and records of the registered broker-dealer. An agent who holds himself out individually as an investment adviser must register as an investment adviser.

¹⁰ Section 302. Exemptions -- The following persons shall be exempted from the registration provisions of Section 301 (d) A person registered under the Investment Advisers Act of 1940, who has not previously had any certificate denied or revoked under this act or any predecessor statute, if (i) his only clients in this State are other investment advisers, broker-dealers, institutional investors [see definition of "institutional investor" at Section 102(k) of the 1972 Act, 64 Pa. Code §102.111, and 15 Pa. B. 4187], or governmental agencies and other instrumentalities designated by regulation of the commission, or (ii) during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i) above, whether or not he or any of the persons to whom the communications are directed is then present in this State." [brackets added.]

employ an associated person to represent him in this Commonwealth unless the associated person is registered under this act.”¹¹

Section 501(f) of the 1972 Act states that “[a]ny investment adviser who violates Section 301 shall be liable to the client for all fees paid, directly or indirectly, to the investment adviser for investment advisory services.”

Definitions of Investment Adviser and Associated Person

“**Investment adviser**” as defined in Section 102(j) of the 1972 Act means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing or selling securities (whether such advice relates to specific securities or to categories of securities), or who, for compensation and as part of a regular business, issues or promulgates analyzes or reports concerning securities.¹²

“**Associated person**” as defined in Section 102(c.1) means any partner, officer or director of (or person occupying a similar status or performing similar functions), or other individuals employed by or associated with, an investment adviser, except clerical or administrative personnel, who:

- (i) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
- (ii) Manages accounts or portfolios of clients;
- (iii) Determines which recommendation or advice regarding securities should be given:

¹¹ Where a firm must register as an investment adviser, the only persons who must be registered as associated persons are those principals or employees whose activities with respect to Pennsylvania clients come within the definition of associated person. Further, if a professional working in a firm provides securities advisory services that meet the exclusion for professionals, the person does not have to register as an associated person even if the firm otherwise must register as an investment adviser.

¹² Pursuant to Section 102(j)(i) through (viii) investment adviser does not include:

- (i) A bank;
- (ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;
- (iii) A broker-dealer registered under this act without the imposition of the condition referred to in section 305(b)(v);
- (iv) A publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation which is not solely engaged in the rendering of investment advice; and the agents and servants thereof in the performance of their regular duties on behalf of such publication;
- (v) A person whose advice, analyzes or reports relate only to securities exempted under section 202(a);
- (vi) A person who has no place of business in this State if his only clients in this State are other investment advisers, broker-dealers or institutional investors;
- (vii) Any person who during the course of the preceding twelve months has had fewer than five clients and who does not hold himself out generally to the public as an investment adviser.
- (viii) Other persons not within the intent of this subsection whom the commission by regulation designates.

(A) if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or,

(B) if the investment adviser has no investment committee, the person or persons who determine general client investment advice providing that, if there are more than five such persons who determine general investment advice, only the supervisors of such persons are deemed to be associated persons solely by virtue of this paragraph; or

(iv) Immediately supervises employees in the performance of any of the foregoing.

Discussion

Professionals may rely on an exclusion from the definition of investment adviser contained in Section 102(j)(ii) for lawyers, accountants, engineers or teachers where performance of the investment advisory services is solely incidental to the practice of their profession. Whether the exclusion from the definition of investment adviser is available to a lawyer, accountant, engineer or teacher providing investment advisory services within the meaning of Section 102(j)(ii), depends upon the relevant facts and circumstances.¹³

* * * * *

A lawyer, accountant, engineer or teacher, whether or not holding himself out to the public as providing financial planning or other financial advisory services, who does not render advice with respect to investing in specific securities, types of securities, or categories of securities¹⁴ need not register as an investment adviser. Asset allocations recommendations⁷, however, generally do include advice on types of securities.

EXAMPLE A

An accountant provides clients accounting and financial planning services. No advice with respect to specific securities, types of securities, or categories of securities is provided.

The accountant need not register as an investment adviser.

* * * * *

Where the securities advice is provided by a lawyer, accountant, engineer, or teacher, who does not hold himself out to the public as providing financial planning or other financial advisory services, the availability of the exclusion from the definition of investment adviser for securities advice rendered solely incidental to his profession will depend on those factors set forth in footnote 6 of this announcement.

¹³ For example, the Commission primarily will look to whether the investment advisory services provided and the fees charged are solely incidental to the total services provided to the individual client as opposed to comparing whether the aggregate of such fees and services are solely incidental to the aggregate of services provided to all clients. In addition, the Commission will take other relevant factors into consideration in determining applicability of the exclusion, including, but not limited to, whether the firm establishes a separate subsidiary, division, or other business entity to perform advisory services or maintains an investment adviser registration with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940. In this context, the Commission would look to U.S. Securities and Exchange Commission Release IA-1092 relating to the analogous exclusion in the Investment Advisers Act of 1940 which states that “. . . the exclusion . . . is not available . . . to a lawyer or accountant who holds himself out to the public as providing financial planning, pension consulting, or other financial advisory services. In such a case it would appear that the performance of investment advisory services by the person would not be solely incidental to his practice as a lawyer or accountant.” (See however, “Discussion” section; example D.)

¹⁴ The Commission at its August 7, 1991 meeting permitted the staff to publish the following no-action position: In the context of persons providing, for compensation, advice with respect to securities, the staff of the Commission will not recommend enforcement action to the Commission for the failure of the person to comply with the registration provisions in Section 301(c) and 301(c.1.) for investment advisers and associated persons respectively, where the securities advice provided to clients in this State is limited to: a general recommendation that the client should be more aggressive or more conservative in securities investments, a general recommendation as to the percentage of the client's assets that should be in securities, and/or a general recommendation that the client pursue an income-producing or growth oriented investment strategy, provided the recommendation does not identify specific securities, types of securities, or categories of securities. For the purpose of this no-action position: (a) the phrase “types of securities” refers to classes of securities where the issuer is not specifically identified such as: common stock, preferred stock, options, warrants, bonds, mutual funds; and (b) the phrase “categories of securities” refers to general areas of securities investments where neither the issuer nor the types of securities are identified such as: cyclical securities, automotive industry securities, international securities, NYSE securities.

EXAMPLE B.1

An accountant, who does not hold himself out to the public as providing financial planning or other financial advisory services, provides the client both accounting and financial planning services. The services involve advice with respect to specific securities, types of securities, or categories of securities.

Whether the accountant is excluded from the definition of investment adviser depends on those factors set forth in footnote 6 of this announcement, including a comparison of the extent of the securities advisory services provided to any client as contrasted with the accounting services provided to that client. The comparison is measured by the compensation paid for each service.

EXAMPLE B.2

An accountant provides a client financial planning services only. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities.

The accountant is not excluded from the definition of investment adviser and therefore must register as an investment adviser.

* * * * *

If the investment advice provided by a lawyer, accountant, engineer, or teacher, who holds himself out to the public as providing financial planning or other financial advisory services, is part of the financial plan being provided to a financial planning client, the professional cannot rely on the exclusion from the definition of investment adviser for investment advice rendered incidentally to the practice of his profession.

EXAMPLE C

An accountant, who holds himself out to the public as providing financial planning or other financial advisory services, provides the client both accounting and financial planning services. The financial planning services involve advice with respect to specific securities, types of securities, or categories of securities.

The accountant is not excluded from the definition of investment adviser no matter how insignificantly the securities advice compares to the other financial planning advice or accounting services rendered.

* * * * *

Where a lawyer, accountant, engineer, or teacher holding himself out to the public as providing financial planning or other financial advisory services, does not provide advice on specific securities, types of securities, or categories of securities as part of his financial planning services but provides such advice in connection with the practice of his profession, in most instances the exclusion from the definition would be unavailable because the professional is holding himself out as a financial planner or financial adviser. If, however, the securities advice is not part of the financial planning services and is both limited and isolated, the exclusion may be still available.

EXAMPLE D

An accountant, who holds himself out to the public as providing financial planning or other financial advisory services, provides clients both accounting and financial planning services. No securities advice is rendered as part of the financial planning services. Clients, on a few occasions, request the accountant's advice on investing in certain limited partnerships. The fees charged to such a client for the advice total only

a small percentage of the fees charged to that client for accounting services provided.

The accountant is excluded from the definition of investment adviser. The example presented is intentionally narrow in order to illustrate that once the accountant holds himself out as a financial planner or financial adviser, even if the only securities advice provided for compensation is not part of the financial planning or advisory activities, only limited and isolated securities advice may be provided without registration as an investment adviser.

* * * * *

Persons seeking to register as investment advisers and associated persons may obtain a Pennsylvania Investment Adviser Registration Packet by contacting:

Pennsylvania Securities Commission
Division of Licensing and Compliance
1010 N. Seventh Street
Eastgate Office Building, 2nd Floor
Harrisburg, PA 17102-1410
Telephone Number (717) 787-5675

Section 102(t) Investment Contracts

The Commission determined that the solicitation of lease brokers to enter into lease broker agreements for a \$3,450 fee for the purpose of profiting from the leasing of automobiles and capital equipment to individuals and businesses by a corporation and its promise to pay \$25 for each lease placed until the entire fee was paid constituted an investment contract as well as a note and evidence of indebtedness which are securities, as that term is defined in Section 102(t) of the 1972 Act. In this proceeding, the Commission adopted the “risk capital” test to determine the existence of a security.

In the Matter of: Drexel Leasing Corporation; Allerton Towne; Edward O'Donnell; Jesse Levin and Stan Bond. 2/9/77

The Commonwealth Court of Pennsylvania determined that pest control franchises being offered and sold by the defendants were investment contracts which are securities, as that term is defined in Section 102(t) of the 1972 Act.

Pennsylvania Securities Commission v. Humphrey's Pest Control Co., Inc.,; Humphrey's Pest Control Franchises, Inc.; Wesley G. Humphreys and Rosamond H. Humphreys No. 669 C.D. 1983 (Memorandum Decision on Preliminary Injunction 5/6/83; Order on Permanent Injunction 8/25/85)

Section 102 (t) Compliance Notice to the Viatical Industry

The purpose of this notice is to advise persons involved in the viatical industry of the need, under certain circumstances, to comply with the Pennsylvania Securities Act of 1972 (1972 Act). This notice is being issued because the Pennsylvania Securities Commission (PSC) has identified an increase in the number of enforcement cases involving the sale of “interests” in viatical settlement contracts to Pennsylvania residents. In these cases, PSC has alleged that the “interests” are securities under the 1972 Act. These “interests” were not registered under the 1972 Act, were sold in a fraudulent manner, or were offered and sold by persons who were not registered under the 1972 Act.

The Viatical Industry

A viatical settlement contract is an agreement under which a person will receive compensation in return for an assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of a life insurance policy or certificate of insurance. The person receiving compensation in return for assignment of the benefits of the life insurance is known as the viator. The person making the offer of compensation generally is known as a viatical settlement broker. The amount of compensation received by the viator will be less than the expected amount of the death benefit.

The viatical industry grew primarily as a result of the AIDS disease. Many individuals who were diagnosed with a potentially terminal illness and owned life insurance policies sought to unlock the value of the death benefit of these policies. Thus, the viatical industry met and continues to meet a consumer need by persons who are diagnosed as terminally ill.

When Viatical Interests are Securities under the 1972 Act

Viatical settlement contracts and viatical settlement brokers generally are regulated by state insurance authorities. However, persons in the viatical industry that seek to raise money from investors to fund viatical settlement contracts and those involved in raising such funds also are subject to State and Federal securities laws, including the 1972 Act.

PSC asserts jurisdiction through the 1972 Act in situations where Pennsylvania residents are being solicited to provide funds for the purchase of numerous viatical settlement contracts because what is being sold are securities and existing provisions of the 1972 Act apply. Often the security being sold is an “investment contract” which is included in the definition of security in Section 102(t) of the 1972 Act.

An “investment contract” is defined by the U.S. Supreme Court to include any investment of money by persons in a common enterprise (funding the purchase of viatical settlement contracts) who expect a profit through the efforts of others (promoter of the investment) (*SEC v. Howey*, 328 U.S. 293 (1946)). Pennsylvania courts have approved use of the Howey test for purposes of the 1972 Act (*Leon M. Martin v. ITM/International Trading & Marketing Ltd., William M. Erbe and David F. Dunn*, 494 A.2d 451 (Pa.Super. 1985)). Often promoters refer to the investment contract as an “interest” in a viatical settlement contract (Viatical Interests). Pennsylvania is in accord with the vast majority of states that use the investment contract analysis to determine if funding schemes for viatical settlement contracts are securities under state securities laws.

SEC v. Life Partners

In its investigation of the sale of Viatical Interests to Pennsylvania residents, some persons have cited *SEC v. Life Partners* (87 F.3d 536 (DC Cir. 1996)) for the proposition that the Viatical Interests they are selling are not securities. PSC advises that this case was determined on very narrow issues which generally are not present in the PSC’s enforcement cases. Further, this is a Federal case which is not automatically binding on Pennsylvania Courts. To PSC’s knowledge, no Pennsylvania Court to date has ruled on the applicability of *Life Partners* to Section 102(t) of the 1972 Act.

Securities Registration Requirement

Because Viatical Interests are securities, they are subject to the securities registration requirements of Section 201 of the 1972 Act. Sections 202 and 203 provide certain exemptions from securities registration, some of which require a notice filing with PSC, and Section 211 requires a notice filing with PSC if the Viatical Interests are being sold in accord with Rule 506 adopted under Regulation D of the U.S. Securities and Exchange Commission (SEC). If the exemptions or notice filing provisions are unavailable, the securities must be registered with PSC. This means that they cannot be sold until the PSC affirmatively registers the Viatical Interests.

PSC recently has received some notice filings and at least one registered offering under Section 205 of the 1972 Act involving the offer and sale of securities to Pennsylvania residents, the proceeds of which were to be used to fund the purchase of viatical settlement contracts.

Requirement to Comply with Anti-Fraud Provision of Securities Laws

The issuer of the Viatical Interests is responsible for compliance with the securities registration requirements of the 1972 Act and the anti-fraud provisions of Section 401. Unlike insurance regulation, the issuer is not required to make specific mandated disclosures to purchasers but is under a legal obligation to disclose all information material to the transaction. Pursuant to case law (*TSC, Inc. v. Northway Industries, Inc.*, 426 U.S. 438 (1976)), this information is that which a reasonable person would believe important in order to make an informed investment decision.

Requirement to Register as a Broker-Dealer or Agent

Persons selling Viatical Interests, usually for a sales commission and very often without the knowledge of their firm (whether it be an insurance company or broker or a securities broker-dealer), are engaged in offering and selling securities and should be registered as a broker-dealer or agent of a broker-dealer under Section 301 of the 1972 Act.

SEC Requirements

Persons involved in the viatical industry who are engaged in activities that may fall under PSC jurisdiction also should consult SEC and Federal securities laws to identify any SEC requirements.

Typical PSC Viatical Interests Enforcement Case

In a typical PSC enforcement case involving Viatical Interests, the Viatical Interests are not registered under the 1972 Act nor is there an exemption available; the person selling the Viatical Interests is not registered as a broker-dealer or agent under Section 301 of the 1972 Act; and the issuer and persons effecting the transactions have omitted to disclose material information relating to the transaction or have made materially misleading statements thereby contravening the anti-fraud provisions of Section 401 of the 1972 Act.

Regulatory Cooperation

This notice to the viatical industry was prepared in cooperation with the Pennsylvania Department of Insurance.

Section 102(t) Investments by general partners in partnerships as constituting securities

The staff has taken the following positions with respect to investments by General Partners in partnerships:

1. Limited partnership interests purchased by general partner(s) constitute “securities” within the meaning of Section 102(t) of the 1972 Act and such general partner(s) must be counted for purposes of calculating the number of offerees and purchasers permitted by Sections 203(d), (e) and (f) of the 1972 Act.

2. General partnership interests ordinarily will not be deemed to be “securities”, unless such interest constitute “investment contracts”, as may be the case where a general partner contributes capital, but otherwise performs no active functions with respect to the partnership.

(PSC Bull. March/April 1978)

Section 102(t) Securities of residential cooperative housing corporations

The Pennsylvania Securities Commission has determined that shares of residential cooperative housing corporations sold in connection with proprietary leases are “securities” as that term is defined in Section 102(t) of the 1972 Act. Unless otherwise exempted, such securities must be registered prior to their offer sale in Pennsylvania and the advertising requirements of Section 606(c) will be applicable.

(PSC Bull. Oct., Dec. 1974; Feb. 1975)

Subsequent to the United States Supreme Court’s decision in United States v. Foreman, the staff received a no-action request with respect to a proposed residential cooperative whose bylaws contained provisions restricting the opportunity for appreciation in the value of the common shares of the residential cooperative, the pledging or hypothecation of such shares, and their free transferability; and further the bylaws provided that the tenant-shareholders would be entitled to only one vote for each residential apartment of which they have a proprietary lease irrespective of the number of shares they may hold. The income and revenues to be generated from renting the commercial facilities by the cooperative corporation will be less than 10% of the total revenues of the cooperative corporation. (See Regulation 102.202) Based upon these facts and other facts appearing in the no-action request, the staff issued a letter taking a no-action position. **Society Hill Towers, Inc.** 12/75. The staff cautions that the no-action position is based solely upon the facts presented. If the traditional attributes of a security had been present, the no-action position would not have been taken.

(PSC Bull. Sept./Oct.1976)

On May 19, 1978 the staff took a no-action position with respect to compliance with the provisions of the 1972 Act concerning the offer and sale of shares in a proposed Pennsylvania cooperative housing corporation where the circumstances are intended to be similar to those considered by the United States Court of Appeals Second Circuit in Grenader v. Spitz, 537 F.2nd 612 (1976) including the right of a tenant-shareholder to transfer the stock at any price negotiated.

(Allegheny Towne Corporation) (PSC Bull. May/June 1978)

Section 102(t) Treatment of Certain Guaranties for Filing and Fee Purposes

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 92-CF-1
TREATMENT OF CERTAIN GUARANTIES FOR
FILING AND FEE PURPOSES
STAFF POSITION**

Occasionally, offerings of securities are filed with the Pennsylvania Securities Commission (Commission) which include guaranties issued by parties that are not the issuer. Under Section 102(t) of the 1972 Act, the guaranty is a security. Therefore, under Section 201, the offer or sale of the guaranty in Pennsylvania either must be registered or exempted.

Generally, these guaranties are offered and sold in conjunction with the securities which are the subject of the filing and are inseparable from those securities themselves, i.e. they cannot be offered and sold separately nor is additional consideration required to receive the guaranty. The question has arisen, where this type of guaranty cannot rely upon a self-executing exemption under the 1972 Act, as to whether a separate filing should be required for each guarantor and a separate filing fee paid.

In balancing the legal requirements and practical considerations and to facilitate investor protection, the Commission, at its March 18, 1992 meeting, permitted the staff to take the following position with respect to filing and fee collection procedures related to guaranties which are part of an offering of debt or equity securities:

STAFF POSITION

Where a guaranty (1) cannot be offered and sold separately from the security being guaranteed¹⁵ and no separate consideration is paid by the purchaser for the guaranty and (2) the guarantor co-signs with the issuer the forms required to be filed with the Commission¹⁶, thereby assuming responsibility for the information filed with the Commission (including the disclosure document), staff would consider the guaranty as an integral part of the entire offering and require only one form to be filed for the offering accompanied by one filing fee based upon the total aggregate offering amount of the security being guaranteed that is to be offered in Pennsylvania.

(PSC Bull. March 1992)

Section 102(t) Reinvesting in Notes

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 07-CF-1
REINVESTING IN NOTES AND WHETHER THE REINVESTMENT
IS A SECURITY AS DEFINED BY SECTION 102(t)
OF THE PENNSYLVANIA SECURITIES ACT OF 1972**

In response to numerous inquiries made of the staff of the Division of Corporation Finance regarding whether the reinvestment in or rollover of a note constitutes the issuance of security which must be registered with the Commission, staff of the Division is providing the following interpretation.

STAFF POSITION

When an issuer issues notes, investors typically receive periodic interest on their investment. Generally, the interest is either distributed directly to the investor or reinvested in the fund on the investor's behalf.

It is the position of Commission Staff that the reinvested interest is a security as that term is defined

¹⁵ This staff position does not apply to guaranties which are offered and sold in reliance upon a self-executing exemption under the 1972 Act. However, where an offering of governmental obligations is being made in reliance upon Section 202(a) of the 1972 Act and that offering includes a "put" or "tender option" issued by a broker-dealer or some other entity which agrees to repurchase the securities being offered under specified conditions, staff will view the "put" or "tender option" as a separate security which must comply with the registration provisions of Section 201 of the 1972 Act.

¹⁶ Each guaranty and guarantor shall be listed on the forms required to be filed with the Commission. For an offering being registered under Section 5 of the Securities Act of 1933 where only Form U-1 is required to be filed with the Commission, the guarantor need not sign Form U-1 if the guarantor has signed the federal registration statement.

under Section 102(t) of the 1972 Act. Accordingly, when an issuer issues notes and reinvests the interest in the fund, the securities must be registered with the Commission or exempt from registration. When filing the registration, the issuer should anticipate the reinvested interest when calculating the amount to be registered.¹⁷

Further, when term notes expire, investors typically have an option to rollover their investment into new notes or rollover the note. The reinvestment in a note is an offer and sale of a security under the 1972 Act. Therefore, in order to issue the securities, the securities must be registered with the Commission or exempt from registration.

PART B. REGISTRATION OF SECURITIES

70 P.S. §§1-201--209 64 PA. CODE §§201.000--209.092

Section 201 Early Investment Incentives

DIVISION OF CORPORATION FINANCE RELEASE NO. 89-CF-1 EARLY INVESTMENT INCENTIVES STAFF POSITION

An early investment incentive is a benefit afforded early investors which is not given to later investors prior to the closing date of the offering (EII). As a matter of public policy, the Commission disfavors those EIIs which are not based upon an economic justification because they may be utilized to pressure offerees to invest in programs and may be used as an implied representation that the investment will increase in value.

The Commission has advised staff not to clear any filings made with the Commission containing EIIs except where any of the following are present:

1. Offering being made in Pennsylvania solely to Accredited Investors, as that term is defined in Regulation 204.010(d)(5), which possess a net worth of \$1 million or more.
2. Offerings being made in Pennsylvania where the EII is based upon an economic justification which can be quantified.
3. Offerings being made in Pennsylvania where (i) the EII has an economic justification but which justification is not susceptible to being quantified and (ii) the EII will be paid to investors out of the proceeds of operations or sale or liquidation of the direct participation investment program from what otherwise would be the sponsor's share (but not from the direct or indirect proceeds of the offering).

Prior to admitting investors who may not be subject to the EII, a supplemental disclosure statement may be required to be sent to prospective investors informing them of the unavailability of the EII for future investors.

(PSC Bull. April 1989)

Section 201 Stock exchange offers

The Commission has also been asked what steps need to be taken in order to comply with the 1972 Act by persons making stock exchange offers.

1. In the event that the securities being offered fall within the exemption contained in Section 202(f) of the 1972 Act, no registration of securities is required.
2. The exemption contained in Sections 203(d) and (e) may also be available. However, the

¹⁷ While the registration is effective, should an issuer's sales approach the registered amount, the issuer should file an amended Form U-1 requesting an increase in the registered amount and submit the appropriate filing fee.

Commission will not waive the requirements of the one year restriction on sales contained in Section 203(d)(i). It is also suggested that any person wishing to effect an exchange transaction pursuant to the exemption in Section 203(d) and (e) contact the Commission before filing.

3. The exemption in Section 203(n) is available solely where the person is issuing its own securities to its own shareholders. Exchange offers of stock of affiliated companies will not be deemed to be in compliance with the exemption unless the corporation “. . . prior to the commencement of the offer, owned substantially all of the voting stock of the issuer or was organized for the purpose of the offer by persons in control of the issuer.” Furthermore, except in cases where holding companies are being formed through this mechanism, the exemption will be denied unless sufficient information is given to the shareholders of the corporation being acquired.

4. The exemption contained in Section 203(o) is not generally available for stock exchange offers. However, in certain B-type reorganizations under the Internal Revenue Service Code of 1954 as amended, where:

- (1) the company being acquired is closely held;
- (2) the terms of reorganization were negotiated; and
- (3) all the shareholders whose stock is being acquired are parties to the reorganization agreement,

the exemption contained in Section 203(o) may be available.

5. Any other exchange offer, unless the securities are exempted by the Commission pursuant to Section 202(i) or in a transaction exempted by the Commission pursuant to Section 203(r), must meet the registration requirements of 1972 Act. However, the exemption contained in Section 203(i) would also be available for such transactions.

6. The same considerations discussed in the Section dealing with cash tender offers in regard to persons who may be broker-dealers within the meaning of Section 102(e) of the 1972 Act are applicable to stock exchange offers.

(PSC Bull. June/Aug. 1973)

Section 201 Nominal Incorporators

STAFF POSITION

Where a person(s), in connection with the filing by an issuer of appropriate documents with a state agency to incorporate the issuer under applicable state law, becomes an incorporating shareholder(s) with the intention upon incorporation, to transfer all such shares(s) to a promoter or principal of the issuer (as those terms are defined in Section 102(o) of the 1972 Act and Regulation 203.184), the Commission has permitted the staff to take the position that, in the context of Section 102(r), no sale has been made to the incorporating shareholder(s). Under these circumstances, however, staff would view resale of the share(s) to the promoter or principal as a sale by the issuer.

Staff would take the same position where a “straw” limited partner is involved in the context of formation of a limited partnership.

(PSC Bull. July/Aug. 1988)

Section 201 The creation and subsequent disposition or distribution of voting trust certificates

The staff of the Commission’s Division of Corporation Finance has taken the position that the initial creation of voting trust certificates, which are defined as securities in Section 102(t) of the 1972 Act, does not constitute a sale of securities subject to the registration provisions of Section 201 of the 1972

Act. However, any subsequent disposition or distribution of a voting trust certificate or an interest in a voting trust for consideration would constitute a sale of securities subject to the registration provisions of Section 201 of the 1972 Act.

(PSC Bull. March/April 1982)

Section 201 Uniform Investment Company Notice Filing (Form NF)

**DIVISION FOR CORPORATION FINANCE
RELEASE NO. 97-CF-1
USE OF THE UNIFORM INVESTMENT COMPANY NOTICE
FILING FORM BY INVESTMENT COMPANIES TO FILE A
NOTICE WITH THE COMMISSION CONCERNING THE OFFER AND
SALE OF SECURITIES IN PENNSYLVANIA AND FILING OF DOCUMENTS
WITH THE COMMISSION THAT ALSO ARE FILED WITH THE SEC.**

At its May 21, 1997 meeting, the Pennsylvania Securities Commission ("Commission") permitted the publication of the following positions of the Division of Corporation Finance ("Staff") with respect to notices filed with the Commission by open and closed-end investment companies, face amount certificate companies, and unit investment trusts ("Investment Companies") as permitted by §102 of the National Securities Markets Improvement Act ("NSMIA") using the Uniform Investment Company Notice Filing Form adopted by the North American Securities Administrators Association, Inc. on April 27, 1997 or successor form thereto ("Form NF").

I. Use of Form NF

In lieu of the face page to Form U-1, the Commission will accept Form NF for notice filings by Investment Companies relating to initial filings, renewal filings and amendments thereto.

The issuer should refer to the instructions in completing Form NF and should provide all information appropriate to the purpose of the filing. In Pennsylvania, the issuer, for purposes of Item 1 of Form NF, always is the fund or the trust. It is never a portfolio or a class of shares within a portfolio.

II. Initial Notice Filings in Pennsylvania

An initial notice filing in Pennsylvania on Form NF should be accompanied by a copy of the registration statement filed under Section 5 of the Securities Act of 1933 ("Registration Statement") and appropriate fees as specified in section 602 (b.1)(iv) of the Pennsylvania Securities Act of 1972 ("1972 Act"). Exhibits not contained in the Registration Statement need not be filed. For effectiveness of initial notice filings, please see Section IV. Please be advised that, if an open or closed-end investment company or face amount certificate company changes its fiscal year-end during the initial notice period, such action will result in a shortened notice period for the renewal notice filing.

III. Renewal Notice Filings in Pennsylvania

A renewal notice filing in Pennsylvania on Form NF should be accompanied by an updated prospectus. If an updated prospectus is not available at the time of filing the notice, the issuer shall file it with the Commission at the same time it is filed with the U.S. Securities and Exchange Commission ("SEC"). All issuers making a renewal notice filing must check box 2 of Item 7 on Form NF and the renewal notice filing will become effective at the end of the issuer's current notice period.. Please be advised that, if an open or closed-end investment company or face amount certificate company changes its fiscal year-end during the previous renewal notice period, such action will result in a shortened notice period for the very next renewal notice period.

IV. Notice Period

The length of the notice period is governed by Section 207(j.1) of the 1972 Act with respect to open and closed-end investment companies and face amount certificate companies and Regulation 207.140 with respect to unit investment trusts.

If the Registration Statement filed by the issuer is not effective with the SEC when filed in Pennsylvania and the issuer elects to have the initial notice period begin concurrently with SEC effectiveness, the issuer must check box 3 of Item 7 on Form NF and provide prompt written notice to the Commission when the SEC declares the Registration Statement effective. Notice to the Commission of SEC effectiveness may be provided by letter, telegram, or facsimile transmission. **If the issuer fails to complete Item 7, the notice period will begin on the date the filing is received by the Commission.**

If the Registration Statement filed by the issuer is effective with the SEC when filed in Pennsylvania, the initial notice period will begin on the date the filing is received by the Commission.

The only time the issuer needs to check and complete box 1 of Item 7 on Form NF is when Form NF is being used to submit information to the Commission during a notice period. When this is the case, the issuer should insert the dates which appear on the Commission's written acknowledgment of the issuer's most recent initial or renewal notice filing.

V. Fiscal Year End

It is imperative that all issuers provide the fiscal year end in Item 4. A change in the fiscal year-end which occurs after an initial or renewal notice filing is made on Form NF **will not** act to extend the initial or renewal notice period set forth in the Commission's written acknowledgment letter.

VI. Amendments to Form NF

Issuers should file Form NF to notify the Commission of any changes to information previously filed with the Commission. The post-effective amendment or supplement to the SEC Registration Statement reflecting the change should be filed with Form NF.

A. *Name Changes.* In order to be responsive to research inquiries from the public concerning Investment Company compliance with the 1972 Act, it is important that the Commission's records reflect any changes to names of Funds, portfolios or classes of shares within portfolios.

B. *Addition or Deletion of Portfolio/Classes.* Again, in order to provide accurate information to the public on Investment Company compliance with the 1972 Act, it is important that the Commission's records reflect deletions or additions of portfolios or classes of shares within a portfolio.

C. *Change in the Fiscal Year-end of a Fund.* As this date is crucial in determining the proper notice period, it is imperative that the Commission be notified promptly of any change. A change in the fiscal year-end which occurs after an initial or renewal notice filing is made on Form NF will not act to extend the notice period set forth in the Commission's written acknowledgment letter. Furthermore, a change in the fiscal year-end of an open or closed-end investment company or face amount certificate company will result in a shortened notice period for a renewal notice filing.

D. *Mergers of Portfolios or Classes.* If an issuer merges one or more of its portfolios or classes of shares within a portfolio, it should notify the Commission on Form NF and file a copy of any amendment or supplement to the SEC Registration Statement.

E. *Mergers and Reorganizations of Investment Companies.* If an issuer will be subject to a merger or reorganization with another issuer, the surviving issuer should notify the Commission on Form NF and file a copy of any Registration Statement filed with the SEC pertaining to the merger or reorganization. The non-surviving issuer should file Form NF to indicate its termination and provide a final sales report. No exhibits to the SEC Registration Statement need be filed.

F. *Termination.* An amendment filed on Form NF to terminate an initial or renewal notice filing is effective upon receipt.

VII. Federal ID and SEC Registration Numbers

Issuers should provide their Federal ID Number and their SEC Registration Number in Item 6 of Form NF.

VIII. Consent to Service of Process

Pennsylvania law does not require the filing of a consent to service of process. Therefore, all issuers should check box 3 of Item 12 on Form NF and explain that Pennsylvania law does not require the filing of a consent to service of process.

IX. Filings to Increase Dollar Amount of Securities to be Offered in Pennsylvania

Prior to selling securities in Pennsylvania which would exceed, during the notice period, the cumulative dollar amount of securities indicated in Item 10(3) on the latest Form NF on file with the Commission, an issuer should notify the Commission of its intent to sell additional securities in Pennsylvania during the current notice period by filing Form NF to increase the dollar amount of securities and paying additional fees, if any, to cover the increase in the dollar amount.

X. Acknowledgment of Filings

For initial and renewal filings and any notices reflecting an increase in the dollar amount of securities to be offered for sale in Pennsylvania, the Commission will issue a written acknowledgment that Form NF has been received. This acknowledgment will reference the dollar amount of securities and the notice period to which the filing pertains.

No written acknowledgment will be issued by the Commission for any other information filed by the issuer on Form NF. The Commission, however, will honor requests to acknowledge receipt of any filing by date-stamping a duplicate of the material filed, provided that the request is accompanied by a self-addressed, stamped envelope or postcard.

XI. Sales Reports

Issuers required to file a sales report under Section 209 of the 1972 Act shall file such report using Form NF. The dates for the "Period Covered" portion of Item 11 on Form NF should coincide with the dates on the Commission's acknowledgment letter which relates to the period covered by the sales report. Issuers should insert on the line in Item 11 entitled "Balance at Beginning of Period" the dollar amount of securities which was provided on the initial or renewal notice filing made with the Commission. The amount inserted on the line "Increases During Period" in Item 11 should reflect the cumulative total of all increases filed with the Commission during the notice period covered by the sales report.

In order for the issuer not to have oversold securities in Pennsylvania, the amount inserted on the line "Amount Available for Sale" in Item 11 (*i.e.*, the sum of the Balance and all the Increases) must equal or exceed the amount inserted on the line "Sales During the Period" of Item 11 which represents the total dollar amount of securities that the issuer actually sold in Pennsylvania during the notice period. Also, Pennsylvania does not provide credit to an issuer for any redemptions made during the relevant notice period nor does it permit the amount in the line "Unsold Balance at the End of Period" to be carried forward to a succeeding renewal notice period.

A sales report covering sales made during the most recent notice period must be filed no later than 120 days after the fiscal year-end for open and closed-end investment companies and face amount certificate companies. Reports of sales made by unit investment trusts should be filed within 60 days of one year from the date the Registration Statement filed with the SEC relating to the securities sold in Pennsylvania became effective with the SEC.

XII. Failure to Pay Filing Fees for Notice of Prospective Sales of Securities

Until October 11, 1999, the filing of Form NF without a filing fee or an incorrect filing fee will be deemed a refusal to pay under NSMIA and the issuer will be required to register the securities to be offered under section 205 or 206 of the 1972 Act. An issuer will not be deemed to have refused to pay the filing fee if the filing fee is received or the correct amount of the filing fee is received by the Commission within **10 business days** of receipt of notification to the issuer that no filing fee was paid or that an incorrect filing fee was submitted. Notification may be made by any means used in the ordinary course of business including, without limitation, telephone, facsimile, e-mail or first class mail. Continued refusal to pay the filing fees or register the securities under Section 201 of the 1972 Act may result in enforcement action, including an order suspending the offer or sale of the issuer's securities in Pennsylvania.

XIII. Failure to Pay a Filing Fee for Oversales Made During a Notice Period

Until October 11, 1999, it is the position of Staff that an issuer, which failed to pay a filing fee that was due because the issuer sold securities in Pennsylvania during the notice period in excess of the amount set forth in Item 9 or the cumulative dollar amount of securities set forth in Item 10 of the latest Form NF filed with the Commission and did not remedy the failure to pay the filing fee within **10 business days** of the sale of those securities in Pennsylvania, has sold securities that would be subject to the registration provisions of Section 201 of the 1972 Act. The issuer, however, may avail itself of Section 210 of the 1972 Act and Regulation 210.010 to register these securities retroactively by paying an appropriate assessment. After retroactively registering these securities, an issuer may file a notice on Form NF to sell additional securities in Pennsylvania pursuant to the notice filing.

XIV. Failure to File

If an issuer sells securities in Pennsylvania without having filed a notice with the Commission for the period during which the securities were sold in Pennsylvania, the Commission may initiate an enforcement action which could result in the issuance of an order suspending the offer and sale of the issuer's securities in Pennsylvania. An issuer, however, may be eligible to enter into an informal settlement described in Commission Release 89-CF-7 issued December 19, 1989.

(PSC Bull. May 1997)

Section 201 Oversales by Investment Companies and Unit Investment Trusts

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 89-CF-7
COMMISSION POLICY ON INFORMAL SETTLEMENT
OF STAFF ALLEGATIONS OF REGISTRATION
VIOLATIONS FOR SALES OF SECURITIES
IN PENNSYLVANIA BY OPEN AND CLOSED-END
INVESTMENT COMPANIES AND UNIT INVESTMENT
TRUSTS IN EXCESS OF THE AMOUNT ACTUALLY
REGISTERED UNDER SECTION 205 OR 206
OR EXEMPTED UNDER SECTION 203(i)**

GENERAL POLICY

In July 1989, Commission staff conducted a review of Commission policies with respect to informal settlement of staff allegations of violations of the registration provisions of Section 201 of the Pennsylvania Securities Act of 1972 (1972 Act) for sales of securities in Pennsylvania by open and closed-end investment companies (Mutual Funds) and unit investment trusts (UITs) in excess of the amount actually registered or exempted for sale in Pennsylvania.

Pursuant to Section 209(b) of the 1972 Act and Commission Regulation 209.010, Mutual Funds and UITs must file Uniform Form USR-1 annually with the Commission to report sales of securities made in Pennsylvania each year. Staff compares the report of sales with the amount of securities registered or exempted. From time to time, a Mutual Fund or UIT oversells the amount of securities actually registered or exempted with the Commission for sale in the Commonwealth (Oversales).

GENERAL PROCEDURE

It has long been the Commission's view that Oversales constitute a violation of Section 201 of the 1972 Act. In lieu of initiating enforcement action for a Section 201 violation based on Oversales, the staff of the Commission will accept an informal settlement where the issuer/sponsor of the Mutual Fund or UIT complies with the following:

- A. Pays, as costs of investigation, fees that otherwise would have been due; and
- B. Files with the Commission a representation that:
 - 1. Payment of costs does not constitute retroactive registration;
 - 2. The Oversales remain unregistered securities; and
 - 3. The issuer will comply with the requirements of the 1972 Act in the future.

ALTERNATE OPTIONAL POLICY FOR UITs

BACKGROUND

During its review, staff brought to the attention of the Commission certain characteristics which it believes unique to UITs and differentiates them from Mutual Funds. Unlike Mutual Funds, which usually offer securities continuously over a period of time, UIT portfolios generally are assembled within a day or two and the registration statement is then declared effective forthwith. Also, the primary distribution of units generally is completed within one to five days from the date the registration statement has been declared effective. It is also characteristic of the UIT industry that pre-effective indications of interest vary widely from actual sales and compilation of state-by-state sales reports takes time.

ALTERNATE OPTIONAL PROCEDURE FOR UITs

The Commission noted these distinctions between Mutual Funds and UITs. In recognition of these distinctions it adopted, on August 21, 1989, the following exception to the aforementioned policy

on informal settlements of Oversales which will be made available solely to UITs meeting the criteria set forth below:

Where a UIT submits the following items, the Commission will accept them as an informal settlement of violations of Section 201 of the Pennsylvania Securities Act of 1972 occasioned by sales of securities by a series of UIT in excess of the amount originally registered with the Commission which are isolated in nature and do not constitute a course of conduct violative of the 1972 Act:

1. Payment of costs of investigation equal to the registration fee that otherwise would have been due if the Oversale had been registered plus \$100.00.

2. A representation that payment of costs of investigation does not constitute retroactive registration of the Oversale securities.

3. A statement from counsel that the sponsor will continue to make every effort to register sufficient amounts of securities in Pennsylvania in the future.

(PSC Bull. December 1989)

Section 202(a) Guidelines to be used in connection with the offer and sale of limited obligation debt securities pursuant to §202(a) of the 1972 Act (“Advisory”)

Section 202(a) of the 1972 Act and the Regulation promulgated thereunder set forth circumstances by which governmental instrumentalities, such as Authorities, particularly industrial development authorities can offer, sell and advertise the sale of its securities in Pennsylvania without registration.

The Commission published the Guidelines as a means of alerting members of such authorities as to certain of their responsibilities under the 1972 Act, to identify certain information which should be contained in the disclosure document and to set forth minimum due diligence procedures which should be taken by the Authority in order to comply with the 1972 Act.

(PSC Bull. Jan./Feb. 1984)

Section 202(a) Revised Advisory with supplemental information to all Pennsylvania industrial development authorities

In August 1983, the Commission released an Advisory regarding the use of the exemption contained in Section 202(a) of the 1972 Act for the offer and sale of limited obligation debt securities (“Bonds”) issued by governmental instrumentalities (“Authorities”).

(PSC Bull. July/August 1983)

The Advisory indicated that the Commission would be developing a supplement to that release to provide Authorities with a summary of questions which could be submitted to applicants and Authority members in order to obtain certain material information which may be required to be disclosed in any prospectus, offering circular, official statement or any advertising published or distributed in connection with the offer and sale of such Bonds.

On January 30, 1984, the Commission approved for release the supplement to the Advisory. Part I of the supplement was designed to elicit information reflecting whether or not the Developer or User had derogatory history including criminal litigation; or was the subject of civil or administrative proceedings; had denial of license; had violations of local, state or federal license; was involved in a receivership or bankruptcy; or was the subject of legal or financial constraints having a negative impact on ability to meet financial obligation on the Bonds, etc.

Part II of the supplement was designed with respect to the Authority and its members including a brief biography of each member, relationship of a member to any entity which would receive proceeds of bond offerings, as well as any adverse information regarding the Authority or its members.

(PSC Bull. Jan./Feb. 1984)

The supplement which was not published in the Commission's Bulletin has been reproduced as follows:

ADVISORY

SUBJECT: Exemption of Limited Obligation Debt Securities Issued by Governmental Instrumentalities Pursuant to Section 202(a) of the Pennsylvania Securities Act of 1972

INTRODUCTION:

In recent years, the sales of industrial revenue bonds have increased dramatically. Along with the increase in sales, there has been an increasing number of bond defaults and the resulting inability of bondholders to realize full recovery of losses through foreclosure, bankruptcy proceedings or other legal redress. This is particularly the case where the bond issue is supported by the revenues of the specific project as opposed to a general obligation issue. With increasing frequency, industrial development authorities and its members have been named as defendants in suits brought under various provisions of the federal securities and state Blue Sky laws.

Section 202(a) of the 1972 Act and the regulations promulgated to this and other sections of the 1972 Act set forth guidelines by which government instrumentalities and, in particular Industrial Development Authorities (Authorities), can offer, sell and advertise the sale of limited obligation debt securities in Pennsylvania without registration under Section 201 of the 1972 Act. Where Authorities are issuing debt securities for which the source of payments of principal, interest or premium, if any, is derived solely from the commercial or nonprofit entity (and its guarantors) which is receiving benefits from the sale of the debt securities, the Commission has reason to believe that, in many instances, the public is not being afforded the protection upon which the exemption from registration contained in Section 202(a) of the 1972 Act was premised.

While this Advisory is not intended to establish the standards for liability under the 1972 Act, it is intended to alert governmental instrumentalities that seek to rely upon Section 202(a) of the 1972 Act for the offer and sale of limited obligation debt securities of the potential for the institution of exemption revocation proceedings. Limited obligation debt securities, for purposes of this Advisory, relate to debt securities issued by Authorities where the source and payment of principal, interest or premium, if any, is derived solely from a commercial or non-profit entity (and its guarantors) which is receiving the benefits from the sale of the debt securities.

STATEMENT:

The exemption provided in Section 202(a) from the registration requirements for securities under the 1972 Act was premised upon the protections to be afforded to the investing public by the involvement of a governmental instrumentality in the securities offering. Where, as a result of, inter alia, willfulness, recklessness or gross negligence on the part of the members of the Authority, the public is defrauded in a securities offering, the Commission, pursuant to Section 204(b), may commence a proceeding against the Authority to deny or revoke the exemption for the Authority's specific securities under the 1972 Act.

Such an exemption revocation proceeding would likely be commenced where, inter alia, public investors failed to receive written disclosures in the official statement (or other securities disclosure documents being utilized) of those material facts relating to the potential inability of the debt service on the limited obligation debt securities being met where (1) the Authority member(s) had knowledge of these factors prior to the offer and sale of these securities or (2) as a result of willfulness, recklessness or gross negligence the Authority either failed to comply with the provisions of the 1972 Act or perform those responsibilities under its enabling statute¹⁸ which would have led to the discovery of these factors.

¹⁸ For example, Pennsylvania's Industrial and Commercial Development Authority Law (PL. 251, No. 102) of August, 1967, as amended, places responsibility on Authorities to determine, inter alia, the financial responsibility of the investor-developer and occupant involved in an industrial development project.

Additionally, the disclosure document being distributed should contain all material information with respect to the Authority, its members and any interested transactions involving such persons and their affiliates.

In adopting procedures to assure that the disclosure document sets forth the information¹⁹ described in the two preceding paragraphs, the members of the Authority should either review the disclosure document themselves or obtain written assurances from a professional staff member, solicitor, or a delegated Authority member that the disclosure document fully describes this information.²⁰

APPENDIX:

1) It is the opinion of the Commission as set forth in Regulation 202.092 that guarantees being given in connection with limited obligation debt securities offerings may constitute securities under Section 102(t) of the 1972 Act. Section 102(t) of the 1972 Act provides that a guarantee of a "security" is a "security." Therefore, any such guarantees, unless exempted pursuant to Regulation 202.092 or any other statutory exemption, Will require registration even where the underlying securities are exempted pursuant to Section 202(a).

2) Commission Regulation 606.033 sets forth requirements for advertising of securities exempt pursuant to Section 202(a). Particular attention should be directed to sub-paragraph (d) of this Regulation which sets forth special disclosure requirements for advertisements and for the face page of the disclosure documents being distributed in connection with the offer and sale of limited obligation debt securities.

3) Commission Regulation 609.010 sets forth the requirements for utilizing financial projections, forecasts and feasibility studies in disclosure materials being distributed in connection with the offer and sale of securities.

This Advisory is only a brief outline with respect to the provisions of the 1972 Act. Persons seeking to offer and sell limited obligation debt securities in this Commonwealth should consult and review the 1972 Act itself before proceeding.

SUPPLEMENT TO ADVISORY ISSUED BY PENNSYLVANIA SECURITIES COMMISSION RELATING TO EXEMPTION OF LIMITED OBLIGATION DEBT SECURITIES ISSUED BY GOVERNMENTAL INSTRUMENTALITIES PURSUANT TO SECTION 202(a) OF THE PENNSYLVANIA SECURITIES ACT OF 1972

On August 24, 1983, the Commission issued an Advisory relating to the requirements under the 1972 Act and the Regulations promulgated thereunder for the offer and sale of limited obligation debt securities issued by governmental instrumentalities (IDBs), The Commission indicated in the Advisory its intention to supplement the Advisory with questions which governmental instrumentalities and, in particular, industrial development authorities (Authorities) may wish to pose to applicants and its members for purposes of identifying factors which should be disclosed in the official statement or other disclosure document being utilized in connection with the offer and sale of IDBs. While the following list of questions does not exhaust the entire scope of information which may be material for an investor in determining whether or not to purchase an IDB, it represents certain key items which could be relevant.

For purposes of the items contained in the following list, the term Developer shall mean any person, partnership or corporation engaged in the development for use by occupants of one or more development projects.

¹⁹ The Commission will be preparing a questionnaire which the Authority may wish to submit to its members and any applicant in order to obtain such information.

²⁰ This Advisory is not intended to be, nor should it be construed as, a recitation of all of the duties and responsibilities of the Authorities in connection with the issuance of limited obligation debt securities under Section 202(a) of the 1972 Act. There may be additional factors which are not included in this Advisory which would be considered material by the Commission in rendering an administrative decision in an exemption denial or revocation proceeding. However, if the procedures identified in the Advisory are followed by an Authority, such compliance could be significant as a defense to an administrative proceeding commenced by the Commission with respect to any such alleged violations of the 1972 Act.

For purposes of the items contained in the following list, the term User shall mean any person, partnership, corporation or other business entity which will use a development project.

The questions set forth below are divided into two sections. Part I relates to information relating to the Developer or User. Part II relates to information with respect to the Authority and its members. In certain offerings, where payment of principal, interest or premium is being guaranteed by a third party, it may also be relevant to obtain the information requested in the questions in Part I with respect to the guarantor.

PART I

QUESTIONS FOR THE APPLICANT

The Authority should require the following information be submitted with respect to any Application:

1. A list of all officers, directors, control persons, general partners of the User and Developer; their names, offices held, percentage of ownership.

2. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, within the last ten (10) years, have been convicted of any criminal offense, other than a minor vehicle violation. If yes, furnish details.

3. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above is now a defendant in any criminal litigation. If yes, furnish details.

4. A statement as to whether or not the User or Developer is now a defendant in any civil litigation involving a claim for more than 10% of their respective assets.

5. A statement as to whether or not the user and Developer and/or any of the persons or businesses listed in response to item 1 above, are subject to any pending disciplinary action by administrative, governmental or regulator body. If yes, furnish details.

6. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, have been, within the past five (5) years, or are now subject to any order resulting from any civil or administrative proceedings issued against them by any administrative, governmental or regulatory agency. If yes, furnish details.

7. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, within the past five (5) years, have been denied any license by any administrative, governmental or regulatory agency on the grounds of moral turpitude. If yes, furnish details.

8. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, have been subject to any current or ongoing investigation with respect to violations of local, state or federal laws, If yes, furnish details.

9. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, or any concern with which such persons were control persons, within the past ten (10) years, have been in receivership or adjudicated a bankrupt. If yes, furnish details.

10. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, within the past five (5) years, have been denied a business-related license or had it suspended or revoked by any administrative, governmental or regulatory agency. If yes, furnish details.

11. A statement as to whether or not the User and Developer and/or any of the persons or businesses listed in response to Item 1 above, within the past five (5) years, have been disbarred, suspended or disqualified from contracting with any federal, state or municipal agency. If yes, furnish details.

12. A statement by the User as to whether or not it is aware if any legal or financial constraints that might materially impair its financial or legal ability of meeting its obligation to the Authority on the bonds.

13. Statements with respect to any property which is being purchased, constructed or improved from the proceeds from the Authority, whether the title is fully insured and zoning requirements have been met.

14. A statement with respect to any person identified in Item 1, as being affiliated with the User as to whether or not such person is directly or indirectly receiving any portion of the proceeds from the Authority. If yes, furnish complete details.

15. A statement with a complete explanation as to whether or not the minimum amount of proceeds to be raised from the Authority will be sufficient to complete the project for which the proceeds are being raised.

16. A statement as to whether the User or Developer and/or any of the persons or businesses listed in response to Item 1 above, within the last five (5) years, have been found liable or are currently a defendant in any civil litigation involving a claim based upon violations of either state or federal securities laws.

EXHIBITS

1. (Certified) financial statements of the User.
2. (Certified) financial statements of the Developer.
3. (Certified) financial statements of any person which is guaranteeing the User's financial obligation to either the Authority or the bondholders.

PART II

QUESTIONS FOR THE AUTHORITY

The Authority should obtain the following information from its members:

1. A brief biography of each member.
2. A statement with respect to any transactions with the Authority by any of its members or their affiliates²¹, including but not limited to, business transactions with the Authority, in connection with the specific bond offering, with the Developer, User or any other entity which would be receiving any of the proceeds of the bond offering.

²¹ The application of the 1972 Act relates to any security offered and sold in the Commonwealth of Pennsylvania. Therefore, the provisions of the 1972 Act are applicable to both Pennsylvania Authorities as well as Non-Pennsylvania Authorities, whose bonds are being offered and sold in the Commonwealth. Accordingly, while Section 12(d) of the Industrial and Commercial Development Authority Law of Pennsylvania provides that "no member of the authority or officer or employe thereof shall, either directly or indirectly, be a party to or be in any manner interested in any contract or agreement with the authority for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such authority," authorities created under the laws of other states may not necessarily have analogous conflict provisions.

3. Any material, adverse information with respect to the Authority or its members in connection with activities of the Authority, including but not limited to, litigation in which the Authority or its members are defendants, investigations of the activities of the Authority, etc.

Section 202(g) Employee Investments in Business: Interpretive Opinion

WHEREAS, It is becoming more common in the present economic climate for employees to make special investments designed to either acquire sole or all of their employer's business or to invest in their current employer's business in order to prevent a complete or partial closing of a business resulting in the loss of employment; and

WHEREAS, The Commission believes that the context of certain of these investments constitutes employee securities benefit plan designed to preserve employment;

NOW, THEREFORE, The Commission, on this date, September 29, 1982, issues the following Interpretive Opinion pursuant to §604 of the Pennsylvania Securities Act of 1972 ("1972 Act"):

1. The exemption contained in §202(g) of the 1972 Act shall be available for the following employee investment plans:

a. An investment plan by which employees of an existing person are solicited to purchase securities of such person pursuant to a plan (including a plan by which the employee will defer receipt of currently taxable income for future payment [whether interest bearing or not]) by which such investments are intended to result in the preservation of the business operations of such person and employment opportunities.

b. An investment plan offered to employees of a workers cooperative taxed pursuant to Sub-Chapter T of the Internal Revenue Code of 1954, as amended, or to individuals who will become employees of a workers cooperative even where such cooperative is in a formation stage or is designed to purchase the assets and liabilities of an entity by which such offerees were or are presently employed.

2. In order to perfect the exemption contained in §202(g) of the 1972 Act, Commission's Form 202-G must be filed in accordance with the provisions of Regulation 202.070(c). Prior to the effectiveness of the exemption, employees may not sign a subscription agreement or tender payment (see staff interpretive opinion relating to subscription agreements and use of funds prior to effectiveness of exemptions and registrations, **PSC Bull., September/October 1976**). However, nothing in this Interpretive Opinion shall be deemed to preclude the participation of such employees in discussions and proposals with respect to the creation of such plans prior to effectiveness of the §202(g) exemption.

3. The Commission wishes to emphasize that the exemption contained in §202(g) does require an employee "benefit plan," and those issuers merely seeking to raise capital from employees for general business purposes may not rely upon the §202(g) exemption.

4. The Commission does not believe an investment plan which solely meets the conditions of 1(a) and (b) is a "benefit plan" if it requires compulsory participation by an employee as a condition of employment.

5. The Commission wishes to underscore the importance that, as required in Item 8 of Commission's Form 202-G, all employees being solicited securities pursuant to such plans, in order to make an intelligent investment decision, receive full and adequate disclosure of all material facts as required by §401 (b) of the 1972 Act, including detailed risk factors relating to any potential loss of investment.

6. This Interpretive Opinion is to clarify availability of the exemption contained in §202 (g) for those employee investment plans which are described in section 1(a) and (b) of this Interpretive Opinion. Nothing in this Interpretive Opinion should be construed as to otherwise limit the availability of the exemption contained in §202(g).

(12 Pa.B. 3855; PSC Bull. Jan./Feb. 1983)

Sections 203(d) and (e) Division of Corporation Finance Staff Interpretations regarding transaction exemptions

In response to numerous inquiries made of the staff of the Division of Corporation Finance regarding Sections 203(d) and (e) of the 1972 Act, the staff of the Division is providing the following interpretations:

1. Mass mailing for purposes of Section 203(d) shall include any distributions by mail to more than 100 persons in the state.

2. Any brochure being distributed (including summaries of private placement memoranda) must be filed with the Commission pursuant to item 12 of Commission's Form 203-D at the time of the filing.

3. If the document was prepared subsequent to the filing it must be filed within 5 days pursuant to Regulation 203.041(h).

4. The regulation relating to projections contained in 64 Pa. Code §609.010 apply to any document being distributed in Pennsylvania.

5. If the document being distributed constitutes more than tombstone information (see Commission's Regulation §606.031(e)), the document may constitute an offering. The distribution of the private placement memorandum to any potential investor will always constitute an offer.

6. If the document being distributed is sufficient to constitute an offer and the issuer distributes the document to a person with the understanding that such person will seek to obtain or find investors for the issuer, each individual who receives such a document from such person will constitute an offeree.

7. In almost all instances a person (other than a bona fide employee of an issuer) who receives compensation for finding and obtaining an investor(s) will be deemed to be in the business of effecting transactions in securities and will be required to register as a broker-dealer.

8. Agents of broker-dealers will be deemed to be required to be registered as a broker-dealer if their activities come within the previous paragraph and if they are not effecting the transactions through the broker-dealer with whom they are employed.

9. Where a registered investment adviser or persons excluded from the definition of investment adviser pursuant to Section 102(j)(iv) obtain or find potential investors for an issuer and are compensated for such activities, they will be required to register as a broker-dealer. Where such will perform the same services and, in addition give investment advice, such persons will still be required to register as a broker-dealer unless the compensation is exclusively for giving investment advice. Where the compensation paid exceeds that which is commensurate for activities related to giving investment advice, it will be assumed that some or all of compensation is being given for obtaining investors and, therefore, such persons would be required to register as a broker-dealer.

10. Bona fide employees of an issuer generally cannot receive compensation for effecting transactions under Section 203(d) or Section 203(n).

(PSC Bull. May/June, July/Aug. 1983)

Section (d), (e) and (f) Staff Interpretation regarding counting in transaction exemptions

Many inquiries have been received by the staff of the Commission concerning the interpretation of these sections as they relate to the question of whether offerees and purchasers who are non-residents of Pennsylvania are to be counted for the purposes of these subsections.

1. Subsections (f) and (e) of Section 203, as they relate to each other have been interpreted as follows:

Purchasers under 203(f) are limited to five (5). This includes non-Pennsylvanians as well as Pennsylvania residents. Offers under 203(f) are limited to fifty (50) Pennsylvania residents; however, there is no limitation on offers to non-Pennsylvania residents.

2. Subsections (d) and (e) of Section 203, as they relate to each other have been interpreted as follows:

The only limitation on the number of purchasers is that no more than twenty-five (25) of the purchasers may be residents of Pennsylvania. The only limitation on offerees is that no more than fifty (50) of the offerees may be residents of Pennsylvania. However, because of the prohibitions on public solicitation as contained in subsection (d)(ii), this exemption is rarely available for federally filed offerings. Further, in practically every foreseeable situation the Commission will not waive the one (1) year holding period provided for in subsection (d)(i) of Section 203.

Therefore, issuers seeking to avail themselves of the exemption contained in 203(d) for federally filed offerings should do so only under unique circumstances where the offer is being made to a limited number of Pennsylvania residents who have special relationship to the issuer.

(PSC Bull. Oct. 1973)

Editor's Note: The number of purchasers and offerees permitted under these sections has been expanded for certain transactions qualifying under Regulation 204.010.

Section 203(d) Computation of number of purchasers

It has come to the attention of the staff of the Commission that in connection with transactions being made under a claimed 203(d) exemption various devices are being employed by issuers and/or purchasers to create an appearance that there were no more than the prescribed twenty-five purchasers when in reality more than that number are purchasing, directly or indirectly. Under Section 204(c) issuers have the burden of proving that a claimed Section 203(d) exemption is applicable. In sustaining this burden, an issuer must have made a reasonable inquiry to determine whether a purchaser is acquiring securities for his own account or on behalf of others.

(PSC Bull. March/April, May/June 1975)

Section 203(d) - Sales of Securities for which an additional filing fee is payable

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 89-CF-5
STAFF POLICY ON SALES OF
SECURITIES IN PENNSYLVANIA
UNDER A SECTION 203(D) FILING
FOR WHICH AN ADDITIONAL FILING
FEE IS PAYABLE**

A statutory condition contained in Section 203(d)(iv) of the Pennsylvania Securities Act of 1972 (1972 Act) requires that an issuer, in order to rely upon that exemption for the sale of securities in this State, must pay the filing fee specified in Section 602(b)(viii) of the 1972 Act. The filing fee required by Section 602(b)(viii) is based upon the maximum aggregate dollar amount of securities which the issuer

intends to offer in Pennsylvania. Staff is aware of situations where an issuer, which filed under Section 203(d) and complied with all of the requirements thereof, subsequently sells securities in this state for which, under Section 602(b)(viii), a higher fee would be applicable. With respect to this situation, the Commission, on December 19, 1989, permitted the staff to take the following position:

STAFF POSITION

Section 203(d)(iv) of the 1972 Act states that payment of the appropriate filing fee is a statutory condition for the availability of the Section 203(d) exemption. Where an issuer sells securities in this state in excess of the amount permitted by payment of the original filing fee, the Section 203(d) exemption will not be available for such sales and staff will deem those sales to have been made in violation of the registration provisions of Section 201.

Under these circumstances, Commission staff will not view all sales made under Section 203(d) as tainted but only those which breached the maximum dollar amount of sales permissible under the original filing fee **paid**. Payment by the issuer of the additional filing fee AFTER affecting the sales cannot cure the registration violation.

Staff generally will not recommend initiation of an enforcement proceeding for violations of Section 201 for such transactions where (1) the issuer effects a rescission offer under Section 504(d) of the 1972 Act with respect to such sales and (2) the registration violation was isolated in nature and did not represent a course of conduct by the issuer or any of its affiliates to wilfully violate the provisions of the 1972 Act.

For those bona fide situations where the issuer files for a certain offering amount and later determines that there is a larger market for the securities than originally anticipated, the Division reminds issuers to file with the Commission an amendment increasing the amount of securities to be exempted, pay any additional applicable filing fee and provide additional disclosure, if any, PRIOR to effecting such additional sales in this State.

(PSC Bull. December 1989)

Section 203(d)(i) Transfer of securities

It is the position of the Commission staff that Section 203(d)(i) relates only to a sale as defined in Section 102(r). It does not prohibit the transfer of securities where there is no sale, i.e., by gift, contract or operation law. However, redemption of securities by the issuer, whether initiated by the purchaser or seller, constitutes a sale subject to Section 203(d)(i), unless the security is a demand note or is a debt security with a maturity of less than one year and is redeemed at maturity.

(PSC Bull. June 1986)

Section 203(d) Resale of Section 203(d) units of limited partnership interests by general partners and broker-dealers; Division of Corporation Staff Position

The staff of the Division of Corporation Finance has observed the need for staff guidance in situations occurring under a filing made pursuant to Section 203(d) of the 1972 Act where, in order for a limited partnership offering to close or to reach a minimum subscription to close, the general partner of the limited partnership ("General Partner") or broker-dealer marketing the offering ("Broker-Dealer") will purchase the remaining required amount of limited partnership interests ("Interests") with a view toward re-offering these Interests within twelve months from the date of their purchase.

The staff of the Commission generally will not recommend enforcement action to the Commission regarding such reoffering by the General Partner²² or Broker-Dealer if all of the following conditions are met:

1. Full disclosure of the possibility of such purchase and re-offering of the Interests has been made in the original offering circular;

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1. The General Partner or its affiliate cannot receive commissions for the sale of the Interests when they are re-offered.

2. The General Partner purchases the Interests in accordance with the provisions of Commission Regulation 203.184²³ and the Broker-Dealer purchases the Interests in accordance with the provisions of Section 203(c) of the 1972 Act;

3. Form AM, amending Form 203-D is filed prior to the re-offering of the Interests. The Commission staff views the re-offering of the Interests as benefitting the issuer, even where there is a difference between the original offering price and the re-offering price. The issuer may, however, state that a Form AM filing is being made as a conservative measure and not in recognition that the provisions of Section 203(b) of the 1972 Act are unavailable; and

4. In re-offering the Interests, the General Partner or Broker-Dealer must comply de novo with the requirements of Section 207(m) and Section 203(d)(i) as well as all of the other provisions of Sections 203(d) and (e) of the 1972 Act.

(PSC Bull. Nov./Dec. 1982)

Editor's Note: Those who plan to rely upon this position should fully analyze those issues addressed by the staff of the U.S. Securities & Exchange Commission in an April 29, 1986 letter to Linda A. Wertheimer, Chair of the American Bar Association Subcommittee on Partnerships, in which SEC staff gave interpretive advice on SEC Rules 10b-9 and 15c2-4 promulgated under the Securities Exchange Act of 1934 with respect to resales of securities.

Section 203(d)(iii) Compensation to promoters for providing information or drafting private placement memorandum

The Commission has permitted the staff to take the position that where compensation is received by promoters or their affiliates for providing information for the Private Placement Memorandum or initial drafts of the Private Placement Memorandum or for services in connection with the structuring of the offering, which is an incidental portion of the overall compensation received for bona fide business services, the staff of the Commission will presume that the compensation is not for selling provided that all of the securities transactions in this State are effected by a broker-dealer registered under Section 301 of the 1972 Act. Where the transaction is not being effected by a registered broker-dealer, it remains the burden of the issuer to prove that such remuneration is not a disguised selling compensation.

(PSC Bull. June 1986)

Section 203(d)(iii) Persons who receive compensation in connection with a sale as constituting a promoter for purposes of Section 203(d)(iii)

BROKER-DEALER/PROMOTERS

In determining, for the purposes of Section 203(d)(iii) of the 1972 Act, whether or not a person receiving compensation in connection with the sale of securities is a promoter, the following positions have been taken by the staff:

1. Any affiliate of a promoter is also deemed to be a promoter for purposes of this subsection.

2. Broker-dealers, particularly those engaged in the business of effecting transactions in tax-sheltered offerings, will be deemed, pursuant to Section 102(o)(i) of the 1972 Act, to be promoters where the broker-dealer or its affiliate "acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer," if the broker-dealer performs any of the following activities:

a. where the promoters of a limited partnership to be formed have not appointed a general partner, finding, selecting or recommending the selection of the general partner to the promoters; or

b. soliciting persons who become promoters of the issuer to form such issuer (usually a limited partnership) for the purpose of syndication; or

²³ 2. If the General Partner or Broker-Dealer elects to purchase the Interests pursuant to the provisions of Section 203(d) of the 1972 Act, the General Partner is still subject to the prohibition in Section 203(d)(i) of the 1972 Act and the Interests purchased cannot be re-offered for a period of twelve consecutive months from the date of purchase.

c. participating in the finding of the property to be purchased, owned or leased by or to the issuer if the issuer is being formed substantially for the purpose of engaging in activities relating to this property.

The foregoing should not be deemed to be the exclusive tests of what constitutes a promoter but are merely illustrative of specific issues with which the staff has dealt to date. Other fact situations will require analysis as to whether such facts fall within the definition.

(PSC Bull. July/Aug. 1976)

Editor's Note: Act 52 of 1984 (effective May 9, 1984) amended Section 203(d) to permit promoters or affiliates of promoters who were broker-dealers registered under Section 301 or agents registered under Section 301 of such broker-dealers to receive compensation in connection with the sale of the security.

Section 203(d)(iii) Availability of exemption under 203(d) where a promoter of the issuer is paid a fee for advising offerees; said promoter considered investment adviser

The staff has taken the position that the exemption provided in Section 203 (d) of the 1972 Act is not available, by virtue of the provisions of Section 203(d)(iii), where a promoter of an issuer is paid a fee for advising offerees with respect to the purchase of securities of that issuer.

Attention is also directed to the staff interpretation which appeared in the Commission's Bulletin dated October 1, 1974, relating to the requirements for certain persons rendering such advice for compensation (or acting as an offeree representative for compensation) to register as an investment adviser.

(PSC Bull. March/April 1978)

Section 203(f) Options and warrants; registration requirements at the time of exercise of options and warrants issued pursuant to 203(f)

Where options or warrants were issued in connection with the initial capitalization of an issuer in a transaction exempted pursuant to Section 203(f) of the 1972 Act, no subsequent filing is required at the time of the exercise as long as the initial issuance of the options or warrants was done in good faith and not for the purpose of avoiding the registration provisions of the Act or the provisions which preclude the availability of the exemption contained in Section 203(d).

(PSC Bull. Oct. 1973)

Section 203(f) Initial capitalization period

For purposes of claiming the exemption contained in Section 203(f), Commission staff have utilized the presumption that the initial capitalization period extends six months after the date of filing incorporation or partnership forms with the appropriate state agency.

(PSC Bull. June 1986)

Section 203(f) - Counting of Purchasers

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 89-CF-8
STAFF INTERPRETATIONS ON COUNTING OF
PURCHASERS UNDER COMMISSION REGULATIONS
203.184 AND 203.187 AND SECTION 203(f) OF THE 1972 ACT**

Certain questions have arisen concerning the counting of purchasers with respect to Regulations 203.184 and 203.187 and Section 203(f) of the Pennsylvania Securities Act of 1972 (1972 Act).

STAFF INTERPRETATIONS

The Commission, on December 19, 1989, permitted staff to take the following positions with respect to the following specific questions:

1. Q. Do offers and sales made under Regulation 203.184 (Offers and Sales to Principals) and Regulation 203.187 (PA Small Issuer Exemption) count against the numerical limitations set forth in Section 203(f)?
 - A. Yes. Unlike the provisions of Section 203(d) which excludes from computation under that section purchasers of registered securities or securities sold in reliance on an exemption other than Section 203(d) or (f), the availability of Section 203(f) is conditioned on the fact that, as part of its initial capitalization, offers and sales of securities are made to no more than 5 persons ANYWHERE.
2. Q. Do sales made to persons under Regulation 203.184 count against the numerical limitations set forth in Regulation 203.187?
 - A. Yes. Subsection (c)(1) of Regulation 203.187 states that all persons to whom the issuer has sold securities will be counted against the 10 person limitation. This would include all issuer transactions whether registered, exempted, sold outside this jurisdiction or in violation of Section 201.
3. Q. May a Pennsylvania issuer make sales to 10 persons under Regulation 203.187 and then, within a period of 12 consecutive months, file under Section 203(d) to make sales to an additional 25 persons for total sales to 35 persons?
 - A. Yes.
4. Q. May a Pennsylvania issuer use Regulation 203.187 and Regulation 204.010(a)(1) and (2) to make sales to 45 persons (10 under Regulation 203.187 and 35 under Regulation 204.010(a)(1) and (2)) within a period of 12 consecutive months?
 - A. No. Subsection (d) in Regulation 203.187 makes clear that all offers and sales made under Regulation 203.187 count against the applicable numerical limitations set forth in Regulation 204.010(a)(1) and (2) where the offers and sales under Regulation 204.010 occur within a period of 12 consecutive months of offers and sales made under Regulation 203.187.

Staff notes that the method for computing offerees and purchasers set forth in Regulation 609.012 applies to the foregoing interpretations.

(PSC Bull. December 1989)

203(f); Regs. 203.187 & 203.189 Rejection of Executed Subscription Agreements.

DIVISION OF CORPORATION FINANCE RELEASE NO. 96-CF-2 STAFF NO-ACTION POSITION CONCERNING REJECTION OF EXECUTED SUBSCRIPTION AGREEMENTS TO COMPLY WITH NUMERICAL LIMITATIONS IN SECTION 203(f) AND COMMISSION REGULATIONS 203.187 AND 203.189

Commission staff has received inquiries concerning what action, if any, staff would recommend where, in an isolated circumstance, an issuer or a broker-dealer acting on behalf of an issuer, received executed subscription agreements in connection with an offering structured and intended to comply with Section 203(f) of the 1972 Act or Commission Regulations 203.187 or 203.189 which were in excess of the numerical limitations set forth in those exemptions. At its June 26, 1996 meeting, the Commission authorized publication of the following Staff No-Action Position:

STAFF NO-ACTION POSITION

A. Staff would not recommend enforcement action to the Commission under the above-referenced circumstances if an issuer rejected as many executed subscription agreements as necessary (which need not be based upon order of receipt) to bring the number of purchasers within the numerical limitations of the aforementioned exemptions, provided that:

1. The circumstances were isolated in nature and not intended to circumvent the provisions of the 1972 Act;
2. The offers were exempt pursuant to Section 203(e) or Regulations 203.187 or 203.189;
3. The terms of the subscription agreement provided that the issuer had the absolute authority to reject unilaterally any or all agreements; and
4. The issuer returned the executed subscription agreement to the subscriber and, if a check was tendered in connection with the subscription agreement, the issuer refrained from negotiating the check and returned it the subscriber.

B. In the event that an issuer desires to rely upon the exemptions in Sections 203(d) and (e) of the 1972 Act to re-solicit the rejected subscribers or solicit new investors, staff would not recommend that a proceeding be commenced under Section 204(b) of the 1972 Act to deny the availability of those exemptions if:

1. The conditions of the staff no-action position set forth in A occurred; and
2. The issuer filed Commission Form 203-D or Form D Supplement and a copy of SEC Form D with the Commission **prior** to the receipt of executed subscription agreements or consideration from the rejected subscribers or new investors.

NOTE: This Release is intended to provide a non-exclusive safe harbor from enforcement action for the specific situations described herein and should not be interpreted as a determination of whether or not a sale has occurred within the meaning of Section 102(r) of the 1972 Act.

(PSC Bull. June 1996)

Sections 203(i) and 205 Requested time for filings

It is requested that issuers who intend to sell securities in Pennsylvania pursuant to Sections 203(i) and 205 file with the Commission within twenty days of the initial SEC filing. There have been a significant number of last minute filings with the Commission under Section 205 involving problems which, had the file been made earlier, might have been resolved without delaying the registration.

(PSC Bull. June/Aug. 1973)

Section 203(q) - Spinoff Distributions by Blank Check/Blind Pool companies

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 89-CF-4
"SPIN-OFF" DISTRIBUTIONS UNDER SECTION 203(Q)
BY "BLANK CHECK/BLIND POOL" COMPANIES OF
SHARES IN NEWLY-FORMED SHELL SUBSIDIARIES**

There have been an increasing number of "blank check/blind pool" registration statements being filed with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 for securities transactions involving the distribution of shares and warrants of a newly-formed or acquired subsidiary shell corporation which itself is a recently-formed but publicly-held shell company. The Commission has determined that the bona fide requirement in Section 203(q) of the Pennsylvania Securities Act of 1972 (1972 Act) makes this exemption unavailable for shell transactions.

Further, the Commission is concerned that the persons filing such registration statements with the SEC are representing to the SEC that the transactional exemption in Section 203(q) of the 1972 Act is available for such distributions. In view of the foregoing, the Commission requested staff to develop a position with respect to these proposed distributions and the application of Section 203(q) of the 1972 Act. On December 19, 1989, the Commission permitted staff to take the following position:

STAFF POSITION

Section 203(q) of the 1972 Act is a transactional exemption from registration available for any bona fide distribution of the securities of another person, not the issuer. A notice on Commission Form 203-Q must be filed with the Commission 10 days prior to the intended date of the distribution or dividend which shall contain a statement concerning the facts and circumstances surrounding the distribution or dividend.

Form 203-Q is reviewed by Commission staff for: (1) compliance with the requirements of Section 203(q); (2) a determination as to whether the proposed distribution is a bona fide distribution for purposes of Section 203(q); (3) a determination as to how the distributor will comply with the anti-fraud requirements of Section 401 of the 1972 Act; and (4) the manner in which the securities of the distributor came to be held by Pennsylvania residents and the section of the 1972 Act relied upon for such transactions.

Commission staff notes that a statutory condition for the availability of the Section 203(q) exemption is the bona fide nature of the proposed distribution. It is the position of Commission staff that the use of a shell distribution to avoid the registration provisions of Section 201 of the 1972 Act will not satisfy the bona fide requirement of the exemption in Section 203(q). Therefore, it is the view of Commission staff that the transactional exemption contained in Section 203(q) is not available for the type of distribution described in the introductory paragraph of this Release. Furthermore, this type of distribution generally is not exempt under Section 203(a) or (b) of the 1972 Act.

With respect to issues of secondary trading of the “spin-off” securities in Pennsylvania, staff emphasizes that such securities must be registered pursuant to Section 201 of the 1972 Act unless the requirements of the exemptions found in Section 203(a) or (b), as further defined in Commission Regulation 203.011, have been met.

(PSC Bull. December 1989)

Section 203(r) Exchange Transactions with Institutional Accredited Investors

Pursuant to Section 203(r) of the 1972 Act, the Commission issued an Order dated March 16, 2004, exempting transactions in which debt securities generally registered with the SEC on Form S-4 are exchanged for debt securities of the same issuer previously sold to Qualified Institutional Buyers (QIBs) pursuant to United States Securities and Exchange Commission (SEC) Rule 144A if the following conditions are met:

1. A person who owns outstanding debt securities (and any related guarantees) exchanges those securities for debt securities (and any related guarantees) of the same issuer which are the subject of an effective registration statement filed with the SEC under Section 5 of the Securities Act of 1933 (15 U.S.C. §77(e)) (Exchange Transaction).
2. The outstanding debt securities (and any related guarantees) are “restricted securities” as that term is defined in SEC Regulation 144(a)(3) (17 C.F.R. §230.144(a)(3)).
3. No consideration is paid by the owner of the outstanding debt securities (and any related guarantees) in connection with the Exchange Transaction.
4. There are no material differences in the terms of the outstanding debt securities (and any related guarantees) and the debt securities (and any related guarantees) which are the subject of the Exchange Transaction.

(PSC Bull. March 2004)

Section 203(r) Offers and sales to principals under Regulation 203.184

Commission staff have taken the position that it will not recommend enforcement action to the Commission for violations of Section 201 with respect to sales of securities to principals by issuers relying upon §203.184 for (1) offers and sales to principals of securities also being offered simultaneously to non-principals under other exemptions set forth in Sections 202 or 203; and (2) offers and sales of securities to statutory promoters of the issuer who will become, at the inception of the issuer, officers or directors. Further, the staff has not objected to reliance on this Regulation in making offers and sales of limited partnership interest to officers and directors of the corporate general partners.

(PSC Bull. June 1986)

Section 203(r) Employee investments in business

The Commission has recognized that employees of companies in order to preserve jobs and improve the economy, are seeking means by which they may participate in the financing of Pennsylvania businesses. In many instances employees are looking to own and operate their current employer's business which might otherwise be closed. Therefore, the Commission has developed several procedures in order to expedite the aspects of the employee's investment which come within the jurisdiction of the 1972 Act.

The thrust of the actions is to simplify registration and other investment procedures where employees or impacted communities raise capital for investment in a business to prevent it from closing. The company in question must meet several criteria regarding annual gross revenue, history of operation, and other conditions plus guarantee it will remain in Pennsylvania and employ at least 25 people. The Commission's actions specifically are geared to solicit investment where 25 or more jobs are threatened or a company plans to close an operation.

A kit has been developed to acquaint individuals with these procedures and includes the following materials:

1. A five page written overview that explains the Commission's actions in this area and how they work.
2. A copy of the Commission's Interpretive Opinion (which was approved for publication by the Commission on September 29, 1982) making an exemption from registration available to worker's cooperatives taxed under Subchapter T of the Internal Revenue Code.
3. A copy of Commission Regulation 203.186 (effective January 22, 1983) on "Employee Takeovers" and a copy of Commission's Form 203-R-6 which must be filed with the Commission in order to take advantage of the exemption from registration created by this Regulation.
4. A copy of Commission Regulation 203.185 (effective January 22, 1983) which provides community involvement in the purchase of an existing local employer's business.
5. A copy of the Commission's "Advisory" which describes two exemptions from registration that may be available in instances where there are a limited number of purchasers of securities.

For copies of this Kit or more specific information, please write or call the Director of the Division of Corporation Finance at (717) 787-5401.

(PSC Bull. Jan./Feb. 1983)

Section 203(r) Distribution of preliminary prospectuses in connection with the offering of certain securities of non-profit organizations

Pursuant to Section 203(r) of the 1972 Act, the Commission issued an Order dated July 11, 1974 exempting any offer (but not a sale) of debt securities being made in a firm underwritten offering by a broker-dealer registered under the Federal Securities & Exchange Act of 1934 and being sold in Pennsylvania by a broker-dealer registered under the 1972 Act where the issuer is relying upon the exemption contained in Section 3(a)(4) of the Federal Securities Act of 1933, as amended, where a trust

indenture substantially meeting the requirements of the Trust Indenture Act of 1939 is used, and no such offer is made until a Section 206 registration statement or Section 203(p) Notice including a prospectus and required exhibits has been filed with the Commission.

The preliminary prospectus to be distributed should be in substantially final form without final pricing information. Further, when the pricing information has been determined, it is necessary to notify the Commission immediately so that the offering may be presented for registration or exemption.

(PSC Bull. Aug. 1974)

Section 203(r) Use of Solicitation of Interest Materials Prior to the Registration of Securities under Section 205 or 206

DIVISION OF CORPORATION FINANCE

RELEASE NO.: 00-CF-2

**Application Process for Discretionary Exemptive Order under Section 203(r)
of the Pennsylvania Securities Act of 1972 to Use Solicitation of Interest Materials
Prior to the Registration of Securities under Section 205 or 206
of the Pennsylvania Securities Act of 1972**

AVAILABILITY OF DISCRETIONARY EXEMPTIVE ORDER

A discretionary exemptive order under this Release **is not available** for issuers engaged in petroleum exploration or production or mining or other extractive industries or “blind pool” offerings. Also, persons who have previous disciplinary history in the securities business are ineligible for an exemptive order. If an issuer is not organized under the laws of Pennsylvania or does not have its principal place of business in Pennsylvania, it must have filed a copy of its solicitation of interest materials with the U.S. Securities and Exchange Commission (SEC) pursuant to SEC Rule 254 of Regulation A prior to requesting an exemptive order under this Release.

Editor's Note: This Release supercedes Release 94-CF-1 (July 6, 1994).

BACKGROUND

In connection with a proposed securities offering to be made under Regulation A of the federal Securities Act of 1933 (1933 Act), the SEC has adopted rules that permit issuers to “test the waters” as to public receptivity to such an offering by publicly disseminating certain information about the issuer designed to solicit indications of interest. This process is intended to assist issuers in realistically evaluating investor interest in a proposed securities offering prior to incurring the time and expense of making a filing with the SEC. **“Testing the Waters”, however, is not a substitute for a registered securities offering and delivery of a prospectus describing the offering.**

This Release establishes a similar process in Pennsylvania for use of solicitation of interest materials in conjunction with a proposed Regulation A offering or a proposed registered intrastate offering by a Pennsylvania issuer under Section 3(a)(11) of the 1933 Act. For purposes of this Release, solicitation of interest materials means Form SOI and Pennsylvania SOI Supplement appended hereto (SOI Forms).

Disclosures on SOI Forms may be written or scripted for electronic broadcast. At a minimum, SOI Forms must contain all the information (including required legends, information and responses) set forth in this Release. Language and graphics used in the SOI Forms and any subsequent communication with persons who have received the SOI Forms may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections and forecasts).

HOW TO REQUEST AN EXEMPTIVE ORDER

Under the Pennsylvania Securities Act of 1972 (1972 Act), distribution of the SOI Forms is deemed to constitute an offer. The exemptive order to be issued under Section 203(r) of the 1972 Act allows issuers to use SOI Forms prior to filing a registration statement for a securities offering under Section 205 or 206 of the 1972 Act and exempts offers made by means of the SOI Forms, **but not sales resulting from such**

offers, from the registration requirements of Section 201 of the 1972 Act.

To request an exemptive order under this Release, a letter on company letterhead and signed by an officer should be sent to the Pennsylvania Securities Commission, Division of Corporation Finance, 1010 N. 7th Street, Harrisburg, PA 17102-1410. Included with the letter should be:

- (1) Two copies of the attached SOI Forms;
- (2) A signed copy of the Issuer Affirmations attached to this Release; and
- (3) Two copies of any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

REVIEW OF APPLICATIONS FOR AN EXEMPTIVE ORDER

All applications will be reviewed under the anti-fraud provisions of the 1972 Act by Commission staff within five business days of being filed with the Commission. Comments arising from a review of the application will be conveyed to the issuer or, at the issuer's direction, to its counsel. While each question on the SOI Forms must be completed, the issuer may include additional disclosures relating to these questions, provided these disclosures do not include predictions of future revenues, profits or payments of dividends.

Only the Commission may grant the exemptive order. The Commission meets twice per month and the exemptive order request will be scheduled for the next available Commission meeting date occurring after completion of staff review and satisfaction of staff comments, if any. An exemptive order issued under this Release is effective until the earlier of: the date a registration statement is filed with the Commission under Section 205 or 206 of the 1972 Act or 12 months from the date of issuance of the order.

ORAL COMMUNICATIONS, FREE WRITING AND AMENDMENTS

An exemptive order allowing use of SOI Forms exempts all **subsequent** oral communications between the issuer and recipients of the SOI Forms if the issuer complies with the following:

1. All communications with recipients of the SOI Forms cease the earlier of: (1) the date a registration statement is filed with the Commission under Section 205 or 206 of the 1972 Act or (2) 12 months from the date of issuance of the order.
2. If an issuer wishes to modify or add information to its SOI Forms after the exemptive order has been granted, these materials must be filed with the Commission at its Harrisburg office five business days prior to them being given to prospective investors in Pennsylvania with whom the issuer still is communicating. No new or additional exemptive order is required for these amendments but the Commission has the authority to issue a summary denial order under Section 204 of the 1972 Act prohibiting their use if the information contained in the amendments is false or misleading in any material respect.
3. If a prospective investor makes a specific request for materials, this would not require an amendment to the SOI Forms. The issuer, however, must maintain a file identifying with reasonable specificity, the materials that were given to an offeree pursuant to a specific request and the dates of every communication with that person (**see Record Retention**).
4. In any written or oral communication, including a response to a specific request from a prospective investor, the issuer may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends.

SALES OF SECURITIES

No **SALES** of securities may be made pursuant to the exemptive order. Sales may be made solely in compliance with a registration statement declared effective under Section 205 or 206 of the 1972 Act or in reliance upon an exemption that is not otherwise prohibited under the terms of the exemptive order (**see Prohibition on Use of Certain Exemptions**).

PROHIBITION ON USE OF CERTAIN EXEMPTIONS

Sales of the Issuers's securities.

Under the terms of the exemptive order, the issuer may not rely upon the exemptions in Sections 203(f), 203(d) and 203(s) of the 1972 Act and Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) and 204.010 to offer or sell its securities to prospective investors who received SOI Forms for six months from the date of the last communication with any prospective investor.

Sales of securities by an affiliate of the Issuer:

Where an officer, director, general partner, promoter or control person of the issuer during the period in which an offer was made under the exemptive order either simultaneously or subsequently serves in a similar capacity with another company, that other company may not rely upon the exemptions in Sections 203(f), 203(d) or 203(s) of the 1972 Act or Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) or 204.010 to offer or sell its securities to a prospective investor in Pennsylvania who responded to the SOI Forms for a period of six months after the date of the issuer's last communication with that person.

For purposes of this Release, a sale is deemed to have occurred when the issuer accepts money or a commitment to purchase securities.

RECORD RETENTION

As a condition of the issuance of an exemptive order, issuers must agree to maintain a list that includes (1) the names and addresses of all prospective investors responding to the SOI Forms; (2) the dates of all communications with such persons and (3) in the event that materials were provided in response to a specific request, a description of reasonable specificity as to the materials provided and to whom they were provided. Issuers also must agree to maintain this list for three years from date of receipt of the last investor communication as a result of the solicitation.

ANTI-FRAUD PROVISIONS APPLY

The SOI Forms and oral communications with recipients of the SOI Forms are subject to the anti-fraud provisions of Section 401 of the 1972 Act. Therefore, issuers must insure that these materials and communications do not contain omissions of material fact or misstatements of material facts. Material facts are those which a reasonable person would want to know in order to make an informed investment decision with respect to the securities that are the subject of the SOI Forms.

SOLICITATION OF INTEREST MATERIALS AS ADVERTISEMENTS

The exemptive order also will constitute a waiver of the provisions of Commission Regulation 606.031, "Advertising literature".

ATTACHMENTS TO THIS RELEASE:

ISSUER AFFIRMATIONS

SOLICITATION OF INTEREST FORM (SOI)

PENNSYLVANIA SOI SUPPLEMENT SAMPLE

SECTION 203(r) EXEMPTIVE ORDER

FEDERAL AND STATE DISQUALIFICATIONS

ISSUER AFFIRMATIONS

In support of the request of (Insert Name and Address of Company) (Issuer) filed with the Pennsylvania Securities Commission (Commission) to issue an order under Section 203(r) of the Pennsylvania Securities Act of 1972 (1972 Act) permitting the Issuer to distribute Form SOI and Pennsylvania SOI Supplement (SOI Forms) in Pennsylvania to offer the Issuer's securities (Order), the Issuer affirms and agrees to the following:

About the Issuer:

A. The Issuer: (1) is organized under the laws of the Commonwealth; (2) has its principal place of business in the Commonwealth or (3) has filed a copy of the solicitation of interest materials with the SEC under SEC Rule 254 of Regulation A.

B. The Issuer and each officer, director, general partner or control person of the issuer is not subject to a federal disqualification under SEC Rule 262 of Regulation A or a state disqualification under Commission Regulation 204.010(b)(1).

C. The Issuer is engaged or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a “blind pool” offering or an offering for which the specific business or properties cannot now be described.

D. The Issuer and each officer, director, general partner or control person of the Issuer is familiar with the anti-fraud provisions of Section 401 of the 1972 Act.

About the SOI Forms:

A. The Issuer is filing two copies of its SOI Forms with its request and agrees not to distribute, publish or otherwise disseminate the SOI Forms until the Order is granted by the Commission.

B. If the Issuer wishes to amend its SOI Forms, it agrees to file these amendments with the Commission at its Harrisburg Office five business days prior to them being given to prospective investors in Pennsylvania with whom the issuer still is communicating.

C. The issuer agrees not to include information in the SOI Forms or in materials provided to a recipient of the SOI Forms pursuant to a specific request that would exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, including financial projections and forecasts.

About the Offers:

A. The Issuer may not make offers under an Order granted by the Commission unless the prospective investor has received a copy of the SOI Forms.

B. The Order exempts only the offer, BUT NOT THE SALE, of the Issuer’s securities.

C. The Issuer agrees that a sale occurs when the Issuer accepts money or a commitment to purchase the securities.

D. The Issuer agrees to maintain a list that includes (1) the names and addresses of all prospective investors responding to the SOI Forms; (2) the dates of all communications with such persons and (3) in the event that materials were provided in response to a specific request, a description of reasonable specificity as to the materials provided and to whom they were provided. The issuer also agrees to maintain this list for three years from date of receipt of the last investor communication as a result of the solicitation.

About Prohibition on Use of Certain Exemptions:

The Issuer agrees to the following in the event the securities being offered by means of the SOI Forms are not registered under Section 205 or 206 of the 1972 Act.

A. Under the terms of the exemptive order, the issuer may not rely upon the exemptions in Sections 203(f), 203(d), and 203(s) of the 1972 Act and Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) and 204.010 to offer or sell its securities to prospective investors who received SOI Forms for six months from the date of the last communication with any prospective investor.

B. Where an officer, director, general partner, promoter or control person of the issuer during the period in which an offer was made under the exemptive order either simultaneously or subsequently serves in a similar capacity with another company, that other company may not rely upon the exemptions

in Sections 203(f), 203(d) or 203(s) of the 1972 Act or Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) or 204.010 to offer or sell its securities to a prospective investor in Pennsylvania who responded to the SOI Forms for a period of six months after the date of the issuer's last communication with that person.

(Name of Issuer)

BY:

(Officer's Title)

DATED:_____

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must therefore be complete. You may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections and forecasts). You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented. **The information in the Pennsylvania SOI Supplement is an integral part of the SOI Form and MUST accompany the SOI Form information at all times and under all circumstances.**

SOLICITATION OF INTEREST FORM

NAME OF COMPANY

Street Address of Principal Office:

Company Telephone Number:

Date of Organization:

Amount of the Proposed Offering:_____

Name of Chief Executive Officer:_____

THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR OR PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING IS QUALIFIED BY THE SEC AND IS REGISTERED IN THIS STATE*

*The language "IS QUALIFIED BY THE SEC AND" is not applicable if the offering is made under Section 3(a)(11) of the federal Securities Act of 1933.

- This Company () Has never conducted business operations.
 () Is in the development stage.
 () Is currently conducting operations.
 () Has shown a profit for the last fiscal year.
 () Other (specify)_____

BUSINESS:

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.
2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

OFFERING PROCEEDS:

3. Describe in general how the company intends to use the proceeds of the proposed offering.

KEY PERSONNEL OF THE COMPANY:

4. Provide the following information for all officers, directors or persons occupying similar positions:

Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting indications of interest under the Pennsylvania Securities Act of 1972 (1972) when used in conjunction with Form SOI. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the 1972 Act and must therefore be complete. You may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections and forecasts). **The information in the Pennsylvania SOI Supplement is an integral part of the SOI Form and MUST accompany the SOI Form information at all times and under all circumstances.**

PENNSYLVANIA SOI SUPPLEMENT

NAME OF COMPANY _____

Check the appropriate response(s)

1. The securities the issuer proposes to offer are:
 - a. Common Stock ____
 - b. Preferred or Preference Stock ____
 - c. Notes, Debentures or Bonds ____
 - d. Limited Liability Company Membership Interests ____
 - e. Units of two or more types of securities, composed of:
 - f. Other (specify): ____

2. These securities will have:
 - a. Cumulative voting rights ____
 - b. Other special voting rights ____
 - c. Preemptive rights to purchase any new issue of shares ____
 - d. Preference as to dividends or interest ____
 - e. Preference upon liquidation ____

- f. Anti-dilution rights ____
- g. Other special rights or preferences ____
- h. Conversion rights ____

Explain any items checked.

3. The issuer's revenues during the last full fiscal year were:
 - a. Less than \$10,000__.
 - b. \$10,000 or more but less than \$50,000__.
 - c. \$50,000 or more but less than \$250,000__.
 - d. \$250,000 or more but less than \$1 million__.
 - e. \$1 million or more __.
 - f. Issuer has been in existence for less than a full fiscal year__.

4. The issuer had a profit or loss during its last full fiscal year of:
 - a. PROFIT OF: Less than \$10,000__.
 \$10,000 or more but less than \$50,000__.
 \$50,000 or more but less than \$250,000__.
 \$250,000 or more__.
 - b. LOSS OF: Less than \$10,000__.
 \$10,000 or more but less than \$50,000__.
 \$50,000 or more but less than \$250,000__.
 \$250,000 or more__.
 - c. Issuer has been in existence for less than a full fiscal year__.

5. The average price per share of stock paid in cash by the issuer's current shareholders was:
 - a. Less than \$.01__.
 - b. \$.01 or more but less than \$.05__.
 - c. \$.05 or more but less than \$.10__.
 - d. \$.10 or more but less than \$.25__.
 - e. \$.25 or more but less than \$1.00__.
 - f. \$1.00 or more__.

6. The issuer has engaged in the following transactions with its officers, directors, 10% shareholders or their affiliates or relatives:
 - a. Issued securities in exchange for property or services__.
 - b. Loaned money__.
 - c. Rented or purchased property__.
 - d. Purchased or sold goods or services__.
 - e. No such transactions have occurred__.

7. During the last full fiscal year, the issuer's officers and directors received combined aggregate cash compensation of:
 - a. Less than \$50,000__.
 - b. \$50,000 or more but less than \$100,000__.
 - c. \$100,000 or more but less than \$250,000__.
 - d. \$250,000 or more but less than \$500,000__.
 - e. \$500,000 or more__.

8. Are there any outstanding options or warrants held by current shareholders?
- YES __.
NO __.
9. Does the issuer's liabilities currently exceed the fair market value of its assets?
- YES __.
NO __.
10. Is the issuer now, or in the past two years was it, unable to meet its obligations as and when they become due in the usual course of business?
- YES __.
NO __.

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA SECURITIES COMMISSION

IN THE MATTER OF:

:
: ORDER
:

WHEREAS, _____ (the "Issuer") has filed with the Pennsylvania Securities Commission (the "Commission") a request pursuant to Section 203(r) of the Pennsylvania Securities Act of 1972 (the "1972 Act") to exempt the offer, but not the sale of _____ (the "Securities") in contemplation of filing a registration statement for the Securities under Section 205 or 206 of the 1972 Act (the "Exemption Request"); and

WHEREAS, The Issuer has filed with the Commission a copy of Form SOI and Pennsylvania SOI Supplement (the "SOI Forms") that it proposes to disseminate publicly in the Commonwealth to effect the offers which are the subject of the Exemption Request; and

WHEREAS, The Issuer has represented that the Issuer and each promoter, officer, director, general partner or control person of the Issuer is not subject to a federal disqualification under United States Securities & Exchange Commission (the "SEC") Rule 262 of Regulation A or a state disqualification under Commission Regulation 204.010(b)(1); and

WHEREAS, The Issuer has represented that it is organized under the laws of the Commonwealth, has its principal place of business in the Commonwealth, or has filed a copy of the solicitation of interest materials with the SEC under SEC Rule 254 of Regulation A; and

WHEREAS, The Issuer is engaged or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described; and

WHEREAS, the Commission, after due deliberation, finds that it is necessary or appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue the following Order:

NOW, THEREFORE, THIS __ day of _____, 20____, The Commission, pursuant to the grant of authority in Section 203(r) of the 1972 Act, exempts offers (but not sales) of Securities effected by means of the SOI

Forms, subsequent oral communications with recipients in Pennsylvania of the SOI Forms or materials provided to a recipient of the SOI Forms in Pennsylvania pursuant to a specific request by that recipient and, pursuant to the grant of authority in Section 609(a) of the 1972 Act, waives the requirements of Commission Regulation 606.031 with respect to such offers, provided that:

1. No communication is made by the Issuer with any person in Pennsylvania unless that person has received a written copy of the SOI Forms or any amendments thereto in accordance with paragraph two below and that such communication does not use or contain material information that is false or misleading or exaggerates the investment opportunity, minimizes the risks of the enterprise or predicts revenues, profits or payment of dividends; and

2. No amendments to the SOI Forms may be distributed to any person in Pennsylvania unless filed with the Commission five (5) business days prior to them being given to prospective investors in Pennsylvania with whom the issuer still is communicating; and

3. The Issuer will not solicit or accept money or a commitment to purchase the Securities; and

4. After the Issuer commences making offers in the Commonwealth under this Order, the Issuer does not rely upon the exemptions in Sections 203(f), 203(d), and 203(s) of the 1972 Act and Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) and 204.010 to offer or sell the Securities to prospective investors who received SOI Forms pursuant to this Order for six months from the date of the last communication with any prospective investor, and

5. Where an officer, director, general partner, promoter or control person of the issuer during the period in which an offer was made under the exemptive order either simultaneously or subsequently serves in a similar capacity with another company, that other company may not rely upon the exemptions in Sections 203(f), 203(d) or 203(s) of the 1972 Act or Commission Regulations 203.187, 203.189 (except for reliance on the waiver in Section 203.189(b)(1)) or 204.010 to offer or sell its securities to a prospective investor in Pennsylvania who responded to the SOI Forms for a period of six months after the date of the issuer's last communication with that person; and

6. The Issuer maintains a list that includes:

(A) The names and addresses of all prospective investors responding to the SOI Forms;

(B) The dates of all communications with such persons; and

(C) In the event that materials were provided in response to a specific request, a description of reasonable specificity as to the materials provided and to whom they were provided ("List"); and

7. The Issuer maintains the List for three years from date of receipt of the last investor communication as a result of the solicitation.

The effective period of this Order shall be from _____ until the earlier of:

(1) The date a registration statement for the Securities has been filed with the Commission under Section 205 or 206 of the 1972 Act, or

(2) Twelve consecutive months from the date of issuance of this Order.

BY ORDER OF THE COMMISSION:

APPENDIX TO FORM SOI

Federal Disqualifications

§230.262 Disqualification provisions.

Unless, upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption provided

by this Regulation A be denied, the exemption shall not be available for the offer or sale of securities, if:

(a) the issuer, any of its predecessors or any affiliated issuer:

(1) has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by §230.252;

(2) is subject to any pending proceeding under §230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;

(3) has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;

(4) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. §3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. §3007 with respect to conduct alleged to have violated 39 U.S.C. §3005. The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.

(b) any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter:

(1) has been convicted within 10 years prior to the filing of the offering statement required by §230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(2) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser;

(3) is subject to an order of the Commission entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(4) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(5) is subject to a United States Postal Service false representation order entered under 39

U.S.C. § 3005 within 5 years prior to the filing of the offering statement required by §230.252, or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. §3007 with respect to conduct alleged to have violated 39 U.S.C. §3005.

(c) any underwriter of such securities was an underwriter or was named as an underwriter of any securities:

(1) covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the offering statement required by §230.252; or

(2) covered by any filing which is subject to any pending proceeding under §230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement.

Pennsylvania Disqualifications

64 Pa. Code §204.010(b)(1) and (c)

(b) Conditions.

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction, or otherwise found to have met any of the criteria described in section 305(a)(ii)-(xiii) of the act (70 P.S. § 1-305(a)(ii)-(xiii)) unless the person subject to the disqualification is registered under section 301 of the act (70 P.S. §1-301).

(c) Exceptions.

(1) Subsection (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this Commonwealth and in the Form BD filed with the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection (b)(1), to act in a capacity other than that for which the person is registered.

(2) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

Section 203(t) Staff Interpretive Advice on Accredited Investor Exemption

DIVISION OF CORPORATION FINANCE RELEASE NO. 05-CF-1

THE ACCREDITED INVESTOR EXEMPTION UNDER SECTION 203(T) AND THE NON-ISSUER EXEMPTIONS CONTAINED IN SECTION 203(A) AND (B) OF THE PENNSYLVANIA SECURITIES ACT OF 1972 ARE NOT AVAILABLE FOR TRANSACTIONS WHICH ARE PART OF A PLAN OR SCHEME TO CIRCUMVENT THE REQUIREMENTS FOR THE REGISTRATION PROVISIONS OF THE 1972 ACT

BACKGROUND

On January 25, 1999, Act 109 amending the 1972 Act became effective. Act 109 added Section 203(t) as a category of securities exempt from the registration requirement of Section 201 of the 1972 Act. Section 203(t) exempts offers where all sales would be made to Accredited Investors, as that term is defined in Rule 501 of SEC Regulation D. The exemption is available only if the offering is being made

in reliance on Section 3(a)(11) of the Securities Act of 1933 (“1933 Act”), SEC Regulation A or Rule 504 of SEC Regulation D.

Over the last two years, Commission Staff has seen an exponential increase of Section 203(t) offerings, all of which have relied upon SEC Rule 504. Staff has learned that these securities are being sold to either a single accredited investor or a few accredited investors, individual and corporate, who shortly thereafter offer these securities for sale to the general public under the non-issuer exemptions in Section 203(a) and (b).

STAFF POSITION

Investors purchasing securities under Section 203(t) with a view to resell them within 12 months from the date of purchase are participating in a distribution and will be deemed to be underwriters as that term is defined in Section 102(v) of the 1972 Act. Consequently, any distribution to Pennsylvania residents must comply with the registration requirements of the 1972 Act, or be exempt therefrom.

The non-issuer exemption contained in Section (a) is not available because according to Regulation 203.011, “a transaction which is part of a single plan of distribution by an issuer of its securities to the public will not be deemed a non-issuer transaction for purposes of section 203(a) of the act.” Furthermore, the exemption under Section 203(b) is not available for non-issuer transactions exempted from Section 5 of the 1933 Act pursuant to Sections 3(a)(11) or 3(b). Therefore, these distributions will be viewed as part of a plan or scheme to evade the registration provisions of the 1972 Act.

For more information on the SEC’s position regarding Rule 504 resales, see SEC Release No. 33-7644, dated February 26, 1999 (Revision of Rule 504 of Regulation D, the “Seed Capital” Exemption). See also, Litigation Release No. 19311/July 26, 2005, *SEC v. U.S. Wind Farming, Inc., William L. Telander, et al.*, Case No. 05 C 4259 (N.D. Ill. filed July 25, 2005).

FURTHER ASSISTANCE

Any questions concerning this Release may be directed to staff of the Division of Corporation Finance at (717) 787-8059. Alternative formats of this document may be available on request. Call (717) 787-1165 or TTY Users: via AT&T Relay Center 1-800-654-5984.

Section 203(t) Staff Interpretive Advice on Accredited Investor Exemption

DIVISION OF CORPORATION FINANCE RELEASE NO: 10-CF-1

BACKGROUND

President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) on July 21, 2010. Currently, both Rule 215(e) and Rule 501(a)(5) of the Securities Act of 1933 (1933 Act) define an accredited investor to include any natural person whose individual net worth, or joint net worth with that person’s spouse, exceeds \$1,000,000 at the time of purchase. Pursuant to Section 413(a) of the Dodd-Frank Act, titled Adjusting the Accredited Investor Standard, the definition was amended to remove from the calculation of net worth the value of a natural person’s primary residence. Section 413(a) provides that such adjustment would be effective upon enactment of the Dodd-Frank Act.

References to the accredited investor definition contained in the rules and regulations of the United States Securities and Exchange Commission (SEC) exist both in the Pennsylvania Securities Act of 1972 (1972 Act) and the Regulations promulgated under the 1972 Act. Release No. 10-CF-1 is intended to provide issuers and issuers’ counsel with the position of Pennsylvania Securities Commission (PSC) staff as it relates to such references in light of the Dodd-Frank Act.

STAFF POSITION

It is the position of PSC staff that pending any changes by the SEC to its rules and regulations concerning the definition of accredited investor, all references to the SEC's accredited investor definition contained in the 1972 Act or the Regulations promulgated thereunder should be read as excluding from the calculation of net worth the value of a natural person's primary residence.

FURTHER ASSISTANCE

Any questions concerning this Release may be directed to staff of the Division of Corporation Finance at (717) 787-5401. Alternative formats of this document may be available on request. Call (717) 787-1165 or TTY Users: via AT&T Relay Center 1-800-654-5984.

DIVISION OF CORPORATION FINANCE RELEASE NO. 00-CF-3 STAFF INTERPRETIVE GUIDANCE ON OFFERINGS UNDER SECTION 203(T) OF THE PENNSYLVANIA SECURITIES ACT OF 1972

BACKGROUND

On January 25, 1999, Act 109 amending the Pennsylvania Securities Act of 1972 (1972 Act) became effective. Act 109 added Section 203(t) as a category of securities transaction exempt from the registration requirement of Section 201 of the 1972 Act. Section 203(t) exempts offers where all sales would be made to Accredited Investors, as that term is defined in Rule 501 of SEC Regulation D, and subsequent sales to Accredited Investors. The exemption is available only if the offering is being made in reliance on Section 3(a)(11) of the Securities Act of 1933 (1933 Act), Rule 504 of SEC Regulation D or SEC Regulation A. The exemption permits use of general solicitation and contains a disqualification provision. The two-business day right of withdrawal in Section 207(m) and the requirement for review of prospective financial statements in 64 Pa. Code §609.010 do not apply to offers and sales made under Section 203(t).

Subsequent to enactment of this exemption and adoption of an implementing regulation at 64 Pa. Code §203.201 (effective January 1, 2000), questions have arisen concerning integration of the provisions of the Section 203(t) exemption with other exemptions provided by the 1972 Act or regulations adopted thereunder. At its June 20, 2000 meeting, the Commission authorized publication of the following Commission Staff Positions concerning Section 203(t).

STAFF POSITION

Scenario 1

An issuer either organized under the laws of the Commonwealth of Pennsylvania or which has its principal place of business in the Commonwealth sold securities to 7 individuals. The issuer now wants to make a second offering of securities to 3 non-Accredited Investors and 50 Accredited Investors. The issuer will not use public advertising.

- Q. May the issuer offer and sell securities to the 3 non-Accredited Investors *first* in reliance on 64 Pa. Code §203.187 (Small Issuer Exemption) before offering and selling the securities in reliance on Section 203(t)?
- A. Yes. No filing with the Commission is required for offers or sales made in reliance on 64 Pa. Code §203.187 but the issuer must file Commission Form E prior to making sales to Accredited Investors in reliance on Section 203(t) and pay a filing fee of \$500.
- Q. Would the answer to the previous question be the same if the issuer *first* made sales to non-Accredited Investors in reliance on 64 Pa. Code §203.184 (Principal Exemption)?
- A. Yes.

- Q. Would the Commission's staff position be different if the issuer used public advertising in conformity with Section 203(t)(vi) prior to making sales to the 3 non-Accredited Investors in reliance on 64 Pa. Code §203.187?
- A. Yes. 64 Pa. Code §203.187(a)(5) prohibits use of public advertising.

Scenario 2

An issuer files Commission Form E to make sales in Pennsylvania in reliance on Section 203(d) of the 1972 Act. After making sales to 3 non-Accredited Investors in Pennsylvania under Section 203(d), the issuer wants to make all remaining sales to Accredited Investors.

- Q. May the issuer rely on Section 203(t) for sales to the Accredited Investors?
- A. Yes, if (1) all remaining sales, both within and without Pennsylvania, are made to Accredited Investors; (2) the sales to the Accredited Investors are exempt from registration under the 1933 Act pursuant to Section 3(a)(11) thereof, Rule 504 of SEC Regulation D or SEC Regulation A; (3) the issuer terminates the Section 203(d) offering; (4) the issuer files an amended Form E; and (5) the issuer pays a filing fee of \$500. Section 602(b.2) states that there is no refund of a Section 203(d) filing fee.
- Q. May the issuer use public advertising in connection with the remaining sales to Accredited Investors?
- A. Yes, if it conforms to Section 203(t)(vi).

Scenario 3

An issuer filed Commission Form E to exempt sales of securities under Section 203(t). The issuer engages in public advertising in conformity with Section 203(t)(vi) but no Accredited Investors are interested in purchasing the securities.

- Q. May the issuer switch to making sales in the same offering to non-Accredited Investors in reliance on Section 203(d)?
- A. If the prospective investor responded to the Section 203(t) public advertising, the answer is no because Section 203(d)(ii) prohibits public advertising. For other prospective investors, Commission staff would assert a presumption that the investors became known to the issuer as a result of the Section 203(t) public advertising unless the issuer, pursuant to its burden under Section 204(c), demonstrates otherwise and proves the availability of the Section 203(d) exemption.
- With respect to prospective investors who responded to the Section 203(t) public advertising and those prospective investors for whom the issuer was unable to demonstrate the availability of the Section 203(d) exemption, Commission staff would not recommend enforcement action to the Commission if the issuer intended to rely on Section 203(d) at the end of a six month period beginning with the date of the last publication of advertising used in connection with soliciting sales of securities under Section 203(t) to re-solicit these prospective investors.
- Q. Would the answer to the previous question be different if the issuer wanted to sell a different type of security to non-Accredited Investors under Section 203(d)?
- A. No.
- Q. Would the answer to the first question in this scenario be the same if the issuer wanted to rely on the exemption in 64 Pa. Code §203.187?
- A. Yes, provided the issuer previously had not sold securities to more than 10 persons.

Scenario 4

An issuer files Commission Form E to rely upon the Section 203(t) exemption but does not use any public advertising.

- Q. If the issuer made no sales, may the issuer switch to Section 203(d)?
- A. Yes, but the issuer must (1) terminate the Section 203(t) offering; (2) file an amended Commission Form E; and (3) pay the filing fee specified in Section 602(b.1)(viii). Section 602(b.2) states that there is no refund of a Section 203(t) filing fee.
- Q. If the issuer makes sales to 4 Accredited Investors in reliance on Section 203(t), may the issuer then rely on Section 203(d) to make additional sales?
- A. Yes, if the issuer (1) terminates the Section 203(t) offering; (2) files an amended Form Commission Form E; and (3) pays the filing fee specified in Section 602(b.1)(viii). Section 602(b.2) states that there is no refund of a Section 203(t) filing fee.
- Q. May an issuer simultaneously make sales in reliance on Sections 203(t) and 203(d)?
- A. Generally, no. Section 203(t) is available only where sales of securities of the entire offering will be made (both within and without of this Commonwealth) to Accredited Investors. Although highly unlikely and dependent on specific factual situations, it may be possible that sales made to Accredited Investors in Pennsylvania under Section 203(d) might also be eligible for the exemption in Section 203(t)

Scenario 5

An issuer, subsequent to using solicitations of interest under a Commission order issued under Section 203(r) to “test the waters” (see Commission Release No. 00-CF-2), determines to make an offering only to Accredited Investors.

- Q. May the issuer rely on Section 203(t) even though persons who were not Accredited Investors saw the solicitation of interest.
- A. Yes. Any offers made as a result of the solicitations of interest (SOI) were made under Section 203(r) of the 1972 Act. To switch to a Section 203(t) offering, the issuer would have to (1) terminate the “testing the waters” solicitation of interests; (2) file Commission Form E; and (3) pay a \$500 filing fee.

Scenario 6

An issuer proposes to engage in an offering in reliance on Section 203(t) but may wish to simultaneously utilize another exemption under the 1972 Act.

- Q. Is the issuer foreclosed from using any other exemption in the 1972 Act simultaneous with an offering under Section 203(t)?
- A. Only to the extent that there is a substantive condition in the exemption which would not make it available simultaneously with Section 203(t), e.g. prohibition on public advertising, numerical limitations, etc.

FURTHER ASSISTANCE

Any questions concerning this Release may be directed to the Division of Corporation Finance at (717) 787-5401.

Section 203(t) Securities Offerings on the Angel Capital Electronic Network

DIVISION OF CORPORATION FINANCE RELEASE NO. 99-CF-3 SECURITIES OFFERINGS ON THE ANGEL CAPITAL ELECTRONIC NETWORK AND THE PENNSYLVANIA SECURITIES ACT OF 1972

BACKGROUND

On December 23, 1996, the Pennsylvania Securities Commission (Commission) adopted Release No. 96-CF-5 in order to facilitate access to capital by small Pennsylvania businesses by providing regulatory relief for corporate offerings of securities made through the Angel Capital Electronic Network (ACE-Net). This Release supersedes Release No. 96-CF-5.

ACE-Net, developed by the US Small Business Administration, is an Internet-based electronic system that provides small companies with exposure, at a reasonable cost, to sophisticated and high net worth individuals, commonly known as "Angels" in entrepreneurial literature. In Pennsylvania, ACE-Net is administered by the Ben Franklin Technology Center of Southeastern Pennsylvania located in Philadelphia.

Through a password system, corporate offerings included on ACE-Net are available only to Accredited Investors²⁴ and not to the general public. A listing on ACE-Net is not available for persons with previous disciplinary history in the securities industry or for sole proprietorships, partnerships, limited liability partnerships, "blank check" companies (companies that raise money to invest in future ventures not yet identified), development stage companies that have no specific business plan or purpose, development stage companies whose business plan is to merge or be acquired by an unidentified company, investment companies registered or required to register under the Investment Company Act or companies involved in oil, gas or other mineral or extractive interests.

The ACE-NET SYSTEM

How does ACE-Net operate?

ACE-Net is operated by universities and non-profit entities that have established programs for mentoring new businesses by providing capital, technology, technical and training assistance. The Network Operators receive information from companies seeking to have their offerings listed on ACE-Net.

What information is available on ACE-Net?

ACE-Net consists of listings of corporate offerings of securities that are exempt from registration with the Securities and Exchange Commission (SEC) under SEC Regulation A or Rule 504 of SEC Regulation D. If the offering is exempt from registration with the SEC and sales of the securities will be made in reliance on a state exemption from registration for sales made only to Accredited Investors, the company may complete the ACE-Net Short Form. The listing for other offerings includes an offering circular that utilizes the SCOR disclosure format. No listing is accepted that falls within the disqualification provisions adopted by the North American Securities Administrators Association in its April 28, 1996 Statement of Policy on SCOR offerings.

Access to ACE-Net.

Access to listings on ACE-Net is restricted to persons who certify themselves to the Network Operators as Accredited Investors and pay an annual fee. Access to ACE-Net is regulated through a password system. Before a password is issued to an investor, the investor must complete a form and mail it to a Network Operator self-certifying that the person meets the definition of Accredited Investor. An annual re-certification of Accredited Investor status is required as part of the renewal subscription to ACE-Net. As a regulator, the Commission has a password and Commission staff periodically monitor offerings listed on ACE-Net.

24 The term "Accredited Investor" used in this Release has the meaning found in Rule 501(a) of SEC Regulation D.

Offers and sales of securities listed on ACE-Net.

The Network Operators do not participate in any transaction involving the sale of securities listed on ACE-Net. All negotiations and sale transactions occur outside of ACE-Net. It is the responsibility of the listing company to insure that all offers and sales of securities that are listed on ACE-Net are effected in full compliance with state and federal securities laws. Furthermore, it is the company's responsibility to determine, independently of ACE-Net and before its sale, that the prospective investor satisfies the criteria for an Accredited Investor.

What ACE-Net will not do.

As a condition of receipt of a SEC Staff No-Action Letter dated October 26, 1996, ACE-Net and the Network Operators will not: (1) provide advice about the merits of particular opportunities or ventures; (2) receive compensation from ACE-Net users other than nominal flat fees to cover administrative costs and such fees will not be made contingent upon the outcome or completion of any securities transaction resulting from a listing on ACE-Net; (3) participate in any negotiations between investors and listing companies; (4) directly assist investors or listing companies with the completion of any transaction including, for example, providing closing documentation or paying referral fees to attorneys or other professionals; (5) handle funds or securities involved in completing a transaction; or (6) hold themselves out as providing any securities-related services other than a listing or matching service.

Further, officials of the Network Operators, participants in ACE-Net and employees and participating university officers, directors and employees with direct or indirect operating or supervisory control over Network Operators will not participate as entrepreneurs or investors in any company listed on ACE-Net, except in compliance with the securities laws and unless such participation is disclosed to users of ACE-Net, and such other persons will not discuss any matters with listing companies, investors, or other persons that might require familiarity with securities or the exercise of judgment concerning securities activities.

ACE-NET AND THE 1972 ACT

Section 203(t) of the 1972 Act.

Section 203(t) of the 1972 Act provides an exemption from registration for any offer and any sale resulting from such offer where the securities being offered are sold, whether in or out of Pennsylvania, only to Accredited Investors. For the purposes of making offers and sales to Pennsylvania residents, a company that has listed its offering on ACE-Net may rely on Section 203(t) of the 1972 Act.

Section 203(t) requirements.

Filing Requirement. A company must file a notice with the Commission on Form E, together with a copy of any offering document or literature used in connection with the offers and sales, no later than the day on which the company receives from any person an executed subscription agreement or other contract to purchase the securities being offered or receives consideration from any person therefor, whichever is earlier.

Fee Requirement. At the time Form E is filed with the Commission, the company should forward to the Commission a check payable to the "Commonwealth of Pennsylvania" in the amount of \$500.

No Compensation to Promoters or Affiliates of Promoters. No commission may be given or paid, directly or indirectly, to any person in connection with a sale unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under Section 301 of the 1972 Act. A *promoter*, under the 1972 Act, includes any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of the issuer or any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both, 10% or more of the proceeds from the sale of any class of securities.

Disqualifications. If the company or a predecessor of the company, affiliated company, officer, director or general partner of the company, promoter of the company presently connected with the company in any capacity, beneficial owner of 10% or more of any class of equity securities of the company, within five years of filing Form E, has been the subject of certain disciplinary proceedings, the company is disqualified from relying on Section 203(t).

A development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person may not rely on Section 203(t). An investment company, as defined in the Investment Company Act of 1940 also is prohibited from relying on Section 203(t).

Legend Requirements. The company must specify in any advertisement, communication, sales literature or other information publicly disseminated in connection with the offering, including by means of electronic transmission or broadcast media, that the securities will be sold only to Accredited Investors. Additionally, the company must place a legend on the cover page of the disclosure document to be used in connection with the offering that the securities will be sold only to Accredited Investors.

Telephone Solicitation. The company may not engage in any solicitation of prospective purchasers by telephone until it has reasonable grounds to believe that the person to be solicited is an Accredited Investor.

Acknowledgment. Providing nothing has come to the attention of Commission staff that would render the Section 203(t) exemption unavailable, the company will receive a letter acknowledging receipt of the filing.

Further assistance.

Questions concerning the Release may be directed to the Division of Corporation Finance at (717) 787-5401.

Information concerning the operation of ACE-Net may be found on the Internet at <http://ace-net.unh.edu> or by calling the US Small Business Administration at (202) 205-6532.

(PSC Bull. December 1999)

Regulations 204.010 and 609.010(c)(3) Application and availability; Division of Corporation Finance Staff Interpretations

The staff of the Commission has been asked certain questions concerning the application and availability of Commission's Regulations 204.010 and 609.010(c)(3) which became effective on November 5, 1983. The following sets forth these questions and the Commission staff's response:

1. In a securities offering in which some offers and sales are to be made either outside of Pennsylvania or within Pennsylvania in reliance upon provisions of the 1972 Act other than Sections 203(d) and (e) as well as some pursuant to Sections (d) and (e), what is the impact on the availability of Regulation 204.010 resulting from the non-203(d) and (e) offers and sales?

The staff of the Commission believes that Regulation 204.010 will be available for those offers and sales made pursuant to Sections 203(e) and (d) respectively regardless whether or not the non-203(d) and (e) offers and sales let the requirements of Regulation 204.010. The term "entire securities transactions", in the opinion of the staff, relates only to the entire Sections 203(d) and (e) portion of the overall securities transaction.

2. May a broker-dealer exempt from registration pursuant to Section 302(a) participate in effecting any of the Sections 203(d) or (e) transactions without affecting the availability of Regulation 204.010?

No. It is the position of the staff that Regulation 204.010 is available only where all of the Sections 203(d) and (e) transactions are effected by registered broker-dealers.

3. If, prior to November 5, 1983, a Section 203(e) offering was commenced, a filing was made

under Section 203(d), or sales were made pursuant to the Section 203(d) filing, what impact, if any, will these occurrences have upon the availability of Regulation 204.010?

It is the position of the staff that as long as all of the conditions of Regulation 204.010 were met, both before and after November 5, 1983, the provisions of Regulation 204.010 will be available for all offers and sales occurring after November 5, 1983.

4. Does Regulation 204.010 waive any of the provisions of Section 203(d) and (e)?

It is the position of the staff that only the numerical limitations of Sections 203(d) and (e) have been waived by Regulation 204.010. The Regulation has not waived any of the other requirements of those sections except Section 203(d)(ii) in certain circumstances.

5. Can any person, as that term is defined in Section 102(n) of the 1972 Act, qualify as an Experienced Private Placement Investor under Regulation 204.010(c) ("EPPI")?

No. Only an individual (rather than a corporation or limited partnership, etc.) can qualify as an EPPI. However, a husband and wife, when purchasing as joint tenants or tenants by the entireties, will be considered as an individual and therefore eligible for EPPI status provided that all of the other requirements of Regulation 204.010(c) have been met.

6. Can an unlimited number of offers be made to EPPIs?

It is the position of the staff of the Commission that the making of offers to EPPIs does not automatically expand the 90 offer limitation. The 90 offer limitation can be exceeded only on a one-for-one basis for each EPPI offeree who actually purchases, pursuant to Section 203(d), the securities being offered.

7. Under what circumstances can unreviewed projections and forecasts be distributed to EPPIs pursuant to 609.010(c)(3)?

It is the position of the staff that, in any filing made with the Commission, the unreviewed projections or forecasts must be stickered to explain to the offeree that the projections or forecasts have not been reviewed as would otherwise be required under Regulation 609.010 because the issuer has represented to the Commission that the only individuals receiving unreviewed projections or forecasts in Pennsylvania will be EPPIs.

(PSC Bull. June 1986)

Editor's Note: Regulations 204.010 and 609.010 were revised effective February 16, 1985 and June 27, 1987, respectively,

Regulation 204.010 Staff Interpretations

1. This Regulation only increases the number of purchasers and offerees permitted under Sections 203(d) and (e) of the 1972 Act. The statutory basis upon which these additional offers and sales are exempt from registration resides in Sections 203(d) and (e) and not in §204.010.

2. Except as provided for Pennsylvania issuers in §204.010(f), all Non-Pennsylvania issuers availing themselves of this Regulation must utilize a broker-dealer registered under Section 301 of the 1972 Act to effect all securities transactions made under Sections 203(d) and (e) of the 1972 Act (including the first 25 sales and 50 offers).

Example A.

Facts: A Non-Pennsylvania issuer makes sales to 12 persons pursuant to the Section 203(d) exemption directly without the utilization of a Pennsylvania registered broker-dealer. The issuer wishes to retain a registered broker-dealer in order to effect 23 additional sales pursuant to §204.010(a)(1)(i).

Staff Position: Regulation 204.010(a)(1)(i) would not be available. Likewise, §204.010(a)(1)(iii) would also not be available.

Example B.

Facts: A Non-Pennsylvania issuer sold or intends to sell to 12 institutional investors pursuant to the exemption contained in Section 203(c) directly without the utilization of a registered Pennsylvania broker-dealer. The issuer wishes to utilize a Pennsylvania registered broker-dealer for all of the additional sales in Pennsylvania pursuant to Section 203(d) as well as rely upon the provisions of §204.010.

Staff Position: Assuming there is compliance with all of the other provisions of §204.010, the Regulation may be relied upon.

3. A person may utilize either §204.010(a)(1)(i) and (ii) or §204.010(a)(1)(iii) independently, but not both in combination. The same is applicable for §204.010(a)(2) which contains analogous provisions relating to the making of offers. The term “not in combination with” as set forth in §204.010(a)(1)(iii) and (2)(iii) not only precludes the accumulation of purchasers and offerees with the provisions of §204.010(a)(1)(i) and (ii) relating to the number of purchasers and offerees, but also precludes mixing the substantive requirements of these subsections.

Example A.

Facts: A broker-dealer registered under Section 301 of the 1972 Act is utilized to make sales pursuant to Section 203(d) also intending to rely upon §204.010(a)(1)(iii) and (2)(iii). The broker-dealer failed to comply with §204.010(a)(1)(iii)(C). The total number of sales made in Pennsylvania was 35 and the total number of offers made in Pennsylvania was 90. The broker now wishes to rely upon §204.010(a)(1)(i) and (2)(i).

Staff Position: If Form D and questions 10 and 11 on Commission’s Form 203 D had been filed, §204.010(a)(1)(i) and (2)(i) would not be available. If Commission’s Form 203 D had been filed and all of the other substantive provisions of §204.010(a)(1)(i) and (2)(i) were met, these sections of the Regulation could be relied upon.

Example B.

Facts: A Pennsylvania issuer properly relied upon §204.010(a)(1)(i) and (2)(i) in making sales to 35 persons and offers to 90 persons. The issuer now wishes to file an application pursuant to 204.010(f)(2) in order to utilize §204.010(a)(1)(iii) and (2)(iii).

Staff Position: Regulation 204.010(a)(1)(iii) and (2)(iii) would only be available if all the conditions of §204.010(a)(1)(iii) (A), (B) and (C) were met in connection with the first 35 sales and 90 offers. The same would be true if the first 35 sales and 90 offers were made within the five business day period during which the Commission has the ability to deny the application filed under §204.00(f)(2). Therefore, for example, if securities were sold to a non-accredited investor in Pennsylvania who did not meet the suitability standards in §204(a)(1)(iii)(C), the provisions in §204.010(a)(1)(iii) and (2)(iii) would not be available.

4. In order to utilize the provisions of §204.010(a)(1)(iii) and (a)(2)(iii), all offers and sales under the Section 203(e) and (d) exemptions must be made in accordance with §204.010(a)(1)(iii) (A) (B) and (C) (including the first 50 offers and 25 sales).

Example A.

Facts: A broker-dealer registered under Section 301 of the 1972 Act (or a Pennsylvania issuer) sells to 25 persons under the Section 203(d) exemption. One of the purchasers does not meet the suitability standards in §204.010(a)(1)(iii)(C). Reliance is now sought with respect to making additional sales pursuant to §204.010(a)(1)(iii).

Staff Position: Regulation 204.010(a)(1)(iii) may not be relied upon.

Example B.

Facts: A broker-dealer registered under Section 301 of the 1972 Act (or a Pennsylvania issuer) sells to 25 persons under the Section 203(d) exemption. These sales were not structured to comply with §204.010(a)(1)(iii)(C). Reliance is now sought with respect to making additional sales pursuant to §204.010(a)(1)(iii).

Staff Position: Section 204.010(a)(1)(iii) may not be relied upon.

5. With regard to the calculation of the net worth of a non-accredited investor in §204.010(1)(iii)(C), the staff takes the position that the provisions of that Section are to be interpreted as in pari passu with the interpretations of Rule 501(a)(6) of Regulation D by the staff of the SEC as set forth in SEC Release 33-6455 dated March 3, 1983 (CCH Fed.Sec.Law Rpts.).

6. Regulation 204.010(a)(2)(ii) does not permit an unlimited number of offers to experience private placement investors. This Section only permits an additional offer to be made for each person who has purchased the securities under the Section 203(d) exemption who qualifies as an experienced private placement investor.

7. Principal place of business shall have the same meaning as case law has construed 28 U.S.C. 1332(c). Further, where an issuer operates through subsidiaries, this determination shall be on a consolidated basis.

8. Section 204(c) states that the burden of proving an exemption is upon the person claiming it. The provisions of §204.010(e) establish a “safe harbor” for broker-dealers and Pennsylvania issuers to meet the burden of proof under Section 204(c). Therefore, broker-dealers or Pennsylvania issuers making offers and sales utilizing §204.010(a)(1)(ii) and (a)(2)(ii) or §204.010(a)(1)(iii) and (a)(2)(ii) are obligated to obtain a written representation that a purchaser under §204.010(a)(1)(ii) meets the definition of an experienced private placement investor or that a purchaser under §204.010(a)(1)(iii) meets the definition of accredited investor or has a net worth (exclusive of homes, furnishings and automobiles) of 5 times the total purchase price of the securities. In addition, the broker-dealer or Pennsylvania issuer must have reasonable grounds to believe, and must believe after reasonable inquiry, that the written representation is correct.

(PSC Bull. April 1985)

Regulation 204.010 Staff Position on Waiver of Disqualification Actions taken by the SEC

STAFF POSITION RE: WAIVERS OF DISQUALIFICATION

The Commission, at its December 2, 1987 meeting, permitted the staff to take a no-action position with respect to applying the provisions of Regulation 204.010(c)(2) (waivers of disqualification equally to actions taken by the SEC as well as state securities administrators.

(PSC Bull. Dec. 1987)

Regulation 204.010 (a)(1)(iii)(C) Staff Interpretation on Treatment of Retirement Plans and Trusts

DIVISION OF CORPORATION

RELEASE NO. 91-CF-2

**STAFF INTERPRETATION ON THE TREATMENT OF
RETIREMENT PLANS AND TRUSTS UNDER
COMMISSION REGULATION 204.010(a)(1)(iii)(C)**

In response to inquiries by members of the Securities Bar concerning the applicability of the provisions of Regulation 204.010(a)(1)(iii)(C) to retirement plans and trusts²⁵ (Plans), the Commission, on July 8, 1991, permitted publication of the following staff interpretations:

1. The term “purchaser” in Regulation 204.010(a)(1)(iii)(C) does not restrict the availability of the

²⁵ For purposes of this Release, the term “retirement plan and trust” includes pension and profit sharing plans and trusts, KEOGHs, Simplified Employee Pensions and other employee retirement plans, including self-directed retirement plans. Nothing in this Release should be construed as affecting the Commission’s Interpretive Opinion issued July 31, 1987 interpreting the term “Pension and Profit Sharing Plan or Trust” within the context of Section 102(k) of the Pennsylvania Securities Act of 1972.

provisions of that subsection to natural persons. Therefore, sales may be made to Plans in reliance on this subsection if (1) the Plan is an Accredited Investor as defined in SEC Rule 501 under Regulation D or (2) qualifies for the net worth alternative set forth therein.

2. If the Plan is not an Accredited Investor but intends to qualify for the net worth alternative set forth in Regulation 204.010(a)(1)(iii)(C), the net worth of the Plan (other than a self-directed plan) will be determined with reference to the assets and liabilities of the Plan itself, and not with reference to the individual net worth of the participants in the Plan or beneficiaries in the case of a trust.

If the Plan is a self-directed plan²⁶ as defined in Section 404(c)(1) of the Employee Retirement Income Security Act (ERISA), the net worth of the Plan, for purposes of Regulation 204.010(a)(1)(iii)(C), will be deemed to be the net worth of the individual participant for whose account the securities are to be purchased.

3. For purposes of qualifying for the net worth alternative under Regulation 204.010(a)(1)(iii)(C), the net worth of the Plan (other than a self-directed retirement plan) will be deemed the amount referred to as "Net Assets Available for Benefits" as calculated in accordance with generally accepted accounting principles utilizing Statement of Financial Accounting Standards No. 35 (December 1980).

Under the provisions of Regulation 609.012, however, a Plan will not be counted as one offeree or purchaser where it was organized for the specific purpose of acquiring the securities being offered or purchased.

(PSC Bull. July 1991)

Section 205/206 Execution of Form U-1 by Attorneys-in-Fact

DIVISION OF CORPORATION FINANCE

RELEASE NO. 93-CF-1

**Execution of Uniform Application to Register Securities (Form U-1)
by Attorneys-in-Fact Pursuant to a Valid Power of Attorney**

Under Regulations 205.021 and 206.010 of the Pennsylvania Securities Commission ("Commission"), filings made with the Commission for certain offerings under the registration provisions of Sections 205 and 206 of the Pennsylvania Securities Act of 1972 ("1972 Act") must include a completed and properly executed Uniform Application to Register Securities ("Form U-1"). Where a Form U-1 has been executed by an attorney-in-fact pursuant to a valid power of attorney, an issue arose as to whether that form of execution met the "properly executed" requirement set forth in Commission Regulations 205.021(a)(2) and 206.010(a)(1). The Commission, at its June 16, 1993 meeting, permitted the staff to take the following position with respect to the execution of Form U-1 under powers of attorney.

STAFF POSITION

A Form U-1 may be executed by an attorney-in-fact acting pursuant to a valid power of attorney. A Commission Form 205 or 206 may not be executed similarly unless the person executing the form otherwise meets the requirements set forth in Item 5 of the General Instruction to Form 205 and 206 as codified in Commission Regulations 205.021 and 206.010.

(PSC Bull. June 1993)

²⁶ For purposes of this Release, a self-directed retirement plan means that individual employees under the terms of the plan exercise exclusive control over the investment decisions for their account and have assets that are held in a separate account from the investments of other participants in the plan in conformity with Section 404(c)(1) of ERISA.

DIVISION OF CORPORATION FINANCE

RELEASE NO. 89-CF-2

USE OF THE TERM "INSURED" OR "GUARANTEED" IN THE NAMES OF ISSUERS OF PUBLIC DIRECT PARTICIPATION PROGRAMS

STAFF GUIDELINES

The Commission has concern that use of the term "Insured" or "Guaranteed" in the name of an issuer making a public offering of a direct participation program (DPP) may be misleading. The Commission requested the Division of Corporation Finance to prepare staff guidelines for review of DPP offerings using the term "Insured" or "Guaranteed" in the name of an issuer. The Commission has approved the following guidelines for staff use:

1. A DPP offering using the term "Insured" or "Guarantee" in the name of an issuer may be cleared for registration at staff level where:

A. The insurance or guaranty runs for a substantial portion of the life of the partnership and is not less than five years in duration.

B. The insurance or guaranty is not subject to exceptions or exclusions that reduce the insurance or guaranty below the type of protection that can be expected by investors when they see the term "Insured" or "Guaranteed" in the name of the issuer.

C. The insurance or guaranty is from a separate non-affiliated entity and is not simply a reallocation of funds acquired by borrowing or from cash flow.

D. The following disclosure, if applicable, is added or stickered to the cover page of the prospectus with specific cross references to more extensive disclosure in the Risk Factors section and elsewhere in the prospectus:

1) A summary explanation of the insurance or guaranty and any exceptions or exclusions;

2) The fact that the insurance or guaranty runs to the partnership and does not insure (guaranty) a return to investors:

3) The fact that the insurance or guaranty is of a limited nature;

4) The fact that the insurance or guaranty is of a limited duration.

E. A representation is submitted by each issuer that any advertising literature utilized in connection with the offering will contain, at a minimum, the disclosure as to the insurance or guaranty which appears on the prospectus cover in accordance with D above.

F. Additional disclosure, as requested by staff, based on the characteristics of each individual offering is made.

2. Offerings not meeting the criteria in Item 1 will receive staff comments that use of the term "Insured" or "Guaranteed" in the name of the issuer may be misleading and the offering cannot be cleared for registration at staff level.

(PSC Bull. June 1989)

Section 205/206 - Real Estate Investment Trusts

DIVISION OF CORPORATION FINANCE RELEASE NO. 89-CF-3 REAL ESTATE INVESTMENT TRUST STAFF REVIEW GUIDELINES

The recent significant problems which have developed with respect to real estate limited partnerships offered and sold to the public in the early 1980s, has generated a resurgence of filings under Section 205 and 206 of the Pennsylvania Securities Act of 1972 (1972 Act) of real estate investment trusts (REITs) by real estate syndication companies. In its review of these REIT files, Commission staff has identified areas of concern which include the following: (1) investor suitability, (2) adequacy of risk factor disclosure of prior performance and (3) growing use of "excess shares" provisions and anti-takeover provisions. The Commission requested staff to develop review guidelines to address these concerns. On September 27, 1989, the Commission approved the following guidelines for staff use in the review of REITS filed under Section 205 or 206 of the 1972 Act.

INVESTORS SUITABILITY:

The guidelines approved by the Commission provide that REITs filed under Section 205 or 206 of the 1972 Act may be cleared at the staff level only where the program has a minimum investor suitability of \$30,000 income and \$30,000 net worth (exclusive of home, furnishings and automobiles) and a limitation that the investment be no more than 10% of an investor's net worth (exclusive of home, furnishings and automobiles).

The reasons for the suitability standard relate to the following factors: (1) the substantial risks to shareholders who invest in REITS; (2) shares of the REITs frequently trade at a discount to the current liquidating value of the underlying real estate assets; and (3) REIT shares are not necessarily as liquid as listed shares of corporations. Some shares may lack any liquidity as not all REITS intend to list their shares for trading on a national or regional stock exchange or to have the shares quoted on NASDAQ. Another risk is that if REIT status is voluntarily or automatically terminated, shareholders will not receive the expected tax advantages. Finally, REITs invest in substantially the same types of mortgages and real estate as a real estate limited partnership and REIT Offerings are usually unspecified.

DISCLOSURE OF PRIOR PERFORMANCE:

Under the review guidelines, staff is directed to require, as necessary, that additional disclosure (including additional risk factors, as appropriate) be added to a REIT prospectus describing any substantial operating difficulties in prior public real estate limited partnerships or REITs affiliated with the current sponsor.

As a consequence of recent problems with real estate limited partnerships, the Commission has instructed staff to increase disclosure, where necessary, of any substantial operational difficulties in prior public real estate limited partnerships. Since the basic aim of REITs and real estate limited partnerships essentially is the same, i.e. investment in real property, similar problems experienced with public real estate limited partnerships may be relevant to REIT offerings. Therefore, this increased disclosure is being extended to REIT offerings.

DISCLOSURE OF EXCESS SHARE PROVISIONS:

The guidelines approved by the commission require additional disclosure, as necessary, in REITs filed under Section 205 or 206 of the 1972 Act to fully explain to prospective shareholders any Excess Shares Provisions and advise that such a provision may be viewed as an anti-takeover device which may adversely affect REIT share prices. An excess shares provision is the restriction on the purchase of more than 9.8% of the shares in a trust or corporation that intends to qualify as a REIT under the Internal Revenue Code of 1986 ("Excess Shares").

Commission staff is concerned that Excess Shares provisions in REITs which generally limit investors to holding less than 10% of the outstanding shares may operate as an anti-takeover device which contributes to the fact that REIT shares trade at a substantial discount to current liquidating value.
(PSC Bull. September 1989)

Section 206 Staff Position on SCOR offerings (Small Company Offering Registrations)

**DIVISION OF CORPORATION FINANCE
RELEASE 07-CF-2**

At its September 10, 2007 meeting, the Pennsylvania Securities Commission (Commission) permitted publication of the following positions of the staff of the Division of Corporation Finance (Staff Position) with respect to SCOR offerings filed under Sections 205 or 206, 70 P.S. §§1-205 and 1-206, of the Pennsylvania Securities Act of 1972 Act (1972 Act). This release supersedes Release 99-CF-2.

STAFF POSITION

Background

Prior Release 99-CF-2 permitted Regulation A offerings (Regulation A) to be filed as SCOR offerings under Sections 205 or 206 of the 1972 Act. Regulation A is technically an exemption from registration with the US Securities and Exchange Commission (SEC) under the federal Securities Act of 1933 (1933 Act); however, disclosure documents such as the Form 1-A and an Offering Circular must be filed with the SEC and after SEC review, the offering is deemed qualified. In Pennsylvania, a Regulation A offering may be filed under Section 205, Registration by Coordination, irrespective of SCOR eligibility. Staff conducts the same substantive review utilizing the NASAA Statements of Policy. Therefore, a Regulation A offering filed under the SCOR program pursuant to Section 205 or 206 of the 1972 Act does not afford an issuer any additional benefit than a Regulation A offering filed outside of the SCOR program. (See Corporation Finance Release 07-CF-3.) Indeed, a Regulation A offering filed under Section 206 has higher filing fees and is subject to more stringent standards than a Registration by Coordination.

Therefore, to maintain the simplicity of filing a SCOR offering for offerings exempt from federal registration requirements under Rule 504 of SEC Regulation D or Section 3(a)(11) of the 1933 Act, and to avoid confusion regarding the applicable forms to be filed, fees to be paid, and availability of advertising, Staff proposed to remove Regulation A offerings from the SCOR program as discussed below.

Availability of SCOR

Staff follows the Statement of Policy on Small Company Offering Registrations adopted by the North American Securities Administrators Association on April 28, 1996 (NASAA SCOR Policy) except that SCOR is not available to companies engaged in the business of extension of credit that plan to offer and sell debt securities to the public. In addition, with respect to financial statements, Staff will not recommend registration of SCOR offerings which use a statement of receipts and disbursements.

A company is eligible for SCOR if it is relying upon an exemption from registration with the SEC under the federal Securities Act of 1933 (1933 Act) provided by Rule 504 of SEC Regulation D, or Section 3(a)(11) of the 1933 Act and corresponding SEC Rule 147.

Under Rule 504 of SEC Regulation D, the aggregate offering amount cannot be more than \$1 million. An offering under Section 3(a)(11) of the 1933 Act and SEC Rule 147 may be any amount but, among other requirements, all securities must be offered and sold only to Pennsylvania residents. The company also must be resident and doing business in Pennsylvania and 80% of the net proceeds of the offering must be used in the operation of the company's business in Pennsylvania.

Substantive Review of a SCOR Offering

Staff will utilize the following Statements of Policy adopted by NASAA (NASAA SOPs) in the review and analysis of offerings made by companies making a SCOR offering.

Statement of Policy Regarding Corporate Securities Definitions

Statement of Policy Regarding Loans and Other Material Affiliated Transactions

Statement of Policy Regarding Preferred Stock

Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders

Statement of Policy Regarding Options and Warrants

Statement of Policy Regarding Promoter's Equity Investment

Statement of Policy Regarding Promotional Shares

Statement of Policy Regarding Impoundment of Proceeds

Statement of Policy Regarding Specificity in Use of Proceeds

Statement of Policy Regarding Unsound Financial Condition

Statement of Policy Regarding Unequal Voting Rights

Statement of Policy Regarding Specificity in Use of Proceeds

Accordingly, staff will recommend registration of equity securities of companies that file SCOR offerings and satisfy all the requirements of the NASAA SOPs. With respect to issuers that file SCOR offerings with the Commission that do not satisfy certain requirements of the NASAA SOPs, staff will utilize the following criteria:

1. Where an issuer does not have two independent directors, it will not be deemed a basis for denial of registration.
2. If the underwriting expenses exceed the amount set forth in the NASAA SOP, it will not be deemed a basis for denial of registration, provided that the underwriting compensation has been approved by the National Association of Securities Dealers, Inc. (NASD).
3. While failure to meet the above standards will not be deemed an automatic basis for denial of registration, it will be deemed a basis for locking in all the promoter's promotional equity securities (Restricted Securities).
4. Failure to comply with the standard for Promoter's Equity Investment will not be deemed an automatic basis for denial or registration; however, the lock-in agreement may exceed the time periods set forth in the NASAA SOP. In order to determine the length of time the Restricted Securities will be required to remain subject to the lock-in agreement (which may exceed the time periods set forth in the NASAA SOP), staff will consider such factors as the amount of promoter's equity investment in the corporation, the financial condition of the company, and any other factor relating to amounts of promoters' profits or participation.
5. Staff will require that all loans by the company to promoters, officers, directors, its affiliates, or their controlling persons be repaid by the close of the offering, except where such loans were made for bona fide business purposes. Additionally, staff will require a representation in the offering disclosure document that all future loans made by the company to promoters, officers, directors, its affiliates, or their controlling persons will be for bona fide business purposes.

Furthermore, the Commission will utilize all amendments to the NASAA SOPs subsequently adopted by NASAA unless (1) the Commission makes an affirmative statement to the contrary or (2) the amendment relates to a Statement of Policy or section thereof which the Commission previously indicated it would not utilize.

Required Financial Statements

Audited Financial Statements must comply with the requirements of Commission Regulations 609.031 through 609.037. SCOR offerings that do not exceed \$1 million may file reviewed financial statements in lieu of audited statements. The written consent of the accountants for the use of the financial statements in connection with the SCOR offering also must be filed with the Commission. SCOR offerings which

include prospective financial information (e.g., financial projections) must comply with Commission Regulation 609.010.

Annual Financial Reports to Pennsylvania Residents

For SCOR offerings that become registered under Section 206 of the 1972 Act, the company, pursuant to Commission Regulation 606.011, must provide annual financial statements to Pennsylvania security holders within 120 days after the end of the issuer's fiscal year for as long as the securities are held of record by a Pennsylvania resident. These statements must be prepared by an independent accountant in accordance with generally accepted accounting principles and must be audited, except if the financial statements used in the offering were reviewed, then the issuer may use reviewed statements. **Completing the SCOR Form (Form U-7)**

A company must use as its prospectus, the Form U-7, Disclosure Document adopted by NASAA on September 28, 1999 (New Form U-7), if the company is relying upon an exemption from registration with the SEC under the 1933 Act provided by Rule 504 of SEC Regulation D or Section 3(a)(11) of the 1933 Act and SEC Rule 147, and is seeking to register its securities under Section 206 of the 1972 Act.

For specific instructions for completing the New Form U-7, staff recommends that companies consult the appropriate NASAA SCOR Issuer's Manual.

Forms and Filing Fees

Filing of Form U-7 with the Commission must be accompanied by a complete and executed Commission Form R, a Uniform Application to Register Securities (Form U-1) (available on the Commission's website at www.psc.state.pa.us), and the requisite filing fee.

The filing fee for an offering being made in reliance upon Rule 504 of SEC Regulation D, Section 3(a)(11) of the 1933 Act and SEC Rule 147, filed under Section 206 of the 1972 Act is \$500 plus 1/20 of 1% of the maximum aggregate offering price at which the securities are to be offered in Pennsylvania during the effective period of the registration with a maximum fee of \$3,000. Checks should be made payable to the "Commonwealth of Pennsylvania". A portion of the fee will be returned if the offering is withdrawn prior to effectiveness.

When Offers and Sales of SCOR Offerings may be made in Pennsylvania

A SCOR offering being made in reliance upon Rule 504 of SEC Regulation D or Section 3(a)(11) and SEC Rule 147 must be filed under Section 206 of the 1972 Act. Under Section 206, **no advertisements or offers or sales of securities may occur in Pennsylvania until the Commission has declared the offering effective.**

Legal Opinion and Notice of Right of Withdrawal

For SCOR offerings which are filed under Section 206 of the 1972 Act, the following items are required:

- Section 206(b)(14) of the 1972 Act requires that an attorney render an opinion that the security when sold will be legally issued, fully paid, and non-assessable and, if a debt security, a binding obligation of the issuer
- Section 207(m)(1) of the 1972 Act requires that written notice be given of the right of a purchaser to withdraw an acceptance within a specific time period without any liability to the purchaser. Commission Regulation 207.130 specifies the manner in which the right of withdrawal notice may be given, and includes illustrative language that complies with the notice required by this section.

Advertisement of a SCOR Offering

In connection with a SCOR offering which is relying upon Rule 504 of SEC Regulation D or Section 3(a)(11) of the 1933 Act and SEC Rule 147 and being filed under Section 206 of the 1972 Act, a company may not disseminate publicly any advertising literature, including a tombstone advertisement, in Pennsylvania prior to the offering being declared effective by the Commission.

SCOR Offerings and the Internet

Placing an offering on the Internet provides a low cost method of reaching a large number of potential purchasers and, for this reason, may be especially attractive to companies undertaking a SCOR offering.

Companies should be aware of the following issues relating to making offerings on the Internet:

- **An Offer on the Internet is an Offer in Pennsylvania.** Any communication on the Internet designed to raise capital is considered an offer under current regulatory interpretations of both federal and state securities laws (Internet Offer). Therefore, Internet Offers must be made pursuant to a registration or an exemption from registration under the 1972 Act.
- **When an Internet Offer can be made in Pennsylvania.** For a SCOR offering being made in reliance upon Rule 504 of SEC Regulation D or Section 3(a)(11) of the 1933 Act and SEC Rule 147 and filed under Section 206 of the 1972 Act, an Internet Offer cannot be made in Pennsylvania until the SCOR offering has been declared effective by the Commission.
- **Using the Internet for Offerings where sales will not be made in Pennsylvania.** Where a company has registered a SCOR offering in other states, but does not intend to make the offering available in Pennsylvania, the company may rely upon the Internet Offer Exemption provided by Commission Regulation 203.190. This regulation provides a self-executing exemption (i.e., no filing required) and facilitates use of the Internet to communicate Internet Offers to persons residing in states in which the SCOR offering is registered. Most states have adopted similar exemptions for Internet Offers.
- **Need to Keep Internet Offering Current.** If a company is placing its SCOR offering on the Internet and the information in the Form U-7 changes, either as a result of regulatory comments or business events, the company is under a legal obligation to update all material information promptly.

“Test the Waters”

In connection with a proposed securities offering to be made under SEC Regulation A, the SEC adopted rules that permit companies to “Test the Waters” as to public receptivity to an offering by publicly disseminating certain information about the company designed to solicit indications of interest. This process is intended to assist companies in realistically evaluating investor interest in a proposed offering prior to incurring the time and expense of making a filing with the SEC. **“Test the Waters”, however, is not a substitute for a registered securities offering and delivery of a prospectus describing the offering.**

In 1994, the Commission established a similar process in Pennsylvania for use of solicitation of interest materials (**SOI Materials**) to “Test the Waters” in conjunction with a proposed SEC Regulation A offering, a Rule 504 offering under SEC Regulation D or a proposed registered intrastate offering by a Pennsylvania company pursuant to the exemption in Section 3(a)(11) of the 1933 Act and SEC Rule 147. SOI Materials constitute “offers” under the 1972 Act and the company must obtain an exemptive order from the Commission to use SOI Materials in Pennsylvania.

Specific information on “Testing the Waters” and obtaining an exemptive order for SOI Materials is contained in Release 94-CF-1 dated July 6, 1994.

Mid-Atlantic Region Review Program (CR--SCOR--MAR)

At its meeting on April 6, 1999, the Commission indicated its agreement to participate in Mid-Atlantic Region Review Program (CR--SCOR--MAR). Staff from the states of Pennsylvania, Maryland, West Virginia, New Jersey, Virginia, Delaware and the District of Columbia (Participating States) have created a protocol for the review of offerings of companies seeking to raise capital in those states through a public offering of securities under Rule 504 of SEC Regulation D, or SEC Regulation A.

CR--SCOR--MAR provides a coordinated procedure designed to streamline the process for registration of a company’s securities in the Participating States. CR--SCOR--MAR offers an issuer efficiencies in completing the registration process by reducing the number of comment letters an issuer receives and the number of individuals with whom the issuer must negotiate resolution of comments, by establishing a time line for review of offerings and one common review standard.

- **Standard of Review.** The Pennsylvania standard of review for SCOR offerings was adopted by CR--SCOR--MAR as the common review standard.

- **Program Administrator State and Lead Jurisdiction.** The Maryland Securities Division acts as Program Administrator for CR--SCOR--MAR. As such, Maryland is responsible for choosing the lead jurisdiction for review of offerings. Only one lead jurisdiction will be designated. Generally, the lead jurisdiction will be the jurisdiction where the issuer's principal place of business is located; however, that jurisdiction may decline to act as lead examiner, in which case Maryland will designate another jurisdiction to act as lead examiner.

For more specific information on the CR--SCOR--MAR Program, visit the Commission's website at www.psc.state.pa.us.

Professional Assistance

Undertaking a SCOR offering will require a substantial commitment of time on the part of the company's officers, promoters and directors. Independent accountants will be required to prepare the company's financial statements. While company personnel can prepare the information requested on Form U-7 and file the appropriate documents with the Commission, it often is appropriate for a company to seek the assistance of counsel experienced in securities law issues. Although assistance of experienced counsel adds a transaction cost to the company for the offering, the dollars invested may return important dividends in terms of more timely resolution of regulatory issues and achievement of an earlier registration date than would be the case without the effective assistance of experienced counsel.

Assistance from the Commission

Questions concerning this Release may be directed to the Commission's Division of Corporation Finance by calling (717) 787-5401 or toll-free in Pennsylvania (800) 600-0007.

Availability in Alternative Formats

This Release may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (1-800-854-5984). To make arrangements for alternative formats, please contact the ADA Coordinator at (717) 787-6828.

ADVISORY: This Staff Position is not a rule or interpretation or order of the Commission nor has it been published as bearing the Commission's official approval. It represents guidance to the staff by the Commission with respect to the administration of the Pennsylvania Securities Act of 1972 by the Division of Corporation Finance.

Section 207(g), 208(a)(v), 305(a)(ix) Notice of Commission's criteria used in evaluating registration statements filed pursuant to §§ 205 and 206 of the 1972 Act

On April 14, 1982, the Commission adopted the NASAA Real Estate Guidelines by issuing the following Statement of Policy:

The Pennsylvania Securities Commission ("Commission"), where applicable, will utilize the criteria contained in the North American Securities Administrators Association, Inc. Real Estate Guidelines effective March 31, 1982 ("NASAA Real Estate Guidelines") with respect to the application of Sections 207, 208 and 305(a)(ix) of the Pennsylvania Securities Act of 1972 ("1972 Act") to the registration statements of real estate programs filed with the Commission pursuant to Sections 205 and 206 of the 1972 Act.

The Commission's Guidelines for Non-Specified Property Programs for Real Estate (PSC Bulletin, April 1974) are superceded by the relevant provisions of Section VI of the NASAA Real Estate Guidelines subject to the following:

a. The phrase "substantially committed" in Section VI.G. of the NASAA Real Estate Guidelines shall mean that 75% or more of the offering proceeds of each previous program has been committed; and,

b. The Commission will utilize, with respect to Non-Specified Property Programs, the investor suitability standards set forth in Section III.B.4. of the NASAA Real Estate Guidelines with the added requirement that he has a net worth of ten times the amount of his investment in the program.

(2 Pa.B. 1476; PSC Bull. March/April 1982)

On December 18, 1985, the Commission adopted the NASAA Statement of Policy on Real Estate Investment Trusts by issuing the following Statement of Policy:

The Securities Commission, where applicable, will utilize the criteria contained in the Statement of Policy adopted by the North American Securities Administrators Association, Inc. (to be effective January 1, 1986) with respect to the application of sections 207,208 and 305(a)(ix) of the Pennsylvania Securities Act of 1972 to the registration statements of real estate investment trusts filed with the Commission under sections 205 and 206 of the 1972 Act.

Any amendments to the NASAA Statement of Policy on Real Estate Investment Trusts subsequently adopted by NASAA will be utilized by the Commission unless the Commission makes an affirmative statement to the contrary.

(16 Pa.B. 1099; PSC Bull. March 1986)

Section 207(g), 208(a)(v), 305(a)(ix) Utilization of the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (NASAA) on April 17, 1994.

**Division of Corporation Finance
Release No. 95-CF-3**

Utilization of the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (NASAA) on April 17, 1994

Commission Policy

At its July 12, 1995 meeting, the Commission indicated that, where applicable, it generally will utilize the criteria contained in the NASAA Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by NASAA on April 17, 1994 (Guidelines) with respect to the application of sections 207, 208 and 305(a)(ix) of the Pennsylvania Securities Act of 1972 (1972 Act) to registration statements filed by issuers under section 206 of the 1972 Act that constitute a religious denomination within the meaning of the Guidelines.

(PSC. Bull. July 1995)

Section 207(g), 208(a)(v), 305(a)(ix) Utilization of Statement of Policy Regarding Registration of Asset- Backed Securities Adopted by the North American Securities Administrators Association (NASAA) on October 25, 1995.

**Division of Corporation Finance
Release No. 95-CF-4**

Utilization of Statement of Policy Regarding Registration of Asset-Backed Securities Adopted by the North American Securities Administrators Association (NASAA) on October 25, 1995.

Commission Policy

At its November 14, 1995 meeting, the Commission indicated that, where applicable, it generally will utilize the criteria contained in the NASAA Statement of Policy Regarding Registration of Asset-Backed Securities adopted by NASAA on October 25, 1995 with respect to the application of Sections 207, 208, and 305(a)(ix) of the Pennsylvania Securities Act of 1972 (1972 Act) to registration statements filed under Section 205 or 206 of the 1972 Act.

(PSC. Bull. November 1995)

Section 207(g), 208(a)(v), 305(a)(ix) Utilization of Statement of Policy Regarding Mortgage Programs Adopted by the North American Securities Administrators Association (NASAA) on September 10, 1996.

**Division of Corporation Finance
Release No. 96-CF-4**

**Utilization of Statement of Policy Regarding
Mortgage Programs Adopted by the North American Securities
Administrators Association (NASAA) on September 10, 1996.**

Commission Policy

At its November, 6, 1996 meeting, the Commission indicated that, where applicable, it generally will utilize the criteria contained in the NASAA Statement of Policy Regarding Mortgage Programs adopted by NASAA on September 10, 1996 with respect to the application of Sections 207, 208, and 305(a)(ix) of the Pennsylvania Securities Act of 1972 (1972 Act) to registration statements filed under Section 205 or 206 of the 1972 Act.

(PSC. Bull. November 1996)

**OFFICE OF THE CHIEF ACCOUNTANT
RELEASE NO: 12-OCA-3**

SUBJECT

Commission Guidelines Regarding the Interpretation of Net Assets as defined under the NASAA Statement of Policy Regarding Real Estate Investment Trusts and Incorporating Net Asset Value in the Review and Analysis of Real Estate Investment Trusts.

BACKGROUND

The Pennsylvania Securities Commission attempts to foster legitimate capital through adequate review of registration and exempt offering material filed with the Division of Corporation Finance and the Office of the Chief Accountant. The Commission staff has increasingly been presented with Real Estate Investment Trusts (REITs) filing registrations under Section 205 of the Act defining Net Assets using a basis not in accordance with U.S. GAAP, specifically in the calculation and use of Net Asset Value (NAV) as a non-GAAP financial measure.

On December 18, 1985, the Commission adopted the North American Securities Administrators Association Statement of Policy Regarding Real Estate Investment Trusts (NASAA REIT Guideline), which defines "Net Assets" as "[t]he total assets (other than intangibles) at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on a basis consistently applied." It appears that many REITs interpret this definition to allow the use of a basis not based on generally accepted accounting principles. Staff believes this is an incorrect interpretation.

The purpose of this Staff Position is to present the views of the Staff that the phrase "on a basis consistently applied" will be interpreted to mean "on the basis of generally accepted accounting principles," consistent with other NASAA Guidelines adopted by the Commission. In addition, Staff will interpret the term "Net Asset Value" consistent with the term "Net Asset Value Per Program Interest" as defined in the NASAA Registration of Commodity Pool Program Policy, also adopted by the Commission.

STAFF POSITION

INTERPRETATION OF NET ASSETS AS DEFINED UNDER THE NASAA STATEMENT OF POLICY REGARDING REAL ESTATE INVESTMENT TRUSTS AND THE DEFINITION OF NET ASSET VALUE AS DEFINED UNDER THE NASAA REGISTRATION OF COMMODITY POOL PROGRAMS GUIDELINE IS TO BE USED BY ANALOGY IN THE REVIEW AND ANALYSIS OF REAL ESTATE INVESTMENT TRUSTS FILED UNDER SECTIONS 205 or 206.

- (1) NET ASSETS as defined under Section I.B.17. of the NASAA Statement of Policy Regarding Real Estate Investment Trusts:

NET ASSETS – The total assets (other than intangibles) at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

Shall be interpreted to mean the following:

NET ASSETS – The total assets (other than intangibles) at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on the basis of generally accepted accounting principles.

- (2) NET ASSET VALUE PER PROGRAM INTEREST as defined under Section I.B.9. of the NASAA Policy Registration of Commodity Pool Programs:

NET ASSET VALUE PER PROGRAM INTEREST – The NET ASSETS divided by the number of PROGRAM INTERESTS outstanding.

Shall be applied to Real Estate Investment Trusts by analogy and be defined as the following with respect to these filers:

NET ASSET VALUE PER SHARE – The NET ASSETS divided by the number of SHARES outstanding.

SHARE shall be the term defined under Section I.B.25. of the NASAA Statement of Policy Regarding Real Estate Investment Trusts.

COMMISSION NOTICE: USE OF NASAA GUIDELINES

On June 15, 1983, the Commission directed that subject Notice be published:

I. The Securities Commission, where applicable, will utilize the criteria contained in the North American Securities Administrators Association, Inc. (“NASAA”) Statements of Policy set forth below with respect to the application of sections 207, 208 and 305(a)(ix) of the 1972 Act to the registration of such programs filed with the Commission, under Sections 205 and 206 of the 1972 Act.

A. Oil and Gas Programs (dated April 23, 1983) except Production Purchase Program set forth in Section V.B.3.

B. Equipment Programs (dated April 23, 1983).

II. With respect to the NASAA Real Estate Programs Statement of Policy (Commission’s position previously published at 12 Pa.B. 1476 (May 1, 1982)) and the NASAA Statements of Policy set forth in I.A. and B. above, any amendments to such Statements of Policy subsequently adopted by NASAA will be utilized by the Commission unless:

A. The Commission makes an affirmative statement to the contrary; or

B. The amendment relates to a section of a NASAA Statement of Policy which the Commission previously had indicated it would not utilize.

III. A. Further, the Commission will not be utilizing the criteria contained in the NASAA Statement of Policy on Cheap Stock (dated April 23, 1983) with respect to the application of Sections 207, 208 and 305(a)(ix) of the 1972 Act to registration statements of corporate equity offerings filed with the Commission under Sections 205 and 206 of the 1972 Act.

B. The Commission will continue to utilize the criteria contained in its “Informal Guidelines for the Staff Analysis and Review pursuant to Section 207(g) and Section 208(a)(v) of Registration Statements Filed under Sections 205 and 206 of the 1972 Act for the Equity Securities of Corporations” which were approved on July 28, 1981, and published in the July 1981 PSC Bulletin.

(13 Pa.B. 2382; PSC Bull. July/Aug. 1983)

Following is the Commission’s position with respect to the utilization of the NASAA Statement of Policy on Commodity Pool Programs (with accompanying PA Suitability Standards for Trail Commissions):

Registration Statements Filed with the Commission

The Commission, where applicable, will utilize the criteria contained in the North American Securities Administrators Association, Inc. (“NASAA”) Statement of Policy on Commodity Pool Programs (dated September 21, 1983) with respect to the application of Sections 207, 208 and 305 (a)(ix) of the 1972 Act to the registration statements of commodity pool programs filed with the Commission under Sections 205 and 206 of the 1972 Act except that, with respect to certain commodity pool programs which pay compensation to sales agents from a percentage of the commodity brokerage commissions (“Trail Commissions”), the Commission will utilize the following investor suitability standards in lieu of those set forth in Section III.B.3 of the aforementioned NASAA Statement of Policy:

Amount of Trail Commissions to be Paid expressed as a percentage of Net Asset Value per Annum	Investor Suitability	
	0-7.0%	\$175,000 Net Worth ²⁷ or \$100,000 Net Worth and \$50,000 annual taxable income in the past year and anticipated in the year succeeding the date of purchase
7.1-8.0%	\$275,000 Net Worth	
	8.1-10.0%	\$350,000 Net Worth
	over 10%	\$1,000,000 Net Worth

In any event, an investment in a Commodity Pool Program cannot exceed 10% of the Pennsylvania investor’s Net Worth if such Net Worth is less than \$1,000,000.

(14 Pa. B. 1685; PSC Bull. July/Aug. 1984)

Sections 207(g) and 208(a)(v) Commission guidelines for staff analysis and review pursuant to § 207(g) and § 208(a)(v) of the 1972 Act for registration statements filed under § 205 and § 206 of the 1972 Act for equity securities of corporations which are not eligible for or do not request review under the Coordinated Equity Review Program (“CER”)

**DIVISION OF CORPORATION FINANCE
RELEASE NO.: 07-CF-3
PRIOR REFERENCE: 97-CF-3**

The Pennsylvania Securities Commission participates with other jurisdictions in a nationwide coordinated equity review program (CR-Equity) developed by state securities regulators through the North American Securities Administrators Association (NASAA) which allows an issuer conducting a multi-state public offering of corporate equity securities to opt for coordinated equity review of corporate offerings to be registered under Section 5 of the Securities Act of 1933. Offerings under CR-Equity are reviewed according to the standards set forth in the following Statements of Policy adopted by NASAA on April 27, 1997, as amended on November 18, 1997 and September 28, 1999 (NASAA SOPS):

- Statement of Policy Regarding Corporate Equity Securities Definitions**
- Statement of Policy Regarding Loans and Other Material Affiliated Transactions**
- Statement of Policy Regarding Preferred Stock**

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For purposes of this Notice, Net worth is defined to be exclusive of homes, home furnishings and automobiles.

Statement of Policy Regarding Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders
Statement of Policy Regarding Options and Warrants
Statement of Policy Regarding Promoter's Equity Investment
Statement of Policy Regarding Promotional Shares
Statement of Policy Regarding Impoundment of Proceeds
Statement of Policy Regarding Unsound Financial Condition
Statement of Policy Regarding Unequal Voting Rights

The text of NASAA SOPs can be found at www.coordinatedreview.org.

At its September 24, 1997 meeting, the Commission had authorized staff generally to utilize criteria contained in the above-referenced NASAA SOPs in its analysis and review under §207(g) and §208(a)(v) of the Pennsylvania Securities Act of 1972 (1972 Act) of registration statements filed pursuant to §205 and §206 of the 1972 Act for registration of equity securities of corporations that do not request review under the CR-Equity Program. This Release supersedes Release 97-CF-3 in amending the criteria to be utilized in reviewing Non-CR-Equity offerings.

Staff Position

At its August 28, 2007 meeting, the Commission re-authorized staff to recommend registration of the equity securities of Non-CR-Equity issuers that file a registration statement that satisfies all the requirements of the NASAA SOPs, and permitted staff to utilize the following criteria with respect to Non-CR-Equity issuers that file a registration statement with the Commission that does not satisfy certain requirements of the NASAA SOPs:

1. Where an issuer does not have two independent directors, it will not be deemed a basis for denial of registration.
2. If the underwriting expenses exceed the amount set forth in the NASAA SOP, it will not be deemed a basis for denial of registration, provided that the underwriting compensation has been approved by the National Association of Securities Dealers, Inc. (NASD).
3. While failure to meet the above standards will be not be deemed an automatic basis for denial of registration, it will be deemed a basis for locking in all the promoter's promotional equity securities.
4. Failure to comply with the standard for Promoter's Equity Investment will not be deemed an automatic basis for denial of registration; however, the lock-in agreement may exceed the time periods set forth in the NASAA SOP. In order to determine the length of time the shares will be required to remain subject to the lock-in agreement (which may exceed the time periods set forth in the NASAA SOP), staff will consider such factors as the amount of promoter's equity investment into the corporation, the financial condition of the company, and any other factor relating to amounts of promoters' profits or participation.
5. Staff will require that all loans by the company to promoters, officers, directors, its affiliates, or their controlling persons be repaid by the close of the offering, except where such loans were made for bona fide business purposes. Additionally, staff will require a representation in the offering disclosure document that all future loans made by the company to promoters, officers, directors, its affiliates, or their controlling persons will be for bona fide business purposes.

Furthermore, the Commission will utilize all amendments to the NASAA SOPs subsequently adopted by NASAA unless (1) the Commission makes an affirmative statement to the contrary or (2) the amendment relates to a Statement of Policy or section thereof which the Commission previously indicated it would not utilize.

This Release, however, does not exhaust the possible indices that staff may deem relevant in its review of registration statements of corporate equity offerings. The guidelines contained in this Release are not

necessarily standards that the Commission itself would apply in making a final determination on the effectiveness of a registration statement but constitute procedures to be followed by staff on its review of corporation equity offerings filed under Section 205 and 206 of the 1972 Act.

The text of NASAA SOPs referenced in the Release are as follows:

NASAA STATEMENT OF POLICY REGARDING UNEQUAL VOTING RIGHTS

Adopted October 24, 1991

- I. Introduction. The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guideline relating to public offerings of securities, that have less than equal voting rights, is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (“Administrator”) from applying different standards than those contained in this Statement of Policy.
- II. The offer and sale of securities that have less than equal voting rights may be deemed to be inconsistent with public investor protection and against public policy by the Administrator unless:
 - A. The securities are given preferential treatment as to dividends and liquidation or the less than equal voting rights are justified to the satisfaction of the Administrator; and
 - B. The terms of the voting rights are prominently disclosed on the cover page of the issuer’s offering circular or prospectus.

NASAA STATEMENT OF POLICY REGARDING CORPORATE SECURITIES DEFINITIONS

Adopted April 27, 1997; Amended September 28, 1999

I. INTRODUCTION

The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guideline relating to definitions is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (“Administrator”) from applying different standards than those contained in this Statement of Policy.

This Statement of Policy Regarding Definitions applies to definitions used in the following NASAA Statements of Policy:

Statement of Policy Regarding the Impoundment of Proceeds
Statement of Policy Regarding Loans and Other Material Affiliated Transactions
Statement of Policy Regarding Options and Warrants
Statement of Policy Regarding Preferred Stock
Statement of Policy Regarding Promoters’ Equity Investment
Statement of Policy Regarding Promotional Shares
Statement of Policy Regarding Specificity in Use of Proceeds
Statement of Policy Regarding Underwriting Expenses and Underwriter’s Warrants
Statement of Policy Regarding Unsound Financial Condition
Statement of Policy Regarding Voting Rights

- II. The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.
 - A. **ADJUSTED NET EARNINGS** are the Issuer’s NET EARNINGS and after charges for interest and dividends, adjusted on a pro forma basis to reflect:

1. The elimination of any required charges for debt, debt securities, or preferred stock that are to be redeemed or retired from the proceeds derived from the public offering of preferred stock;
 2. The effect of any acquisitions or capital expenditures that were made by the Issuer after its last fiscal year, or which are proposed or required to be made during the current fiscal year, which materially affect the Issuer's NET EARNINGS;
 3. The effect of charges or dividends on debt, debt securities or preferred stock issued after the Issuer's last fiscal year;
 4. The effect of any charges or dividends on debt, debt securities or preferred stock that were issued during the Issuer's last fiscal year, but which were outstanding for only a portion of such fiscal year, as if charges or dividends, such debt, debt securities or preferred stock had been outstanding for the entire fiscal year; and
 5. The effect of any other material changes to an Issuer's future NET EARNINGS.
- B. An AFFILIATE is a PERSON who, directly or indirectly, CONTROLS, is CONTROLLED by, or is under common CONTROL with the PERSON specified herein.
- C. AGGREGATE REVENUES is the aggregate amount of revenues a PROMOTIONAL OR DEVELOPMENT STAGE COMPANY has received within the last three consecutive fiscal years immediately preceding the public offering plus revenues received during the period covered by any interim period financial information included in the prospectus. Revenues from interest and extraordinary items are to be excluded.
- D. An ASSOCIATE, when used to indicate a relationship with a PERSON, includes:
1. Corporations or legal entities, other than the Issuer or majority-owned subsidiaries of the Issuer, of which a PERSON is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of EQUITY SECURITIES;
 2. Trusts or other estates in which a PERSON has a substantial beneficial interest or for which a PERSON serves as a trustee or in a similar capacity; and
 3. A PERSONS's spouse and relatives, by blood or by marriage, if the PERSON is a PROMOTER of the Issuer, its subsidiaries, its AFFILIATES, or its parent.
- E. AVERAGE PROMOTIONAL PRICE is the average per share price paid for PROMOTIONAL SHARES and other shares issued prior to the public offering which are of the same class of shares being offered in the public offering as determined by reference to the audited financial statements of the issuer included in the prospectus.
- F. CASH ANALYSIS is the Issuer's "Net Cash Provided By Operating Activities" as reflected on the Statement of Cash Flows and presented in conformity with generally accepted accounting principles. If debt securities are to be redeemed or retired from the proceeds from the public offering, a pro forma adjustment for the elimination of the related interest charges, net of applicable income taxes, must be made.
- G. CONTROL is the power to direct or influence the direction of the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract or otherwise.

- H. EQUITY SECURITIES include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into or exercised to purchase, shares of common stock or similar securities.
- I. An ESCROW AGENT is a financial institution whose principal place of business and domicile is in the United States. It may not be affiliated with the Issuer, its PROMOTERS, or ASSOCIATES. A financial institution may not be disallowed to act as an ESCROW AGENT merely because the Issuer, its PROMOTERS or ASSOCIATES are customers thereof. An ESCROW AGENT may also include an attorney or certified public accountant, provided that the attorney or certified public accountant is not affiliated with the Issuer, its PROMOTERS, or ASSOCIATES, is licensed to do business in the state in which they practice, and can demonstrate that they are adequately insured or can provide a fidelity bond.
- J. An IMPOUNDMENT AGENT is a financial institution that is domiciled and whose principal place of business is located in the United States and whose deposits are insured by the FDIC.
- K. An INDEPENDENT DIRECTOR is a member of Issuer's board of directors who:
1. Is not an officer or employee of the Issuer, its subsidiaries, or their AFFILIATES or ASSOCIATES and has not been an officer, or employee of the Issuer, its subsidiaries, or their AFFILIATES or ASSOCIATES within the last two years; and
 2. Is not a PROMOTER as defined in II. O.1., 2., 3(ii), or 3(iii). below and
 3. Does not have a material business or professional relationship with the Issuer or any of its AFFILIATES or ASSOCIATES. For purposes of determining whether or not a business or professional relationship is material, the gross revenue derived by the INDEPENDENT DIRECTOR from the Issuer, its AFFILIATES and ASSOCIATES shall be deemed material *per se* if it exceeds 5% of the INDEPENDENT DIRECTOR's:
 - (i) annual gross revenue, derived from all sources, during either of the last two years; or
 - (ii) net worth, on a fair market value basis
- L. LOCK-IN AGREEMENT is an agreement between an issuer and PERSONS wherein those PERSONS agree, as a condition of registration, not to sell, pledge, hypothecate, assign, grant any option for the sale of, or otherwise transfer or dispose of, whether or not for consideration, directly or indirectly, EQUITY SECURITIES and all certificates representing stock dividends, stock splits, recapitalizations, and the like, that are granted to or received by the Security Holder for the period specified in the LOCK-IN AGREEMENT.
- M. NET EARNINGS are the Issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, determined according to generally accepted accounting principles, consistently applied.
- N. A PERSON is an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government, or any other legal entity.
- O. A PROMOTER may include:
1. A PERSON who, alone or in conjunction with one or more PERSONS,

directly or indirectly, took the initiative in founding or organizing the Issuer or CONTROLS the Issuer,

2. A PERSON who, directly or indirectly, receives, as consideration for services and/or property rendered, five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES or five percent (5%) or more of the proceeds from the sale of any class of the Issuer's EQUITY SECURITIES;
3. A PERSON who:
 - (i) Is an officer or director for the Issuer; or
 - (ii) Anyone who legally or beneficially owns, directly or indirectly, five percent (5%) or more of any class of the Issuer's EQUITY SECURITIES; or
 - (iii) A PERSON who is an AFFILIATE or an ASSOCIATE of a PERSON specified in II.O.1., 2., 3(i)., or 3(ii). above.
4. A promoter does not include:
 - (i) A PERSON who receives securities or proceeds solely as underwriting compensation if that PERSON falls outside the definition of II.O.1.,2., or 3.
 - (iii) An UNAFFILIATED INSTITUTIONAL INVESTOR, who purchased the Issuer's EQUITY SECURITIES more than one year prior to the filing date of the Issuer's registration statement. An UNAFFILIATED INSTITUTIONAL INVESTOR, who purchased the Issuer's EQUITY SECURITIES on an arm's-length basis within one year prior to the filing date of the Issuer's registration statement may, at the Administrator's discretion, be excluded from the definition of PROMOTER.

P. PROMOTERS' EQUITY INVESTMENT is the total of cash and tangible assets that has been contributed by the PROMOTERS to the Issuer, provided that the value of the tangible assets is accepted by the Administrator. PROMOTERS contributions of intangible assets may be considered as PROMOTERS' EQUITY INVESTMENT, provided that the value thereof has been accepted by the Administrator. PROMOTERS' EQUITY INVESTMENT may be adjusted by the Issuer's earned surplus immediately prior to the public offering.

Q. A PROMOTIONAL OR DEVELOPMENT STAGE COMPANY may include an Issuer who is not listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System, or whose annual NET EARNINGS for each of the last two (2) consecutive fiscal years or whose average, annual NET EARNINGS for the last five (5) fiscal years prior to the public offering have been less than five percent (5%) of the aggregate public offering.

R. PROMOTIONAL SHARES are EQUITY SECURITIES that are to be issued or were issued:

1. By an Issuer, which is a PROMOTIONAL OR DEVELOPMENT STAGE COMPANY, to PROMOTERS for cash or other consideration, including services rendered, patents, copyrights, and other intangibles; or.
2. Within three (3) years prior to the filing of the registration statement by an Issuer, which is not a PROMOTIONAL OR DEVELOPMENT STAGE COMPANY, to PROMOTERS for cash or other consideration, including services rendered, patents, copyrights and other intangibles.

- S. PUBLIC OFFERING PRICE is the per share price at which a PROMOTIONAL OR DEVELOPMENT STAGE COMPANY proposes to offer EQUITY SECURITIES to the public.
- T. An UNAFFILIATED INSTITUTIONAL INVESTOR is:
1. An unaffiliated bank or unaffiliated savings and loan company;
 2. An unaffiliated investment company registered under the Investment Company Act of 1940;
 3. An unaffiliated business development Company as defined in Section 2(a)(48) of the Investment Company Act of 1940;
 4. An unaffiliated small business investment company licensed by the U.S. Small Business Administration under Section 301 of the Small Business Investment Act of 1958;
 5. An unaffiliated employee benefit plan, within the meaning of Title I of the Employee Retirement Income Security Act of 1974, and state and local government employees retirement and pension plans;
 6. An unaffiliated insurance company;
 7. An unaffiliated trust company;
 8. An unaffiliated private business development company, as defined in Section 202(a)22 of the Investment Advisors Act of 1940, or a comparable business entity, that is engaged as a substantial part of its business in the purchase and sale of securities, and which will own less than twenty percent (20%) of the Issuer's securities upon completion of the public offering; or
 9. An unaffiliated Qualified Purchaser to be defined under the National Securities Markets Improvement Act of 1996;
- U. An UNDERWRITER is any PERSON who has agreed with the Issuer or other PERSON on whose behalf a distribution is to be made:
1. To purchase securities for distribution;
 2. To distribute securities for or on behalf of the Issuer or other PERSON; or
 3. To manage or supervise a distribution of securities for or on behalf of the Issuer or other PERSON.

**NASAA STATEMENT OF POLICY REGARDING LOANS AND OTHER
MATERIAL AFFILIATED TRANSACTIONS**

Amended November 17, 1997

I. INTRODUCTION

The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to loans and other material affiliated transactions is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.

III. Where there have been or will be loans and other material affiliated transactions as described in this Statement of Policy, the offer or sale of securities may be disallowed by the Administrator unless the Issuer has, and represents in the prospectus or offering document that it will maintain, at least 2 INDEPENDENT DIRECTORS on its board of directors.

IV. The offer or sale of securities may be disallowed by the Administrator if the Issuer or its AFFILIATES will have loans outstanding after the offering, or intends to make loans to or loan guarantees on behalf of its PROMOTERS, other than:

A. Advances to officers, directors, and employees for travel, business expense, and similar ordinary operating expenditures;

B. Loans or loan guarantees made for the purchase of an Issuer's securities by its officers, directors, and employees, and loans for relocation of officers, directors, and employees, provided the loans or loan guarantees that are ongoing were approved by a majority of the INDEPENDENT DIRECTORS of the Issuer's board of directors who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or

C. Loans made by an Issuer or its AFFILIATES whose primary business is that of making loans, provided that:

1. The loans will be evidenced by promissory notes naming the lender as payee;
2. The loans will bear interest at rates which are comparable to those normally charged by other commercial lenders for similar loans made in the lender's locale;
3. The loans will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by other commercial lenders for similar loans made in the lender's locale;
4. The loans will be made only if credit reports and financial statements show the loans to be collectible and the borrowers are satisfactory credit risks, in light of the nature and terms of the loans and other circumstances;
5. The loans meet the loan policies normally used by other commercial lenders for similar loans made in the lender's locale;
6. The purposes of the loans and the disbursements of proceeds will be reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale; and
7. The loans will not violate the requirements of any banking or other financial institutions regulatory authority.

V. Except for loans described in IV., above, all loans existing at the time of the application for registration shall be repaid in full prior to the offering. The Administrator may waive this requirement if:

- A. Repayment of the loans will be made pursuant to appropriate amortization schedules; or
- B. Any portion of the offering is made on behalf of a PROMOTER and the PROMOTER undertakes to immediately repay the loans from the proceeds of the offering.

VI. The offer or sale of securities may be disallowed by the Administrator if the Issuer or its

AFFILIATES have engaged in other material transactions with PROMOTERS, unless the prospectus discloses the terms of transactions and indicates whether such terms were as favorable to the Issuer or its AFFILIATES as those generally available from unaffiliated third parties; and

A. The transaction is ratified by a majority of the Issuer's INDEPENDENT DIRECTORS who did not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel; or

B. For transactions which were entered into when there were less than two such disinterested INDEPENDENT DIRECTORS, the prospectus discloses that the Issuer lacked sufficient disinterested INDEPENDENT DIRECTORS to ratify the transactions at the time the transactions were initiated.

VII. The Issuer shall disclose in the prospectus or offering document whether or not it or its AFFILIATES have made or will make loans to, have made or will make loan guarantees on behalf of, or have engaged or will engage in material transactions with PROMOTERS and the terms and details relating thereto. If material affiliated transactions or loans have been made, or may be made, the Administrator may require the following representations to appear in the prospectus or offering document:

A. All future material affiliated transactions and loans will be made or entered into on terms that are no less favorable to the Issuer than those that can be obtained from unaffiliated third parties; and

B. All future material affiliated transactions and loans, and any forgiveness of loans, must be approved by a majority of the Issuer's INDEPENDENT DIRECTORS who do not have an interest in the transactions and who had access, at the issuer's expense, to issuer's or independent legal counsel.

NOTE: The Issuer and its officers and directors should consider their due diligence and other obligations to affirmatively demonstrate a reasonable basis for the representations in VI. and VII., above. In particular, they should consider whether the representations in VII. B., above, should be embodied in the Issuer's charter or bylaws.

NOTE: In order to satisfy the ratification provisions of Sections IV.B., VI.A., and VII. of this Statement of Policy the issuer must have at least two INDEPENDENT DIRECTORS on its board of directors. In the event the issuer has only two INDEPENDENT DIRECTORS on its board or directors, both INDEPENDENT DIRECTORS must be disinterested in and approve loans and other material transactions covered by Sections IV.B., VI.A., and VII.B.

NASAA STATEMENT OF POLICY REGARDING PREFERRED STOCK

Adopted April 27, 1997

I. INTRODUCTION

The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to preferred stock is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.

III. A public offering of preferred stock may be disallowed by the Administrator if the Issuer's ADJUSTED NET EARNINGS for the last fiscal year or its average ADJUSTED NET EARNINGS for the last three (3) fiscal years prior to the public offering were insufficient to pay its fixed charges and preferred stock dividends, whether or not accrued, and to meet the redemption requirements, if applicable, of the preferred stock being offered.

IV. As an alternative to III. above, the Administrator may choose to apply a CASH ANALYSIS. The Administrator may consider the Statement of Cash Flows if the statement demonstrates that the issuer has had positive "Net Cash Provided by Operating Activities" for its last fiscal year. The Administrator may request that the issuer submit a financial statement demonstrating an average positive "Net Cash Provided by Operating Activities" for the last three (3) fiscal years prior to the public offering. In either instance there must be sufficient cash to cover the preferred stock dividend whether or not declared.

V. Section III. and IV. above shall not apply to public offerings of convertible preferred stock that are superior in right to payment of dividends, interest and liquidation proceeds to any convertible debt and preferred stock that are or may be legally or beneficially, directly or indirectly, owned by PROMOTERS. The risks of failure to declare or pay dividends and the equity characteristics of the convertible preferred stock must be disclosed in the offering prospectus. An offering of such securities may be reviewed using guidelines for equity offerings.

VI. If the Issuer's NET EARNINGS are subject to cyclical fluctuations or if the Administrator deems it necessary for investor protection, the Administrator may require that the Issuer establish redemption requirements.

VII. A public offering of EQUITY SECURITIES may be disallowed by the Administrator if the Issuer's articles of incorporation authorize its board of directors to issue preferred stock in the future without a vote of the common shareholders unless:

A. The issuer represents in its prospectus or offering document that it will not offer preferred stock to PROMOTERS except on the same terms as it is offered to all other existing shareholders or to new shareholders; or

B. The issuance of preferred stock is approved by a majority of the Issuer's INDEPENDENT DIRECTORS who do not have an interest in the transaction and who have access, at the issuer's expense, to issuer's or independent legal counsel.

NASAA STATEMENT OF POLICY REGARDING PROMOTER'S EQUITY INVESTMENT

Adopted April 27, 1997

I. INTRODUCTION

The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to PROMOTER'S EQUITY INVESTMENT IN PROMOTIONAL OR DEVELOPMENT STAGE COMPANIES is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.

III. A public securities offering by a PROMOTIONAL OR DEVELOPMENT STAGE COMPANY may be disallowed by the Administrator if the PROMOTER'S EQUITY INVESTMENT is less than:

A. Ten percent (10%) of the first \$1,000,000 of the aggregate public offering; and

B. Seven percent (7%) of the next \$500,000 of the aggregate public offering; and

C. Five percent (5%) of the next \$500,000 of the aggregate public offering; and

D. Two and one-half percent (2 1/2%) of the balance over \$2,000,000, which may include items submitted by the PROMOTER to meet this requirement whose value has been accepted by the administrator.

**NASAA STATEMENT OF POLICY REGARDING
OPTIONS AND WARRANTS**

Amended November 17, 1997; September 28, 1999

- II. **INTRODUCTION.** The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guideline relating to options and warrants is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (“Administrator”) from applying different standards than those contained in this Statement of Policy.
- II. **DEFINITIONS.** The terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.
- III. Options or warrants may be issued to underwriters as compensation in connection with a public offering provided those options or warrants comply with the requirements of the NASAA Statement of Policy Regarding Underwriting Expenses, Underwriter’s Warrants, Selling Expenses, and Selling Security Holders.
- IV. Options or warrants may be granted to UNAFFILIATED INSTITUTIONAL INVESTORS in connection with loans if:
- A. The options or warrants are issued contemporaneously with the issuance of the loan;
 - B. The options or warrants are granted as the result of bona fide negotiations between the Issuer and UNAFFILIATED INSTITUTIONAL INVESTOR;
 - C. The exercise price of the options or warrants is not less than the fair market value of the Issuer’s shares of common stock underlying the options or warrants on the date that the loan was approved; and
 - D. The number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.
- V. Options or warrants may be granted in connection with acquisitions, reorganizations, consolidations or mergers if:
- A. They are granted to persons who are unaffiliated with the Issuer; and
 - B. The earnings of the Issuer at the time of grant and after giving effect to the acquisition, reorganization, consolidation or merger would not be materially diluted by the exercise of the options or warrants.
- VI. Options and warrants may not be granted at an exercise price of less than eighty-five percent (85%) of fair market value of the Issuer’s underlying shares of common stock on the date of grant. The issuer, and its officers and directors, should consider the advisability of obtaining a concurrent appraisal, by a qualified independent appraiser, of the value of the shares of common stock at the time of the grant as evidence of the fair market value.
- VII. The total number of options and warrants issued or reserved for issuance at the date of the public offering, may not, for one year following the effective date of the offering, exceed fifteen percent (15%) of the Issuer’s shares of common stock outstanding at the date of the public offering plus the number of shares of common stock being offered that are firmly underwritten, or in the case of offerings not firmly underwritten, the number of shares of common stock required to be sold in order to meet the minimum offering amount. In calculating the number of options and warrants, the following are excluded:
- A. Options and warrants that were issued or reserved for issuance pursuant to III., IV., and V., above;
 - B. Options and warrants that were issued, or reserved for issuance, to employees or

consultants who are not PROMOTERS, in connection with an incentive stock option plan qualified under section 422 of the internal revenue code; and

- C. Options and warrants that are exercisable at or above the public offering price.
- VIII. No options or warrants issued and outstanding at the date of the public offering, excluding those qualified options and warrants issued pursuant to an incentive stock option plan qualified under section 422 of the internal revenue code, may be exercisable more than five (5) years from the date of the public offering.
- IX. If the number of options and warrant that are issued and outstanding and/or reserved for issuance is material, the final offering circular shall disclose the potential dilutive effects of such options and warrants.
- X. If the number of options and warrants exceeds the fifteen (15%) limit established in Section VII, above, ("Excess Options") the Administrator may require the cancellation of such Excess Options or, in the alternative, that such Excess Options be subjected to an ESCROW or LOCK-IN AGREEMENT consistent with the terms specified in Section VI of the *Statement of Policy Regarding Promotional Shares*.

**NASAA STATEMENT OF POLICY REGARDING UNDERWRITING EXPENSES,
UNDERWRITER'S WARRANTS, SELLING EXPENSES AND SELLING SECURITY HOLDERS**
Adopted April 27, 1997; September 28, 1999

- I. **INTRODUCTION.** The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline relating to underwriting expenses, underwriter's warrants, selling expenses and selling security holders is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.
- II. An offer or sale of securities may be disallowed by the Administrator if the underwriting expenses to be incurred exceed seventeen percent (17%) of the gross proceeds from the public offering.
- III. Underwriting expenses may include but are not limited to:
- A. Commissions to underwriters or broker-dealers;
 - B. Non-accountable fees or expenses to be paid to the underwriter or broker-dealer;
 - C. Underwriter's warrants, which shall be valued using the following formula:

$$\frac{[165 \% \times \text{Aggregate Offering Price}] - (\text{Exercise Price} \times \# \text{ of shares offered to public}) \times \# \text{ shares underlying warrants}}{2 \# \text{ shares offered to the public}}$$

The value may be reduced by 20% if the exercise period of the warrants is extended from one year after the public offering to two years after the public offering and by 40% if the exercise period of the warrants is extended from one year after the public offering to three years after the public offering. Warrants granted to underwriters are subject to the following restrictions:

- 1. The underwriter is a managing underwriter;
- 2. The public offering is either a firmly underwritten offering or a "minimum-maximum" offering. Options or warrants may be issued in a "minimum-maximum" public offering only if:
 - (i) The options or warrants are issued on a pro rata basis; and

- (ii) The “minimum” amount of securities has been sold;
 - 3. The exercise price of the warrants must be at least equal to the public offering price;
 - 4. The number of shares covered by underwriter’s options or warrants does not exceed ten percent (10%) of the shares of common stock actually sold in the public offering;
 - 5. The life of the options or warrants does not exceed a period of five (5) years from the completion date of the public offering;
 - 6. The options or warrants are not exercisable for the first year after the completion date of the public offering; and
 - 7. Options or warrants may not be transferred, except:
 - (i) To partners of the underwriter, if the underwriter is a partnership;
 - (ii) To officers and employees of the underwriter, who are also shareholders of the underwriter, if the underwriter is a corporation; or
 - (iii) By will, pursuant to the laws of descent and distribution, or by the operation of law.
 - 8. The warrant agreement may not allow for a reduction in the exercise price of the options or warrants resulting from the subsequent issuance of shares by the issuer except where such issuances are pursuant to a:
 - (i) Stock dividend or stock split; or
 - (ii) merger, consolidation, reclassification, reorganization, recapitalization, or sale of assets.
 - D. Right of first refusal, which shall be valued at 1% of the public offering or the amount payable to the underwriter if the issuer terminates the right of first refusal;
 - E. Solicitation fees payable to the underwriter, which shall be valued at the lesser of actual cost or 1% of the public offering if the fees are payable within one year of the offering;
 - F. Financial consulting or financial advisory agreements with an underwriter or any other similar type of agreement or fees, however designated, which shall be valued at actual cost;
 - G. Underwriter’s due diligence expenses;
 - H. Payments made either six months prior to or required to be made six months following the public offering to investor relations firms designated by the underwriter; and
 - I. Other underwriting expenses incurred in connection with the public offering of securities as determined by the Administrator.
- IV. Underwriting expenses shall not include financial consulting or financial advisory agreements with the underwriter payable at the time the services are rendered provided that such agreement was entered into at least twelve months before the registration is filed with the Securities and Exchange Commission.
- V. An offer or sale of securities may be disallowed by the Administrator if the direct and indirect selling expenses of the offering exceed twenty percent (20%) of the gross proceeds from the public offering.

- VI. Selling expenses may include but are not limited to:
- A. Commissions to underwriters or broker-dealers;
 - B. Non-accountable fees or expenses to be paid to the underwriters or broker-dealers;
 - C. Auditors' and accountants' fees;
 - D. Legal fees;
 - E. The cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;
 - F. Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers, and other experts;
 - G. The cost of authorizing and preparing the securities, including issue taxes and stamps;
 - H. Financial consulting or financial advisory agreements with an underwriter or any similar type agreement or fees, however designated, which shall be valued at actual cost, excluding financial and consulting agreements which is entered into at least twelve months before the registration is filed with the Securities and Exchange Commission;
 - I. Payments made either six months prior to or required to be made six months following the public offering to investor relations firms designated by the underwriter;
 - J. Other cash expenses incurred in connection with the public offering of securities as determined by the Administrator; and
 - K. Expenses incurred in connection with bridge financing in the twelve month period preceding a public offering of securities including, but not limited to:
 - 1. Direct expenses attributable to the financing including interest charges and those expenses set forth in Section III and elsewhere in Section VI of this Policy Statement;
 - 2. Warrants and options valued as set forth in Section III.C. of this Policy Statement; and
 - 3. Expenses attributable to the issuance of securities that are not options, warrants, or convertible securities, to be valued using the following formula:

$$\frac{(\text{Public Offering Price per share} - \text{Cost per share}) \times \text{Number of Securities Issued} \times 100}{\text{Aggregate Public Offering Proceeds}}$$

- VII. A public offering or sale of securities, that includes selling security holders offering more than ten percent (10%) of the securities to be sold in the public offering, may be disallowed by the Administrator unless:
- A. Selling security holders offering or selling more than ten percent (10%) but less than fifty percent (50%) of the securities to be sold in the public offering pay a pro rata share of all selling expenses of the public offering, excluding the legal and accounting expenses of the public offering; or
 - B. Selling security holders offering more than fifty percent (50%) of the securities to be sold in the offering pay a pro rata share of all selling expenses of the public offering; and

- C. The prospectus or offering document discloses the amount of selling expenses that the selling security holders will pay.
- VIII. With the exception of underwriter's or broker-dealer's compensation, the provisions of VII.A., B., and C. above, shall not apply if the selling security holders have a written agreement with the Issuer, that was entered into in an arm's-length transaction, whereby the Issuer has agreed to pay all of the selling security holders' selling expenses.

NASAA STATEMENT OF POLICY REGARDING PROMOTIONAL SHARES

Amended November 17, 1997; September 28, 1999

I. INTRODUCTION. The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guidelines relating to PROMOTIONAL SHARES is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy. In addition, nothing in this Statement of Policy restricts the ability of an Administrator to deny an offering which contains excessive promoters' profits or is not fair, just or equitable under the circumstances.

Terms used in this Statement of Policy are defined pursuant to the NASAA Statement of Policy Regarding Corporate Securities Definitions.

II. ESCROW OF PROMOTIONAL SHARES. The Administrator may require that some or all of the PROMOTERS deposit some or all of their PROMOTIONAL SHARES into an Escrow Account ("Escrow") with an ESCROW AGENT, according to the terms of an Escrow Agreement ("Agreement"), as a condition to registering a public offering of EQUITY SECURITIES. The PROMOTERS, who are required to deposit some or all of their PROMOTIONAL SHARES into Escrow, are hereinafter collectively referred to as Depositors. The Administrator may, in his discretion, require a Lock-In Agreement on substantially the same terms and conditions as an Agreement.

A. Except where a PROMOTER must comply with paragraph II.B., below, the following formula may be used to determine the number of PROMOTIONAL SHARES to be deposited in Escrow.

	Shares	Total price per share
Shares Held by PROMOTERS	100	\$ 1.00
Public Offering Price Per Share		\$ 10.00
Total Paid by PROMOTER*		\$100
Public Offering Price Per Share X .85 =	\$10 X .85 =	11.77 Fully Paid Shares
Shares Held by PROMOTERS	100	
Fully Paid Shares(rounded)	12	
Number of PROMOTIONAL SHARES	88	
to be escrowed		

**If consideration other than cash, then the value attributed to such consideration must be acceptable to the Administrator.*

- B. If the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, then all PROMOTIONAL SHARES shall be deposited in Escrow.
- C. The Administrator may require each PROMOTER to deposit PROMOTIONAL SHARES into Escrow on a pro rata basis.

III. RELEASE OF PROMOTIONAL SHARES

A. The ESCROW AGENT shall release the PROMOTIONAL SHARES held in escrow in the following manner as illustrated in Appendix A.

1. If the Issuer's AGGREGATE REVENUES are:

(i) \$500,000 or more; provided that neither the auditors report nor any footnote to the issuer's latest audited financial statements contain an opinion or statement regarding the ability of the issuer to continue as a going concern:

Beginning one year from the date of completion of the offering, two and one-half percent (2 1/2%) of PROMOTIONAL SHARES held in escrow may be released each quarter pro rata among the Depositors. All remaining PROMOTIONAL SHARES shall be released from escrow on the second anniversary from the date of completion of the offering; or

(ii) Less than \$500,000;

Beginning two years from the date of completion of the offering, two and one-half percent (2 1/2%) of PROMOTIONAL SHARES held in escrow may be released each quarter pro rata among the Depositors. All remaining PROMOTIONAL SHARES shall be released from escrow on the fourth anniversary from the date of completion of the offering; or

2. The public offering has been terminated, and no securities were sold pursuant thereto; or

3. The public offering has been terminated, and all of the gross proceeds that were derived therefrom have been returned to the public investors.

4. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a PERSON who is not a PROMOTER which results in the distribution of the Issuer's assets or securities ("Distribution"), while this Agreement remains in effect, the Depositors agree that:

(i) All holders of the Issuer's EQUITY SECURITIES will initially share on a pro rata, per share basis in the Distribution, in proportion to the amount of cash or other consideration that they paid per share of EQUITY SECURITIES (provided that the Administrator has accepted the value of the other consideration), until the public shareholders have received, or had irrevocably set aside for them, an amount that is equal to one-hundred percent (100%) of the public offering's price per share times the number of shares of EQUITY SECURITIES that they purchased pursuant to the public offering and which they still hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like;

(ii) All holders of the Issuer's EQUITY SECURITIES shall thereafter participate on an equal, per share basis times the number of shares of EQUITY SECURITIES they hold at the time of the Distribution, adjusted for stock splits, stock dividends, recapitalizations and the like; and

(iii) A Distribution may proceed on lesser terms and conditions than the terms and conditions stated in paragraphs III.A.4.(i). and (ii)., above, if a majority of the EQUITY SECURITIES, that are not held by PROMOTERS, or their ASSOCIATES or AFFILIATES, vote, or consent by consent

procedure, to approve the lesser terms and conditions at a special meeting called for that specific purpose.

5. In the event of a dissolution, liquidation, merger, consolidation, reorganization, sale or exchange of the Issuer's assets or securities (including by way of tender offer), or any other transaction or proceeding with a PERSON who is a PROMOTER, which results in a Distribution while this Agreement remains in effect, the Depositors' PROMOTIONAL SHARES shall remain in Escrow subject to the terms of this Agreement.

6. In the event securities in the Escrow become "Covered Securities," as defined in Section 18(b)(1) of the Securities Act of 1933, all securities in the Escrow shall be released.

IV. DOCUMENTATION REGARDING THE TERMINATION OF THE ESCROW AGREEMENT AND/OR THE RELEASE OF PROMOTIONAL SHARES

- A. A request for the release of any of the PROMOTIONAL SHARES from Escrow shall be in writing and be forwarded to the ESCROW AGENT;
- B. The Issuer shall provide the documentation, showing that the requirements of paragraph III., above, have been met, to the ESCROW AGENT; and
- C. The ESCROW AGENT, shall terminate the Agreement and/or release some or all of the PROMOTIONAL SHARES from Escrow if all the applicable provisions of the Agreement have been satisfied. The ESCROW AGENT shall maintain all records relating to the Agreement for a period of three (3) years following the termination of the Agreement. Copies of all records retained by the ESCROW AGENT shall be forwarded to the Administrator promptly upon written request.

V. RESTRICTIONS ON THE TRANSFER, SALE OR DISPOSAL OF PROMOTIONAL SHARES

- A. PROMOTIONAL SHARES held in Escrow may be transferred by will, the laws of descent and distribution, the operation of law, or by any court of competent jurisdiction and proper venue.
 - 1. The escrowed PROMOTIONAL SHARES of a deceased Depositor may be hypothecated to pay the expenses of the deceased Depositor's estate; provided that the hypothecated PROMOTIONAL SHARES shall remain subject to the terms of the Agreement.
 - 2. No PROMOTIONAL SHARES may be transferred, sold or disposed of ("transferred") until the ESCROW AGENT has received a written statement signed by the proposed transferee ("transferee") which states that the transferee has full knowledge of the terms of the Agreement, the transferee accepts the PROMOTIONAL SHARES subject to the terms of the Agreement and the transferee realizes that the PROMOTIONAL SHARES shall remain in Escrow until they are released pursuant to paragraph III., above.
- B. With the exception of paragraph V.A.1., above, PROMOTIONAL SHARES held in Escrow may not be pledged to secure a debt.
- C. PROMOTIONAL SHARES held in Escrow may be transferred by gift to the Depositor's family members, provided that the PROMOTIONAL SHARES shall remain subject to the terms of the Agreement.
- D. With the exception of paragraph V.A. and C, above, no escrowed PROMOTIONAL SHARES, any interest therein or any right or title thereto, may be transferred.

- E. Notwithstanding the provisions of paragraph II.A., above, PROMOTERs shall be prohibited from selling any of their PROMOTIONAL SHARES that are not subject to Escrow during the time that the issuer is offering its securities to the public in a self-underwritten offering.

VI. TERMS OF THE ESCROW

- A. Except as noted in paragraph III.A.4.(iii), above, Depositors shall have the same voting rights as shareholders who purchased EQUITY SECURITIES pursuant to the public offering (“Public Shareholders”).
- B. All certificates representing stock dividends and shares resulting from stock splits of escrowed shares, recapitalizations and the like, that are granted to or received by Depositors while their PROMOTIONAL SHARES are held in Escrow shall be deposited with and held by the ESCROW AGENT subject to the terms of the Agreement. Any cash dividends that are granted to or received by Depositors while their PROMOTIONAL SHARES are held in Escrow, shall be deposited with and be held by the ESCROW AGENT subject to the terms of the Agreement unless such cash dividends are approved by a majority of the INDEPENDENT DIRECTORS of the Issuer. The ESCROW AGENT shall invest such cash dividends as directed by the Depositors. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from the Escrow.
- C. EQUITY SECURITIES that are received by Depositors as the result of the conversion or exercise of convertible securities, warrants, options or rights to purchase common stock or similar securities, while their PROMOTIONAL SHARES are in Escrow, shall be deposited with and held by the ESCROW AGENT subject to the terms of the Escrow.
- D. A summary of the Agreement shall be included in the prospectus and subsequent amendments thereto, annual reports to shareholders, proxy statements and other disclosure materials that are used to make investment decisions until the public offering has been terminated.
- E. The ESCROW AGENT shall be entitled to reasonable compensation from the Issuer for its services as set forth in the Agreement. If the ESCROW AGENT is required to render additional services that are not expressly provided for therein, or if it is made a party to or intervenes in any action, suit or proceedings pertaining to the Agreement, it shall be entitled to receive reasonable compensation from the Issuer and the Depositors. If additional services are provided, the ESCROW AGENT, after giving written notice to the Depositors and Issuer, may deduct reasonable compensation from any cash dividends, interest and proceeds that are being held by it for distribution pursuant to the Agreement.
- F. The Issuer and the Depositors shall hold the ESCROW AGENT harmless from and indemnify it for, any cost or liability regarding administrative proceeding, investigation, litigation, interpretation, implementation, or interpleading relating to the Agreement, including the release of PROMOTIONAL SHARES and the disbursement of dividends, interest or proceeds, unless the cost or the liability arises from the ESCROW AGENT’s failure to abide by the terms of the Agreement.
- G. The Agreement shall be binding upon the Depositors, their heirs and assignees, and upon the Issuer and ESCROW AGENT and their successors.
- H. Except for the ESCROW AGENT’s compensation and indemnification provisions, which shall survive until they are satisfied, the Agreement will be terminated when all of the PROMOTIONAL SHARES have been released or the Issuer’s EQUITY SECURITIES and/or the assets have been distributed pursuant to the Agreement.

APPENDIX A
SCHEDULE OF ESCROW OR LOCK-IN REQUIREMENTS

<u>Class of Offering</u>	<u>Aggregate Revenues</u>	<u>Other Requirements</u>	<u>Terms of Required Escrow or Lock-in</u>
Class A	AGGREGATE REVENUES of \$500,000 or more	Neither the auditor's opinion nor any footnote to the issuer's latest audited financial statement contain an opinion or statement regarding the ability of the issuer to continue as a going concern.	Year 1 - all Year 2 - 2 1/2% pro rata per quarter Year 3 - none
Class B	AGGREGATE REVENUES of less than \$500,000	None	Year 1 - all Year 2 - all Year 3 - 2 1/2% pro rata per quarter Year 4 - 2 1/2% pro rata per quarter Year 5 - none

**NASAA Statement of Policy Regarding
the Impoundment of Proceeds
Amended April 27, 1997; September 28, 1999**

I.

INTRODUCTION. The North American Securities Administrators Association, Inc. (NASAA) has determined that the following guideline relating to impoundment of proceeds is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (Administrator) from applying different standards than those contained in this Statement of Policy.

II.

When an impoundment Agreement (Agreement) is necessary, the proceeds from the sale of the securities must be deposited in an interest bearing escrow or trust account with an IMPOUNDMENT AGENT. The IMPOUNDMENT AGENT may not be affiliated with the Issuer, its AFFILIATE, its officers or directors, the UNDERWRITER, or any PROMOTER.

III. The Agreement

- A. A signed copy of the Agreement must be filed with the Administrator and shall become part of the registration statement;
- B. The Agreement must be signed by an officer of the Issuer, an officer of the UNDERWRITER (if applicable), and an officer of the IMPOUNDMENT AGENT. The aforesaid individuals must have the authority to sign such documents;
- C. The Agreement shall provide that the Impounded Proceeds (Proceeds) are not subject to claims by creditors of the Issuer, AFFILIATES, or ASSOCIATES, or UNDERWRITERS until the Proceeds have been released to the Issuer pursuant to the terms of the Agreement;
- D. A summary of the principal terms shall be included in the registration statement;
- E. The Agreement shall provide that the Administrator has the right to inspect and make copies of the records of the IMPOUNDMENT AGENT at any reasonable time wherever the records are located.

- IV. The IMPOUNDMENT AGENT shall notify the Administrator in writing upon the release of the proceeds. If the proceeds are insufficient to meet the minimum requirements within the time prescribed by the Agreement:
 - A. The IMPOUNDMENT AGENT must release and return the proceeds directly to the investors; and
 - B. The proceeds shall be released and returned to the investors without deduction for expenses, including IMPOUNDMENT AGENT fees. All interest earned shall be submitted pro rata to the investors, along with the proceeds.
- V. If a PERSON, who is an UNDERWRITER or an officer, director, PROMOTER, AFFILIATE, or an ASSOCIATE of the Issuer, purchases securities, that are a part of the public offering being sold pursuant to the registration statement, and if the proceeds from that purchase are used for the purpose of completing the impoundment requirements imposed under this Statement of Policy, the following conditions shall be met.
 - A. The PERSONS are purchasing the securities on the same terms as unaffiliated public investors; and
 - B. The prospectus contains a disclosure that such PERSONS may purchase securities of the Issuer for purposes of completing the impoundment requirements imposed by this Statement of Policy.

NASAA STATEMENT OF POLICY REGARDING SPECIFICITY IN USE OF PROCEEDS

Amended April 27, 1997; September 28, 1999

- I. **INTRODUCTION.** The North American Securities Administrators Association, Inc. (“NASAA”) has determined that the following guideline regarding specificity in use of proceeds is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator (“Administrator”) from applying different standards than those contained in this Statement of Policy.
- II. A registration statement not complying with the requirements of this Statement of Policy may be denied registration by the Administrator.
- III. The issuer’s prospectus shall disclose, in a tabular form, for both the minimum and maximum amounts proposed, if applicable, the percentages and dollar amounts of the following:
 - A. The estimated cash proceeds to be received by the issuer from the offering;
 - B. The purposes for which the proceeds are to be used by the issuer;
 - C. The amount to be used for each purpose; and
 - D. The order or priority in which the proceeds will be used for the purposes stated.
- IV. Additionally, the issuer’s prospectus shall disclose:
 - A. The amounts of any funds to be raised from other sources to achieve the purposes stated, the sources of any such funds, whether the sources are firm or contingent and any contingencies;
 - B. If any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

- C. If any part of the proceeds is to be used to acquire property in the future, the acquisition criteria used by the issuer to determine whether or not to acquire such property; and
 - D. The amount and basis for any proceeds used to pay indebtedness, including unpaid salaries to Promoters (as defined in the Statement of Policy Regarding Corporate Securities Definitions).
- V. The issuer normally may not reserve more than 15% of the proceeds for working capital or general corporate purposes (or for any other unspecified use). In the event the issuer's business plans require greater flexibility in the use of unspecified proceeds, the issuer must:
- A. Disclose all potential uses of such proceeds with qualifying language that such uses may be subject to change; and
 - B. Indicate the specific circumstances leading to reallocation and the potential areas of reallocation.
- VI. The issuer must demonstrate that the offering proceeds, together with all other sources of financing currently available to the issuer, are sufficient to sustain the issuer's proposed activities. If such proceeds are insufficient to sustain the issuer's activities for at least 12 months following the offering, the issuer must provide the appropriate risk disclosure in the prospectus.
- VII. In the event the offering is not firmly underwritten, the issuer must set a minimum amount of proceeds to be raised consistent with the business plan set forth in the prospectus. These proceeds must be impounded in an interest-bearing escrow or trust account until such minimum amount is reached. Additionally, the prospectus must disclose if officers, directors or other promoters have the right to purchase shares for the purpose of meeting the impound requirements.

NASAA STATEMENT OF POLICY REGARDING UNSOUND FINANCIAL CONDITION

Adopted April 27, 1997; Amended September 28, 1999

- I. **INTRODUCTION.** The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following guideline regarding unsound financial condition is consistent with public investor protection and is in the public interest. Nothing shall prevent the Securities Administrator ("Administrator") from applying different standards than those contained in this Statement of Policy.
- II. An issuer shall be deemed to be in unsound financial condition if the financial statements contain:
- A. A footnote to the financial statements or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; and
 - B. Including, but not limited to, one of the following:
 1. An accumulated deficit; or
 2. Negative shareholder equity; or
 3. An inability to satisfy current obligations as they come due; or
 4. Negative cash flow (or revenues not being generated by operations).
- III. If the application for registration contains audited financial statements which were issued more than ninety (90) days from the date of application, the accompanying interim unaudited financial statements are subject to the scrutiny of this Statement of Policy.

- IV. An application for registration by an issuer in unsound financial condition may be denied by the Administrator.
- V. An application for registration by an issuer in unsound financial condition may be registered by the Administrator if the chief financial officer of the issuer provides pro forma financial data acceptable to the Administrator that:
 - A. Demonstrate that the issuer's financial condition will improve either as a direct result of the offering proceeds, or as a proximate result of the offering proceeds (as part of a long term business plan); and
 - B. Demonstrate when profitability is expected to occur; and
 - C. Are supported with documentation of and the bases for any assumptions.
- VI. In addition to satisfying the requirements of V. above, the issuer must:
 - A. Include prominent disclosure that the Issuer is considered to be in unsound financial condition, and that persons should not invest unless they can afford to lose their entire investment; and
 - B. Disclose the following risk factors, as applicable:
 - 1. The presence of an explanatory paragraph in the independent auditor's report;
 - 2. If the issuer has not been generating revenues from operations, the means by which the issuer has been financing its operations;
 - 3. The amount of any accumulated deficit;
 - 4. The presence and amount of any negative shareholder's equity;
 - 5. The need for future financing.
- VII. Nothing in this Statement of Policy shall prevent the Administrator from imposing net worth standards or limiting the sales of securities to accredited investors in lieu of, or in addition to, the requirements of V and VI above. The imposition of these minimal net worth standards does not relieve a dealer from the responsibility of making an independent determination of suitability required under industry standards. Unless the Administrator determines that the risks associated with the offering would require lower standards, public investors shall have the following:
 - A. A minimum annual gross income of \$65,000 and a minimum net worth of \$65,000, exclusive of automobile, home and home furnishings; or
 - B. A minimum net worth of \$150,000, exclusive of automobile, home and home furnishings.
- VIII. If the issuer's latest audited financial statements contain an auditor's report or footnote that contains an opinion or statement regarding the ability of the issuer to continue as a going concern, then all PROMOTIONAL SHARES shall be deposited in Escrow.

Section 207(g) and 208(a)(v) Staff Position on submission of Lock-in Agreements with respect to registration statements filed under Section 205

**DIVISION OF CORPORATION FINANCE
RELEASE NO.: 91-CF-1**

BACKGROUND

In the July 1981 PSC Bulletin, the Commission published Informal Guidelines for Staff Analysis and Review under Sections 207(g) and 208(a)(v) of the 1972 for Registration Statements filed under Section 205 for Equity Securities of Corporations (Guidelines). These Guidelines were republished, as amended, in the June 1986 PSC Bulletin.

Issues have arisen as to whether staff, in implementing Sections II and VII of the Guidelines will accept, under certain conditions, a Lock-in Agreement rather than a formal Escrow. The Commission has authorized publication of this Release to give guidance as to those Lock-in Agreements which will be recommended and accepted by staff in order to clear a Section 205 registration statement.

In both an Escrow and Lock-in Agreement, all officers, directors, promoters and post-offering 5% shareholders of the issuer agree not to sell promotional shares which are held or come to be held by them either for specific periods of time or only under certain conditions. In a Lock-in Agreement, however, this is accomplished by filing written representations accompanied by documentation of certain procedures to be followed whereas an Escrow requires a formal Escrow Agreement utilizing an independent Escrow Agent.

On May 1, 1991, the Commission permitted staff to require compliance with the following provisions and procedures where staff recommends and accepts a Lock-in Agreement as a condition of effectiveness of a Section 205 registration statement in Pennsylvania.

STAFF POSITION

I. Acceptance of the terms of any Lock-in Agreement is at the discretion of the staff of the Division of Corporation Finance, taking into consideration the investor protection issues raised.

II. Each Lock-in Agreement shall cover all shares, whether held beneficially or of record, which presently are held or shall come to be held during the period covered by the Lock-in Agreement by virtue of the exercise of any options, warrants or other rights (including a right of conversion), by all officers, directors, promoters and post-offering 5% shareholders of the issuer, except:

A. Shares held by the underwriter.

B. Shares held by a bona fide venture capital company which does not have an affiliate who is:

1. An officer of the issuer;

2. A post-offering 5% shareholder of the issuer; or

3. A director of the issuer, except an outside director who was elected to the board of directors solely to represent the interests of the otherwise unaffiliated venture capital company.

C. Shares to be purchased in the offering being registered.

III. Each Lock-in Agreement shall state that the parties to the Lock-in Agreement will cause:

A. A copy of the Lock-in Agreement to be available from the issuer or transfer agent upon request and without charge.

B. A notice to be placed on the face of each stock certificate covered by the terms of the Lock-in Agreement stating that the transfer of the stock evidenced by the certificate is restricted in

accordance with the conditions set forth on the reverse side of the certificate.

C. A typed legend to be placed on the reverse side of each stock certificate representing stock covered by the Lock-in Agreement which states that the sale or transfer of the shares evidenced by the certificate is subject to certain restrictions until _____(insert date of termination of the Lock-in Agreement) pursuant to an agreement between the shareholder (whether beneficial or of record) and the issuer, which agreement is on file with the issuer and the stock transfer agent from which a copy is available upon request and without charge.

NOTE: If the shares subject to the Lock-in Agreement are uncertificated securities, the legends in Subsections B and C are to be placed on the periodic statement sent to the registered owner.

IV. Each Lock-in Agreement shall state that a manually signed copy of the Lock-in Agreement will be filed with the Pennsylvania Securities Commission as part of the registration documents.

V. The issuer, or counsel for the issuer or the underwriter, will file with the Commission a written representation that:

A. Copies of the Lock-in Agreement and a statement of the per share initial public offering price will be provided to the issuer's stock transfer agent.

B. Appropriate stop transfer orders will be placed with the issuer's stock transfer agent against the sale or transfer of the shares covered by the Lock-in Agreement prior to its expiration, except as may otherwise be provided in the Lock-in Agreement.

VI. Prior to effectiveness of the registration statement in Pennsylvania, a copy of the Lock-in Agreement must be manually signed by each party and filed with the Commission.

VII. The Lock-in Agreement shall state that the terms and conditions contained in the Lock-in Agreement could only be modified (including premature termination of the Lock-in Agreement) in extremely rare circumstances and then, only with the approval of the Pennsylvania Securities Commission.
(PSC Bulletin April 1992)

Sections 207(g) and 208(a)(v) Informal Staff Guidelines on Maximum-Minimum Offering Ratios in Public Direct Participation Programs

**DIVISION OF CORPORATION FINANCE
RELEASE NO.: 91-CF-4**

In response to the SEC's June 17, 1991, Interpretive Release No. 33-6900 concerning disclosure requirements in offerings of limited partnership units and similar securities, the Commission, on December 16, 1991, approved the use by staff of the following informal guidelines with regard to max-min ratio²⁸ requirements in public direct participation programs:

INFORMAL STAFF GUIDELINES ON MAXIMUM-MINIMUM OFFERING RATIOS IN PUBLIC DIRECT PARTICIPATION PROGRAMS

I. General Guidelines

A. The max-min ratio for offerings with a stated minimum of less than \$10 million does not exceed 10:1.

B. The max-min ratio for offerings with a stated minimum of \$10 million or more does not exceed 15:1.

II. Where the max-min ratio of an offering exceeds the max-min ratio limits in I, the following max-

²⁸ Max-Min Ratio is the ratio between the stated maximum dollar amount and the stated minimum dollar amount of the offering.

min ratios will be permitted if the issuer agrees to provide additional disclosure²⁹:

A. For an offering with a stated minimum of less than \$10 million, the max-min ratio does not exceed 20:1.

B. For an offering with a stated minimum of \$10 million or more, the max-min ratio does not exceed 30:1.

III. Where the max-min ratio of an offering exceeds the max-min ratio limits in II, the staff will suggest that the issuer may do either of the following:

A. Refrain from Pennsylvania sales until the appropriate max-min ratio under I is met; or

B. Provide the disclosure required in II and place Pennsylvania subscriptions into a short-term escrow (120 days or less) until the appropriate max-min ratio under II is met³⁰.

IV. Where the max-min ratio of an offering does not exceed the max-min ratio limits in II but exceeds the max-min ratio limits in I and the issuer does not wish to provide the additional disclosure, the staff will suggest that the issuer may do either of the following:

A. Refrain from Pennsylvania sales until the appropriate max-min ratio under I is met; or

B. Place Pennsylvania subscriptions into a short-term escrow (120 days or less) until the appropriate max-min ratio under I is met³.

V. Where the offering does not meet the criteria in I, II, III or IV, the staff will indicate that the offering cannot be cleared on a staff level and will present it to the Commission. In presenting the offering to the Commission, the staff may recommend additional disclosure, higher suitability, refrain from Pennsylvania sales until a certain minimum is reached, escrow Pennsylvania sales until a certain minimum is reached, any combination of the foregoing, or denial.

(PSC Bull. December 1991)

Editor's Note: This supersedes similar staff guidelines published at PSC Bull. March 1988.

Sections 207(g) and 208(a)(v) NASAA Omnibus Guidelines

**DIVISION OF CORPORATION FINANCE
RELEASE NO.: 92-CF-2
UTILIZATION OF OMNIBUS GUIDELINES ADOPTED BY THE
NORTH AMERICAN SECURITIES ADMINISTRATORS
ASSOCIATION (NASAA) ON MARCH 29, 1992.**

At its meeting of April 27, 1992, the Commission indicated that, where applicable, it will utilize the criteria contained in the NASAA Omnibus Guidelines (Guidelines) adopted by NASAA on March 29, 1992 with respect to the application of sections 207, 208 and 305(a)(ix) of the Pennsylvania Securities

²⁹ Sample Disclosure would be:

PENNSYLVANIA INVESTORS: Because the minimum closing amount is less than (insert actual minimum closing amount necessary to maintain proper max-min ratio under I) you are cautioned to carefully evaluate the program's ability to fully accomplish its stated objectives and to inquire as to the current dollar volume of program subscriptions.

³⁰ If the appropriate minimum has not been met at the end of each escrow period, the issuer must do either of the following:

A. Return the Pennsylvania investors' funds within 15 calendar days of the end of the escrow period; or

B. Notify the Pennsylvania investors in writing by certified mail or any other means whereby a receipt of delivery is obtained within 10 calendar days after the end of each escrow period that they have a right to have their investment returned to them. If an investor requests the return of such funds within 10 calendar days after receipt of notification, the issuer must return such funds within 15 calendar days after receipt of the investor's request.

No interest is payable to an investor who requests a return of his funds at the end of the initial escrow period. Any Pennsylvania investor who requests a return of his funds at the end of any subsequent escrow period will be entitled to receive interest for the time his funds remain in escrow commencing with the first day after the initial escrow period.

Act of 1972 (1972 Act) to registration statements filed with the Commission under sections 205 or 206 of the 1972 Act for which no other NASAA Guideline or Statement of Policy applies.

Furthermore, the Commission stated that it will utilize all amendments to the Guidelines subsequently adopted by NASAA unless (1) the Commission makes an affirmative statement to the contrary or (2) the amendment relates to a section of the Guidelines which the Commission previously indicated it would not utilize.

Inasmuch as the Guidelines apply to those public direct participation programs previously not covered by any other NASAA guidelines, that portion of Commission policy enunciated in Release 90-CF-2 (issued October 31, 1990) requiring submission of a completed cross-reference sheet for the NASAA Real Estate Guidelines for such programs is hereby revoked.

The Commission, however, affirms the other provision of Release 90-CF-2 that staff review of public direct participation programs shall not commence until the issuer or its counsel has submitted a completed cross-reference sheet for the NASAA guideline appropriate to the program.

(PSC Bull. April 1992)

Sections 207(g) and 208(a)(v) NASAA Church Bond Guidelines

**DIVISION OF CORPORATION FINANCE
RELEASE NO.: 02-CF-1
UTILIZATION OF THE STATEMENT OF POLICY
REGARDING CHURCH BONDS ADOPTED BY THE
NORTH AMERICAN SECURITIES ADMINISTRATORS
ASSOCIATION (NASAA) ON APRIL 14, 2002**

At its May 7, 2002 meeting, the Commission indicated that, where applicable, it will utilize the criteria contained in the Statement of Policy Regarding Church Bonds, and any amendments thereto, adopted by NASAA on April 14, 2002 (SOP), with respect to the application of sections 207, 208 and 305 of the Pennsylvania Securities Act of 1972 (1972 Act) to registration statements filed by issuers under section 205 or 206 of the 1972 Act that seek to sell church bonds within the meaning of the SOP.

Sections 207(g) and 208(a)(iv) Guidelines for Registration of Debt Securities of Finance Companies

On May 2, 1983, the Commission approved the utilization of staff guidelines for reviewing registration statements for debt securities of finance companies filed under Section 205 or 206 of the 1972 Act.

(PSC Bull. June 1986)

Section 207(g) and 208(a)(v) NASAA Statement of Policy on Non-Profit Health Care Facilities Debt Securities

On March 20, 1985, the Commission approved utilization as staff guidelines this Statement of Policy in reviewing registration statements for debt securities of non-profit health care facilities filed under Section 205 or 206 of the 1972 Act.

(PSC Bull. June 1986)

Section 207(j); Regulation 207.101 Continuous Offerings of Securities Under Section 205

To extend the offering period of a registration statement beyond the period specified in Regulation 207.101(a)(1), Form 207-J must be filed with the Commission prior to the expiration of the initial period of effectiveness. In no event may the offering period be extended beyond the effective period of the registration statement filed with the Securities and Exchange Commission.

(PSC Bull. June 1986)

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 01-CF-1
USE OF NASAA RISK DISCLOSURE GUIDELINES
ADOPTED ON SEPTEMBER 9, 2001**

At its October 16, 2001, meeting, the Commission indicated that, where applicable, it will utilize the criteria contained in the NASAA Risk Disclosure Guidelines adopted by NASAA on September 9, 2001, and any amendments thereto with respect to application of Section 208 of the 1972 Act to registration statements filed under Section 205 and 206. The Risk Disclosure Guidelines are as follows:

I. INTRODUCTION

A. Background. The risk factor section of the disclosure document presents two purposes that are often in tension with its use as a selling document. First, risk factors alert the potential investor to all of the material risks involved in the offering that bear on the likelihood of business success and financial return to the investor. Second, risk factors protect the issuer from subsequent claims by investors that they were misled by the information in the disclosure document, either by omission or by affirmative misstatements. These guidelines recognize that many variables affect the determination of when disclosure is adequate in the context of a particular offering. Such variables include, but are not limited to, the nature of the offering and the sophistication of the investor.

B. Purpose of These Guidelines. By disseminating a uniform set of the most basic disclosure standards applied by the member jurisdictions of NASAA in reviewing disclosure documents, the reviewing jurisdictions expect to reduce the number and avoid the repetition of deficiency comments issued to applicants. These guidelines attempt to collect and illustrate in a convenient manner, guidelines that in the past have been accessible only by researching securities regulators' laws and regulations, releases, bulletin letters, published no-action positions and industry treatises.

C. Effect of These Guidelines. These guidelines are intended to provide informal guidance to the public and are not intended to create a standard of civil liability in favor of any private party against any person as a result of lack of adherence to them. A disclosure document not complying with these guidelines, however, may be denied effectiveness by the administrator.

II. FORMAT AND USE OF RISK FACTORS

A. The Risk Factors Should Immediately Follow the Cover or the Summary. Consistent with investor protection, a comprehensive listing of the material risks to the potential investor in the offering should be located at the forefront of the disclosure document upon which an investor will make an investment decision. These guidelines recognize that potential investors often focus on the forefront of the document. When comparing potential investment opportunities, consistency in format of often complex disclosure documents further assists the investor.

B. The Risk Factor Section is a List Identifying the Material Risks Associated with the Offering. The risk factor section should not be a comprehensive discussion of the risks and counterbalancing considerations. Like the summary section, the risk factor section is a summary listing of the material disclosures that are discussed and analyzed in more detail in the appropriate, related sections of the body of the disclosure document. Consistent with this purpose, most risk factors will not be comprehensive discussions of the issues. The risk factor section itself should be limited in length. In order to emphasize the nature of the disclosures as risks, no ameliorative statements should appear in the risk factors.

C. Prioritize. The risk factors that identify risks the potential investor is likely to find most significant should appear at or close to the beginning of the list. Burying factors such as the auditors' "going concern", significant recent losses, or 100% dilution in the middle of a lengthy list of risk factors would be inconsistent with these guidelines.

D. Risk Factor Captions Should Appear in Off-Set Type. As a listing of the material risks of the potential investment, captions should stand out to the eye of the reader. *Italicized*, **bold-face**, or underlined type assists the reader to quickly comprehend the scope and nature of the particular risk factors, and permits the reader to focus further on the risk factors of most interest to that reader. For the same reason, issuers should avoid lengthy captions.

III. RISK FACTOR CONTENT

A. Each Caption Succinctly Identifies the Risky Element of the Factor. The caption should avoid the use of general, boiler-plate language. For instance, “**Competition**” merely identifies the subject of the risk factor. The alternative, “**Established Retailers Have Recently Entered The Company’s Market**”, is specifically tailored to the offering, the nature of the competitive risk, and suggests the negative aspect of the risk. As a topic sentence to the factor, the caption can further streamline and shorten the factor.

B. Specific Cross-References Point the Reader to Complete Discussions of the Issue. Consistent with principles of “Plain English” disclosure, risk factors should not merely repeat *verbatim* disclosure appearing elsewhere in the disclosure document. Where appropriate, the risk factor should be a two or three sentence summary with a cross reference to the discussion appearing elsewhere in the disclosure document. In some cases, there may be no need to repeat the risk factor in the body of the disclosure document. If a risk factor uses multiple cross-references, the references should not then repeat the same disclosure. These guidelines recognize that potential investors often focus interest on disclosure that is of most interest to them, and cross-references assist the potential investor in locating this disclosure.

C. Eliminate General, Boiler-Plate Risk Factors. Include only risks that are material to the particular offering or the particular issuer, and, in narrowly drawn cases, particular to the industry segment. Do not include generic risks such as the absence of past dividends or expectation to pay future dividends by a development-stage company. A generic risk factor that the issuer “faces significant competition from established, well-financed companies with greater resources. . .” is an example of an inappropriate risk factor.

D. Forward Looking Statements. Disclosure in the form of boiler-plate legends frequently appears at the beginning of the risk factor section. As the risk factors constitute the “cautionary language” referred to in the legend, these legends are redundant in the risk factor section. They also detract from a “reader-friendly” introduction to the risk factors, and should be moved to follow the risk factors or to some other section of the disclosure document.

IV. GUIDANCE ON SPECIFIC RISK FACTORS OFTEN APPROPRIATE TO A RISK FACTOR SECTION.

Issuers must analyze appropriate risk factors for each offering on a case-by-case basis. Moreover, there is no single acceptable way to draft disclosure for a particular risk factor. You may find it helpful to refer to the SEC Staff Legal Bulletin No. 7 (Corporation Finance), dated September 4, 1998, and its June 7, 1999 update, entitled “Plain English Disclosure,” for guidance in writing risk factors. You may also find it helpful to refer to Appendix A of the NASAA Small Company Offering Registration (SCOR) Manual.

Section 211 SEC Rule 506 Notice Filings and Investment Company Notice Filings

DIVISION OF CORPORATION FINANCE RELEASE NO. 03-CF-01

SEC RULE 506 NOTICE FILINGS

Conversion of Section 203(d) Filings to Rule 506 Notice Filings

Subsequent to passage of the National Securities Markets Improvement Act of 1996 (NSMIA), staff of the Division of Corporation Finance (Division) received requests by issuers whose offerings were being made in reliance on Section 203(d) of the Pennsylvania Securities Act of 1972 (203-D Filing) to convert their offering to take advantage of federal preemption contained in Section 18(b)(4)(D) of the Securities Act of

1933 (1933 Act), as amended by NSMIA.

Upon filing a complete and executed SEC Form D indicating reliance on SEC Rule 506, Division staff granted the request and “converted” the 203-D Filing to a Rule 506 notice filing in accordance with NSMIA (Rule 506 Filing). The Division did not require payment *de novo* of a filing fee but did require payment of any additional filing fee due if the issuer increased the amount of securities to be offered in Pennsylvania from the amount stated on the original 203-D which would trigger an additional filing fee.

Act 109 of 1998 amended the Pennsylvania Securities Act of 1972 (1972 Act) to conform the 1972 Act provisions to NSMIA (Act 109). Section 211 was adopted which set forth the requirements for Rule 506 Filings and amended Section 602(b.1) to provide a notice filing fee of \$500 for Rule 506 Filings. These provisions of Act 109 became effective January 25, 1999.

Over six years after enactment of NSMIA, Division staff continues to receive requests to “convert” 203-D Filings to Rule 506 Filings. It is the position of the Division that adequate time has been allowed for issuers to become aware of NSMIA and its preemptive provisions. Therefore, the Division no longer will honor requests for conversion of a 203-D Filing to a Rule 506 Filing. In such cases, the Division will require filing of a complete and executed SEC Form D indicating reliance on SEC Rule 506 and payment of the \$500 notice filing fee.

Amendments to Pre-January 25, 1999 Rule 506 Notice Filings

Between October 11, 1996 (effective date of NSMIA) and January 25, 1999, (effective date of Act 109), the maximum filing fee paid by an issuer making a Rule 506 Filing with the Commission was \$400. Effective January 25, 1999, the filing fee increased to a flat \$500.

It is the position of the Division that filing of an amendment to a Rule 506 Filing made with the Commission after October 11, 1996 but prior to January 25, 1999 to increase the offering amount in Pennsylvania will be subject to payment of a notice filing fee of the difference between the amount of the filing fee previously paid and \$500.

For example, an issuer made a Rule 506 Filing with the Commission on December 1, 1997 and paid a \$400 notice filing fee to offer \$1.5 million of securities in Pennsylvania. On December 10, 2002, the issuer files an amendment to its Rule 506 Filing indicating that it now will be offering \$2.5 million of securities in Pennsylvania. It is the Division’s position that the issuer is liable for an additional \$100 notice filing fee (the difference between the \$400 previously paid and the \$500 notice filing fee that became effective on January 25, 1999).

Conversion of Section 203(s) and (t) Filings to Rule 506 Filings

Act 109 adopted two new statutory exemptions. Section 203(s) provides a coordinating exemption for offerings exempt from registration under Section 5 of the 1933 Act pursuant to SEC Rule 505. Section 203(t) provides an exemption for offerings where sales will be made only to Accredited Investors as that term is defined in SEC Rule 501(a). A pre-sale notice filing with the Commission on Commission Form E is required as a condition of availability of each exemption.

If an issuer that has filed Commission Form E to claim an exemption under Section 203(s) or (t) determines at any time after filing Form E with the Commission to make a Rule 506 Filing to claim preemption under NSMIA, it is the Division’s position that the issuer must: (1) file a completed and executed SEC Form D indicating reliance on Rule 506; and (2) pay a notice filing fee of \$500. If the issuer paid a filing fee in connection with the claim of exemption under Section 203(s) or (t), Section 602(b.2) prohibits refunding of that filing fee.

Amendments to Rule 506 Filing Changing Securities to be Offered

The Division has received several Rule 506 Filings wherein the issuer subsequently changes (sometimes many months later) the securities to be offered from those indicated on the original Rule 506 Filing (eg. offering Preferred Stock instead of Common Stock). The question has arisen whether such a change necessitates another Rule 506 Filing and payment of another notice filing fee. In this situation, the Division takes the position that the issuer is making a new offering consisting of a different security. Therefore, the Division will request a new Rule 506 Filing reflecting the new security to be offered and payment of a \$500 notice filing fee.

This position would not apply if the issuer merely is changing (by adding or subtracting) a class or classes of the same security, eg adding Class B Common Stock to an offering previously filed offering only Class A Common Stock.

Rule 506 Filings and PA Offering Amount

Since January 25, 1999, the applicable notice filing fee for Rule 506 Filings is a flat \$500. Therefore, upon payment of the \$500 notice filing fee, the Division will not object to issuers inserting an "indefinite" offering amount on SEC Form D.

INVESTMENT COMPANY NOTICE FILINGS

Act 109 conformed the 1972 Act to the provisions in NSMIA concerning the offering of securities by registered investment companies in Pennsylvania. Section 602(b.1) established notice filing fees for investment companies based upon the amount of securities to be offered in Pennsylvania. In Release No. 97-CF-1 (May 21, 1997), the Commission approved use of Form NF as a uniform notice filing form for investment companies.

Section 210 of the 1972 Act provides for retroactive amendment by a registered investment company of its initial Form NF notice filing in circumstances where the registered investment company sold securities in Pennsylvania in excess of the amount stated on its initial notice on Form NF. Availability of Section 210 is conditioned upon payment of an oversale assessment set forth in Section 602.1(d) (Oversale Assessment).

The Oversale Assessment is calculated as 3x the difference between the notice filing fee that would be payable under Section 602(b.1) for the total amount of securities actually sold in Pennsylvania and the total amount of notice filing fees previously paid by the registered investment company with a minimum assessment of \$350 and a maximum of \$3,000.

A question has arisen whether an Oversale Assessment is due when a registered investment company files under Section 210 for a retroactive amendment to its initial Form NF filing but the notice filing fee under Section 602(b.1) for the amount shown on the initial Form NF and the amount actually sold as detailed on the retroactive amendment is the same.

For example, if a registered investment company filed an initial Form NF indicating an offering of \$10 million of securities in Pennsylvania, the notice filing fee would be \$3,000. Subsequently, the registered investment company files under Section 210 for a retroactive amendment to its initial Form NF to show that it actually sold \$20 million in Pennsylvania. Since the original notice filing fee for \$10 million or \$20 million of securities offered in Pennsylvania is the same (*ie*, \$3,000), should the registered investment company be required to pay an Oversale Assessment under Section 602.1(d) of \$350?

The Division responds in the negative. The Division's position is that it will impose the Oversale Assessment in Section 602.1(d) only where the offering amount indicated on the initial Form NF and the actual amount of securities sold indicated on the Section 210 retroactive amendment would have required payment of two different notice filing fees pursuant to Section 602(b.1).

**DIVISION OF CORPORATION FINANCE
RELEASE NO. 99-CF-1
EFFECT OF OCTOBER 11, 1999, ON ISSUERS THAT FAIL TO REMIT
PROPER FILING FEES IN CONNECTION WITH INVESTMENT COMPANY
FILINGS ON FORM NO AND RULE 506 FILINGS ON SEC FORM D**

Background

There appears to be some confusion among the regulated community as to the effect of October 11, 1999, on the ability of states to continue to receive notice filings and filing fees from investment companies and issuers offering and selling securities in reliance on Rule 506 of Securities and Exchange Commission ("SEC") Regulation D ("Rule 506 Issuers") under the National Securities Markets Improvement Act of 1996 ("NSMIA"). This Release explains the operative effect of October 11, 1999, under NSMIA and re-affirms the authority of the Commission under NSMIA and the Pennsylvania Securities Act of 1972 ("1972 Act") to continue to require notice filings and filing fees from investment companies and Rule 506 Issuers.

Between October 11, 1996, and October 11, 1999, an investment company or a Rule 506 Issuer that refused to pay a filing fee to a state could be forced to comply with the securities registration provisions of that state's securities laws pursuant to Section 18(c)(2)(C)(i) of the Securities Act of 1933 ("1933 Act").

October 11, 1999, marks the end of the effectiveness of this "penalty" provision. After October 11, 1999, an investment company or Rule 506 Issuer that sells securities in a state that requires a notice filing and a fee payment and refuses to pay a filing fee may be subject to the issuance of a state order suspending the offer or sale of securities in the state as permitted by Section 18(c)(3) of the 1933 Act.

Requirements of the Pennsylvania Securities Act of 1972

Section 211 of the 1972 Act, enacted by Act 109 of 1998 and effective January 25, 1999, provides for a notice filing and a fee payment by investment companies and Rule 506 Issuers.

Section 211(a). Investment companies are required by this section to file a notice and remit the filing fee specified in Section 602(b.1)(iv) of the 1972 Act and, if applicable, the administrative assessment in Section 602.1(a)(5). The filing fee varies from \$350.00 to \$4,000.00 depending upon the aggregate offering amount of securities the investment company intends to sell.

Section 211(b). Section 211(b) provides that Rule 506 Issuers must make a notice filing on SEC Form D and pay the filing fee specified in Section 602(b.1)(vii) of the 1972 Act. ***Under Section 602(b.1)(vii) of the 1972 Act, a filing fee of \$500.00 is required of every Rule 506 Issuer wishing to sell securities in Pennsylvania.***

Commission Action under Section 18(c)(3) of the 1933 Act

For an investment company or Rule 506 Issuer that files a notice with the Pennsylvania Securities Commission ("Commission") after October 11, 1999, for which the requisite filing fee was not included or which included a fee payment in an amount which is less than the fee due, the Division of Corporation Finance ("Division") will utilize the following procedures:

1. By the close of business on the day on which the notice is filed with the Commission, the Division will issue a "Notice of Refusal to Pay Fees Under the National Securities Markets Improvement Act of 1996" by fax and certified mail, return receipt requested ("Fee Deficiency Letter").
2. If, within 10 days of the issuer's receipt of the Fee Deficiency Letter, the Division has not received payment from the issuer of the fee or fee deficiency or, if an investment company, an amended Form NF harmonizing the amount of securities on the Form NF to the fee amount originally submitted, a Summary Order to Suspend the Offer and Sale of Securities ("Summary Order") will be issued.

3. The Summary Order will prohibit the issuer from prospectively offering or selling securities in Pennsylvania that are the subject of the fee-deficient notice filing. By its own terms, the Summary Order will expire when the Commission receives the correct filing fee. Upon issuance of the Summary Order, an investment company will not be able to amend its Form NF to harmonize the securities amount with the original fee submitted, but will have to pay the fee owing based upon the securities amount contained in the original Form NF.

(PSC Bull. November 1999)

**PART C. REGISTRATION OF BROKER-DEALERS
AGENTS AND INVESTMENT ADVISERS**

70 P.S. §§1-301--306

64 Pa. Code §§301.010--306.00

Section 301 Broker-dealer Responsibility to Ascertain Registration Status of Investment Advisers Referred to Clients under Wrap Fee Arrangements.

**DIVISION OF LICENSING & COMPLIANCE
RELEASE NO. 91-LC-1**

Through its compliance examination program, the staff of the Division of Licensing & Compliance has become aware that broker-dealers are offering money management services and/or other investment advisory services to their clients through non-affiliated investment advisers. In a typical program, the broker-dealer pre-screens and selects a group of investment advisers representing various investment philosophies and disciplines and assists the client in selecting the appropriate adviser. Often, the client grants discretionary authority to the broker-dealer to assume all duties with respect to assets held in the account. Thereafter, the broker-dealer oversees and monitors the performance of the investment adviser on behalf of its client and may provide to the client a periodic performance analysis. Account execution services are performed by the broker-dealer. The client pays the broker-dealer a fee, commonly known as a "wrap fee", which is based on the assets under management. The fee covers the broker-dealer's services, fees to the investment adviser and all commissions and other charges with respect to transactions.

The staff consistently has found that some or all of the investment advisers referred by broker-dealers to their Pennsylvania clients are not registered as investment advisers under Section 301 of the Pennsylvania Securities Act of 1972 (1972 Act). Further, in many cases, no exclusion from the definition of investment adviser or exemption from registration is available.³¹

The Pennsylvania Securities Commission ("Commission") at its meeting of April 23, 1991, permitted staff to publish the following staff position and staff no-action position:

STAFF POSITION AND STAFF NO-ACTION POSITION

On April 23, 1991, the staff adopted the position that broker-dealers who refer clients to investment advisers as part of a wrap fee or other formalized program or arrangement between the broker-dealer and

³¹ Several investment advisers and broker-dealers have attempted to rely on the "de minimus" client exemption set forth in Section 302(d) of the 1972 Act; however, a review of the investment adviser's records reveals more than 5 retail clients in this state and in some cases, the broker-dealer's own records show discretionary authority agreements and referrals to an investment adviser of more than 5 of its Pennsylvania clients. Further, investment advisers often attempt to rely on the exclusion or exemption involving the provision of investment advice to institutional investors specifically with respect to clients that are small pension or profit sharing plans or trusts. "Institutional investor", as defined in Section 102(k), includes pension or profit sharing plans or trusts; however, the Commission issued an interpretive opinion in July, 1985, which states, in pertinent part:

" . . . the term 'pension or profit sharing plan or trust' as used in Section 102(k) . . . shall apply only in the context of a KEOGH, IRA or SEP which has:

1. plan assets of \$5,000,000; or
2. (a) retained, on an on-going basis, the services of a person knowledgeable and experienced in financial and business matters to render professional investment management advice; and
(b) investment of \$500,000 or more in securities."

the investment adviser are responsible for determining whether the investment adviser is registered with the Commission under Section 301, or whether the investment adviser is relying on an exclusion from the definition of investment adviser under Section 102(j) or exempted from registration under Section 302(d). Failure to ascertain the status of an investment adviser³² that is found to be in violation of Section 301 may result in imposition by the Commission of sanctions against the broker-dealer for aiding and abetting violations of Section 301 and/or failure to reasonably supervise its agents³³.

The staff, however, will not recommend enforcement action to the Commission against a broker-dealer where the broker-dealer as part of a wrap fee or other formalized program or arrangement between the broker-dealer and the investment adviser refers or recommends to a Pennsylvania resident an investment adviser that is in violation of Section 301 if:

The broker-dealer has established procedures, and a system for applying such procedures, which require verification of the registration or exclusion/exemption status of the investment advisers referred to Pennsylvania clients³⁴. At a minimum, if the investment adviser claims registration in Pennsylvania, the broker-dealer should request a copy of the certificate of registration or obtain written confirmation from the Commission. If the investment adviser is claiming an exclusion from the definition of investment adviser or exempt status under the 1972 Act, such as the “de minimus” client exemption under Section 302(d), the broker-dealer may rely on the adviser’s claim unless it has any reason to believe otherwise. For example, if that broker-dealer’s own client referrals to the adviser total more than five (other than broker-dealers, institutional investors, governmental agencies or other investment advisers) then the broker-dealer may not rely on the investment adviser’s claim of exemption from registration.

(PSC Bulletin April 1991)

Section 301 - Registration of Financial Planners

The Pennsylvania Securities Commission is aware that much confusion exists with respect to whether a person or entity that holds itself out as a “financial planner” or uses some similar term is required to be registered as an investment adviser under the Pennsylvania Securities Act of 1972 (“1972 Act”). In order to clarify its position, the Commission offers the following guidance:

A person or entity must be registered with the Pennsylvania Securities Commission as an investment adviser when compensation is received as part of their business activity for rendering advice as to the value of securities³⁵ or as to the advisability of investing in, purchasing, or selling securities (whether such advice relates to specific securities or categories of securities). The foregoing applies equally to persons holding themselves out as financial planners (or some similar term) to the degree they receive compensation³⁶ for rendering advice concerning securities.

A registered agent of a registered broker-dealer is not required to register as an investment adviser if both (1) the agent engages in all advisory activities exclusively on behalf of the registered broker-dealer and (2) the activities are effected exclusively through the books and records of the registered broker-dealer. An agent who holds himself out individually as a financial planner (or some similar term)

³² This determination should include an inquiry as to the specific exclusion or exemption being relied upon by the investment adviser.

³³ Where an agent of a broker-dealer makes a casual referral of an investment adviser to a customer, without the knowledge of the broker-dealer, not as part of a formalized program or arrangement between the broker-dealer and the investment adviser, and without compensation to the broker-dealer and/or the agent, the staff of the Commission would not view the referral as a breach of supervisory responsibility by the broker-dealer. However, a broker-dealer, as part of its supervisory practices, should alert agents to the registration requirements for investment advisers.

³⁴ An investment adviser’s claim of registration or exclusion/exemption status need be verified by the broker-dealer only once. It is not necessary for a broker-dealer to perform periodic inquiries into an adviser’s current status unless the broker-dealer has reason to believe that the adviser no longer is registered or the exclusion or exemption has become unavailable.

³⁵ “Securities include, among other things, stocks, bonds, notes, limited partnership interests, mutual funds, and money market funds. [See Section 102(t) of the 1972 Act.]

³⁶ This compensation element is satisfied by the receipt of any economic benefit, whether in the form of an advisory fee or some other fee relating to total services rendered, commissions on products sold as a result of the investment advice, or some combination of the foregoing. It is not necessary that a person who provides investment advisory and other services to a client charge a separate fee for the investment advisory portion of the total services. The compensation element is satisfied if a single fee is charged for a number of different services, including investment advice. [See U.S. Securities and Exchange Commission Release No. IA-1092.]

and who receives compensation for rendering advice concerning securities must be registered as an investment adviser.

There are certain exclusions and exemptions from registration as an investment adviser contained in Sections 102(j) and 302(d) of the 1972 Act.

The Division of Enforcement and Litigation is contacting persons and entities who are registered as investment advisers with the U.S. Securities and Exchange Commission, located in Pennsylvania, and not registered with the Pennsylvania Securities Commission. Enforcement proceedings will be instituted against persons violating the 1972 Act.

Persons required to register as investment advisers may obtain a registration kit by contacting:

Pennsylvania Securities Commission
DIVISION OF LICENSING AND COMPLIANCE
1010 N. Seventh Street
Eastgate Office Building, 2nd Fl.
Harrisburg, PA 17102-1410

(PSC Bull. July 1989)

Section 303(c); Regulation 303.031 Uniform Securities Agent State Law Examination (“USASLE”)

On July 8, 1985, the Commission approved the use of the following Guidelines by the Division of Licensing in recommending that the Commission grant or deny a request for a waiver of the requirement for agent applicants to take and pass the USASLE examination:

1. The Division of Licensing will recommend that the Commission grant a request for waiver of the USASLE in those cases where the agent:

(a) has no disciplinary background which would result in the agent’s application being considered under the Commission’s Special Agent Review Program; and

(b) has not been the subject of customer complaint(s) or has no derogatory information in the files of the agent’s resident state; and

(c) has 10 or more years continuous experience in the investment banking industry;
or

(d) has previously passed the USASLE and has at least five (5) years experience in the securities industry even though the agent’s employment in industry was not continuous (lapse of over 2 years but less than 4 years); or

(e) has previously passed the USASLE and, prior to the date of employment with a broker-dealer, has not been “out of the business” for a period exceeding two (2) years; or

(f) at the time of the filing in PA has maintained continuous employment in the industry subsequent to the date of passing the USASLE.

2. The Division of Licensing will recommend that the Commission deny a request for waiver of the USASLE in those cases where the agent;

(a) has disciplinary background which would result in the agent’s application being considered under the Commission’s Special Agent Review Program; or

(b) has been subject of customer complaint(s) or has derogatory information in the files of the agent’s resident state; or

(c) has less than 10 years experience in the securities industry; or

(d) has previously passed the USASLE; has less than five (5) years experience in the securities industry; and has permitted his employment in the industry to lapse over 2 years but not more than 4 years.

Requests for waiver of the USASLE for any reason not covered in items 1 and 2 will be considered on a case-by-case basis.

(PSC Bull. June 1986)

Regulation 303.042 Use of Investment Adviser Subordination Agreements to Meet Net Capital Requirements

**OFFICE OF CHIEF ACCOUNTANT
RELEASE NO.: 92-CA-1**

In response to inquiries by investment advisers and their attorneys and accountants regarding the use of subordination agreements to meet the net capital requirements of investment advisers, the Commission on May 27, 1992, permitted publication of the following staff position:

Subordination agreements that have been prepared and executed in a manner consistent with Appendix D of SEC rule 15c3-1 (17 CFR 240.15c3-1d), which sets forth the minimum requirements for satisfactory subordination agreements of broker dealers, are a special type of liability of an investment adviser.

The liability with respect to such subordination agreement is reflected on the investment adviser's balance sheet as a subordinated loan, which may be added to net worth for purposes of meeting the net capital requirements of Commission Regulation 303.042 (64 Pa. Code §304.042).

Included in the various provisions of Appendix D is the requirement that, to the extent that such borrowings under a subordination agreement are required for the investment adviser's continued compliance with the minimum net capital requirements, they may not be repaid.

A subordination agreement may be entered into for cash (a subordinated loan agreement) or securities (a secured demand note agreement).

Subordinated Loan Agreements

A subordinated loan agreement is an agreement evidencing or governing a subordinated borrowing of cash by the investment adviser whose obligation to repay the subordinated loan to the lender is reflected on the investment adviser's balance sheet as a liability. For purposes of computing net capital, the subordinated loan may be added to net worth.

Secured Demand Note Agreements

A secured demand note agreement is an agreement evidencing the contribution of a secured demand note by a lender to the investment adviser and the pledge by the lender of securities with the investment adviser as collateral to secure payment of such secured demand note.

The secured demand note is reflected as an asset on the balance sheet of the investment adviser with the underlying collateral being described in a footnote; the investment adviser's obligation to repay the subordinated loan to the lender, which is in the same amount as the secured demand note, is reflected as a liability.

The subordinated loan liability may be added to net worth for purposes of computing net capital; however, any excess of the face amount of the secured demand note over the haircutted value of the collateral must be subtracted from net worth in the computation of net capital.

Investment advisers are cautioned, however, that borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds may constitute a dishonest or unethical practice pursuant to Commission Regulation 305.019 (c) (3) (vi).

(PSC Bull. May 1992)

Section 305(a)(ix) Tournaments for Investors

COMMISSION STATEMENT OF POLICY

The Commission believes that tournaments for investors being conducted by brokerage firms change the concept of investing to merely a gaming activity. The Commission believes that such tournaments could take unfair advantage of a client by inducing them to make highly speculative investment decisions in order to win the tournament as compared to more selective investment decisions designed for a reasonable economic return on investments. Further, such tournaments could result in excessive trading by investors which would then generate excessive commissions for the broker-dealer likewise taking unfair advantage of the client.

(PSC Bull. Sept. 1985)

PART D. FRAUDULENT AND PROHIBITED PRACTICES

70 P.S. §§1-401--407

64 PA. CODE §§401.020--404.020

Section 403 Prohibited advertising by agents

Agents may not advertise in newspapers or yellow pages under their own name.

(PSC Bull. Feb. 1974)

PART E. ENFORCEMENT

70 P.S. §§1-501--511

64 PA. CODE §§501.011-511.000

Sections 504(d) and (e) Rescission offers made pursuant to Regulation 504.060; Staff Interpretations and Commission Interpretive Opinion

DIVISION OF CORPORATION FINANCE

RELEASE NO.: 90-CF-1

BACKGROUND

Final rulemaking on extensive amendments to Commission regulation 504.060 is expected to become effective by June 30, 1990. In conjunction with the effectiveness of these amendments, the Commission, on June 20, 1990, permitted staff to make the following interpretations and issued an Interpretive Opinion with respect to rescission offers made pursuant to Sections 504(d) and (e) of the Pennsylvania Securities Act of 1972 (1972 Act) and Commission Regulation 504.060.

STAFF INTERPRETATIONS

I. Regulation 504.060(b)(1).

It is the position of the Division staff that the provisions of Subsection (b)(1) of the Regulation is available as long as the securities which are the subject of the rescission offer (emphasis added) were not sold to and purchased by more than 35 persons in Pennsylvania during a period of 12 consecutive months.

For instance, a broker-dealer, which was involved in securities transactions which are now the subject of a rescission offering being made by that broker-dealer, may utilize this section as long as sales of the securities which are the subject of the rescission offer being made by the broker-dealer were not effected to more than 35 purchasers in Pennsylvania during a period of 12 consecutive months.

For example, if one broker-dealer sold in violation of Section 201 to 20 persons in Pennsylvania during a 12 consecutive month period and another unaffiliated broker-dealer sold securities of the same issuer to 30 persons in Pennsylvania during the same 12 consecutive month period, the provisions of this regulation would be available for the rescission offer being made by each broker-dealer. The provisions of this section would not be available if the broker-dealer making the rescission offer had sold the securities to 40 persons in Pennsylvania during a consecutive 12 month period.

II. Violations of Section 201 of the 1972 Act.

It is the position of the Division staff that a Section 201 violation includes the **FAILURE** to meet all conditions of an exemption enumerated in the 1972 Act or Regulations promulgated thereunder.

III. Compliance with Section 504(d) of the 1972 Act.

It is the position of the Division staff that compliance with Regulation 504.060 is required in order to obtain the benefit of termination of civil liability under Section 504(d) of the 1972 Act. Further, it is the position of the Division that neither Section 504(d) nor Section 504(e) preclude resolution of aggrieved parties pursuant to privately-negotiated settlements.

IV. Confidentiality.

Under Section 603(c) of the 1972 Act, all information contained in filings made with the Commission is publicly available unless, upon proper showing, the Commission determines to treat the information filed as confidential. Historically, the Commission has supported the public policy embodied in the 1972 Act and has treated only a minuscule amount of information received in filings as confidential.

In granting confidential treatment, the Commission reviews each request individually and seeks to narrow the content of any grant of confidentiality to only that which is absolutely necessary to protect trade secrets, disclosure of information subject to certain legal privileges (e.g. attorney-client), profits margins and other traditionally non-public, commercially sensitive information.

V. Counting of Offerees and Purchasers After A Rescission Offer.

Where an issuer which has made a rescission offer under Section 504(d) with respect to a possible violation of Section 201 plans to continue the offering which was the subject of the rescission offer, Division staff has been asked how the rescission offer will be viewed in light of the numerical limitations set forth in Sections 203(d) and (e) of the 1972 Act.

Section 203(d) of the 1972 Act provides that purchases of securities registered under the 1972 Act or sold in reliance upon an exemption other than Section 203(d) or (e) shall not be included in computing the numerical limitations set forth in Section 203(d). Accordingly, offers and sales made in violation of Section 201 must be included for purposes of computing the numerical limitations set forth in Sections 203(d) and (e).

Making a rescission offer for a Section 201 violation does not constitute a re-offering of the security. Therefore, for purposes of computation, the date on which the initial Section 201 violation occurred is controlling.

VI. Who May Make a Rescission Offer?

Generally, anyone can make a rescission offer.

Although the rescission offeror generally will be a person who was involved in the transactions which gave rise to the rescission, it is not necessary for purposes of Section 504(d) and Regulation 504.060. An offeror utilizing those provisions need not have any previous or current affiliation with the issuer or any broker-dealer which may have effected transactions in the securities now subject to the rescission offer.

VII. Commission Interpretive Opinion.

On June 20, 1990, the Commission issued an Interpretive Opinion on Non-Response or Affirmative Rejection of Offers made pursuant to Section 504(d) or (e) of the Pennsylvania Securities Act of 1972 and Commission Regulation 504.060.

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA SECURITIES COMMISSION**

Non-Response or Affirmative Rejection of
Offers made Pursuant to Section 504(d)
INTERPRETIVE
or (e) of the Pennsylvania Securities Act
OPINION
of 1972 and Commission Regulation 504.060

WHEREAS, Sections 504(d) and (e) of the Pennsylvania Securities Act of 1972 (1972 Act) state that no purchaser or seller, respectively may commence an action under Section 501, 502 or 503 of the 1972 Act if, before suit is commenced, the purchaser or seller has received a written offer to rescind the transaction which would be the subject of the action which conforms to the requirements of those sections; and

WHEREAS, A requirement of Sections 504(d) and (e) is that the offer made pursuant to those sections remain open for acceptance for a period of not less than 30 days from receipt of the offer; and

WHEREAS, The Pennsylvania Securities Commission (Commission) has received requests from the securities bar for an interpretation as to the effect of a non-response to an offer made under Section 504(d) or (e) within 30 days of receipt thereof or an affirmative rejection of such an offer on the offeree's rights within 30 days of receipt thereof on the offeree's rights to a remedy under the provisions of the 1972 Act; and

WHEREAS, The Commission, after due deliberation, has determined that it is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue the following Order:

NOW, THEREFORE, The Commission, on June 20, 1990, pursuant to Section 604 of the 1972 Act, orders that an Interpretive Opinion be issued which interprets that a non-response to a offer made under Section 504(d) or (e) of the 1972 Act within 30 days of receipt thereof or an affirmative rejection of such an offer within 30 days of receipt thereof as terminating the offeree's right to a remedy under the provisions of the Pennsylvania Securities Act of 1972.

(PSC Bull. June 1990)

PART F. ADMINISTRATION

70 P.S. §§1-601-610

64 PA. CODE §§601.010-610.010

Section 606(c) Money market funds which make comparisons to banking deposits and certificates

The Commission recognizes the very substantial differences which exist between money market funds and banks as that latter term is defined in Section 102(d) of the 1972 Act. The Commission believes that such funds should avoid simplistic comparisons and bold claims of superiority over bank investments in advertisements designed to solicit investors in the fund. Should a fund choose to

compare a bank deposit or bank certificate with a fund investment, the Commission believes that the advertisement should contain all of the significant advantages and disadvantages involved in a fair and balanced presentation. At the minimum, the advertisement should disclose the following:

1. The investor's principal is insured in a bank but not in a Fund.
2. The yield to an investor in a Fund will likely vary up or down during the course of the investment whereas the interest paid to an investor on a bank certificate is at a fixed rate for the term of the investment.
3. The underlying investments in a Fund are the sole source of the return to investors and, accordingly, such underlying investments not only determine the rate of return but also establish the degree of risk involved.
4. Any statement of yield shall be accompanied with an explanation as to how the yield is computed along with any additional information necessary to fairly evaluate the yield, including a reference to such risks as may be involved in ownership of the security.
5. Funds invested in bank deposits and bank certificates are not subject to Pennsylvania Personal Property Taxes whereas investments in Funds may be subject to Pennsylvania Personal Property Taxes.
6. The character and the composition of the above, including yield figures, shall be such as to accurately inform without overemphasizing particular advantages or under-emphasizing particular disadvantages.
7. In order for the differences between the bank investments and Fund investments to remain clear in the minds of investors, Funds should avoid using banking terminology including, but not limited to, "deposits" and "interest" in describing the attributes of the Fund.

Advertising for purposes of these guidelines includes all advertisements as defined in §102(a) of the 1972 Act (including Securities and Exchange Rule 434d materials and sales literature being sent by direct mail pursuant to the Securities Act of 1933, as amended) which are published, as that term is defined in §102(p) of the 1972 Act, in this State within the meaning of §702(d) of the 1972 Act. These guidelines should not be construed to permit any advertisements other than those that are disseminated in accordance with the provisions of Commission's Regulation 606.031. The dissemination of any such advertisement in this State which does not meet these guidelines may be deemed by the Commission to violate the provisions of §606(c) of the 1972 Act.

The Commission wishes to emphasize that nothing in these Guidelines should be construed as a conflict with the requirements of SEC Rule 434d (17 C.F.R. 230.434d) with respect to the inclusion of standardized yield computations in money market fund advertisements. Similarly, nothing in these Guidelines is intended to suggest that the disclosures set forth in footnote 4 to SEC Release No. 33-6243 (45 Fed. Reg. 67,079 (October 9, 1981)) are not important or should not be included in the disclosure.

(11 Pa.B 2425)

Section 606(c) Advertisements in connection with the offer and sale of retail repurchase agreements issued by banks and credit unions

To: All Pennsylvania Bank³⁷ and Credit Unions

From: Pennsylvania Securities Commission

Re: Advertisement of Retail Repurchase Agreements

³⁷ A bank means any bank, banking and trust company, savings bank, trust company or private bank, as defined in the Banking Code of 1965, act of November 30, 1965 (P.L. 847), or any savings and loan association, as defined in the Savings Association Code of 1967, act of December 4, 1967 (P.L. 746), or any successor statutes thereto, or any banking institution, trust company or savings and loan institution organized under the laws of the United States, or of any state, territory or the District of Columbia, or a receiver, conservator or other liquidating agent of any of the foregoing.

On January 23, 1982, the Commission published in the Pennsylvania Bulletin Guidelines for the publication and distribution of advertisements in connection with the offer and sale of retail repurchase agreements issued by banks and credit unions (the Guideline is included below). Recently, there has been a substantial influx of banking institutions offering retail repurchase agreements under various marketing labels which do not use the term retail repurchase agreement. Any of these “new products” combine retail repurchase agreements with other bank services. The commission believes that many of these retail repurchase agreement offerings fail to comply with the Commission’s Guidelines and do not adequately apprise the investor of the risks involved or the nature of the retail repurchase agreement. Accordingly, the Commission is republishing and redistributing the Guidelines and expects all banks and credit unions to fully and completely adhere to these Guidelines.

Of special concern to the Commission is the possibility that the investor’s interest in the collateral underlying the retail repurchase agreements has not been properly perfected under applicable state law. Since recent court decisions have indicated that an investor with an improperly perfected or unperfected interest in the collateral underlying the retail repurchase agreements has the same standing as a general unsecured creditor of a bank or credit union, full and adequate disclosure of the method of perfection or the absence of perfection and the attendant risks and implications thereof is required.

The Commission will take immediate enforcement action for violations of Section 401(b) of the 1972 Act (securities disclosure fraud) against any bank or credit union where it is determined that the investor’s interest in the collateral underlying the retail repurchase agreement has not been perfected under applicable state law and where the bank or credit union either (1) knew that such interest had not been perfected and failed to disclose that fact to the investors or (2) believed that such interest had been perfected but failed to disclose to the investors of the possibility and consequences should that belief prove to be erroneous.

Section 606(c) Guidelines for the publication and distribution of advertisements in connection with the offer and sale of retail repurchase agreements issued by banks or credit unions

On December 6, 1983, the Commission directed that the following Guidelines be republished:

Advertising published or distributed in connection with the offer and sale of retail repurchase agreements issued by banks under Section 202(b) of the 1972 Act (70 P.S. §1-202(b)) or credit unions under Section 202(d) of the 1972 Act (70 P.S. §1-202(d)) should contain the applicable information specified in paragraphs (1)-(5). For purposes of these guidelines, retail repurchase agreement shall mean an evidence of indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase, which is described in the Federal Reserve Board’s regulation 12 C.F.R. §207.1(f) (2) (1980), the Federal Deposit Insurance Corporation’s regulation 12 C.F.R. §329.10(b)(2) (1980) or the National Credit Union Administration’s regulation 12 C.F.R. §701.38 (1980).

The following information should be contained in the advertising:

(1) A prominent statement that the retail repurchase agreement is not a deposit, is not insured by the FDIC or the FSLIC, and is not guaranteed in any way by the United States Government or any agency or instrumentality thereof. Language generally associated with deposits should be avoided to prevent creating the impression that insured deposits are being offered.

(2) A statement that the interest being paid by the bank or credit union to the purchasers is subject to Federal, State and, if applicable, local taxes and that the value of the retail repurchase agreement itself may be subject to other local taxes.

(3) Where the advertisement refers to the underlying collateral, the following should be included:

- (i) If there is a possibility that the retail repurchase agreement may become undercollateralized, a statement to that effect should be included.
- (ii) If the security interest in the underlying collateral has not been perfected under applicable State law, a statement to that effect should be included.
- (4) The character and composition of the entire advertisement should be such as to accurately inform without misleading or overemphasizing any particular aspect of the offering.
- (5) A statement that a prospectus, offering circular, or written disclosure document describing the retail repurchase agreement can be obtained at the bank or credit union and should be read carefully before any investments are made. In order to avoid potential violation of Section 401(b) of the 1972 Act (70 P.S. §1-401(b)), the prospectus, offering circular, or written disclosure document should fully disclose all material information regarding the retail repurchase agreement offering, including but not limited to, if applicable, the following:
- (i) Background information regarding the bank or credit union and its financial condition.
- (ii) The nature and terms of the retail repurchase agreement including minimum investment denominations, interest rates, maturities, and prepayment fees.
- (iii) A detailed explanation of the material aspects of the transaction.
- (iv) A specific and accurate identification of the particular collateralized security underlying the retail repurchase agreement and the actual or approximate value thereof. Such information need not, however, be included in the disclosure document if disclosed in writing to the purchaser at the time of the sale.
- (v) A statement that the retail repurchase agreement is an obligation of the issuing bank or credit union and that the underlying security serves as collateral.
- (vi) A statement indicating whether the security interest of the purchaser in the underlying collateral has been perfected under applicable State law and, if it has not been perfected, an explanation of the possible consequences of such lack of perfection.
- (vii) A statement that the purchaser may become an unsecured creditor of the bank or credit union to the extent the market value of the purchaser's security interest in the underlying collateral falls below the amount owed to such purchaser at the maturity of the retail purchase agreement.
- (viii) A statement that the bank or credit union will pay a fixed amount including interest on the purchase price regardless of any fluctuation in the market price of the underlying collateralized security.
- (ix) A statement that the interest rate paid is not that of the underlying collateralized security.
- (x) A statement of the specific source of the funds which will be used to repay the obligation of the bank or credit union, specifically whether the proceeds from the sale of the underlying collateralized security or the general assets of the bank will be used.
- (xi) A prominent statement that the retail repurchase agreement is not a deposit, is not insured by the FDIC, the FSLIC, or the NCUA, and is not guaranteed in any way by the United States Government or any agency or instrumentality thereof. Language generally associated with deposits should be avoided to prevent creating the impression that insured deposits are being offered.
- (xii) A statement that the interest being paid by the bank or credit union to the purchasers is subject to Federal; State; and, if applicable, local taxes.

(xiii) Statements containing language generally associated with funds registered under the provisions of the Investment Company Act of 1940 should be avoided unless it is accompanied by a specific statement that the retail repurchase agreement is not being offered and sold pursuant to a registration filed under 15 U.S.C. §8a 2.

(12 Pa.B. 426; 13 Pa.B. 743; PSC Bull. Jan./Feb. 1983)

Section 606(c) Prohibited use of question and answer procedures to solicit investment notes registered under Section 205

IN THE MATTER OF: TEFAHOT ISRAEL MORTGAGE BANK LIMITED (New York, NY)

Tefahot Israel Mortgage Bank Limited requested the Commission to review and approve for use potential offerees of its Redeemable Investment Notes ("Notes") for the purpose of soliciting indications of interest regarding the Notes. Tefahot further intends to distribute its Prospectus to persons indicating such interest. The Notes were registered under Section 205 of the 1972 Act. On August 24, 1977, the Commission denied Tefahot's request to review and approve the Brochure for use in Pennsylvania.

(PSC Bull. July/Aug. 1977)

Section 606(c) Advertisement of securities offered under Section 202(e) in nationally distributed publications

A Staff no-action letter approved by the Commission for release on October 22, 1984 held that securities, which were to be offered pursuant to Section 202(e) of the 1972 Act, could be advertised under Section 606(c) in a nationally distributed publication published in Pennsylvania as long as circulation of said publication in Pennsylvania would be incidental to a nationwide distribution.

(PSC Bull. December 1984)

Section 606(c); Section 301 Advertisements Offering U.S. treasury bonds; staff interpretation

Advertisements offering U.S. Treasury Bonds in connection with the purchase of a product may violate various provisions of the 1972 Act, A person using this technique must comply with the broker-dealer registration requirements of Section 301 of the 1972 Act. In addition, such advertisements must comply with Section 606(c) of the 1972 Act and must not contain false or misleading statements, or omit statements necessary in order to make the statements, in light of the circumstances under which they are made, not misleading.

(PSC Bull. July/Aug. 1984)

Section 606(c) and Regulations 606.031 and 606.033 Statement of exemption from federal taxation permissible

In a No-Action letter dated February 5, 1982, Commission staff stated that it would not recommend enforcement action to the Commission if a statement as to the exemption from federal taxation appeared in any advertising published or distributed in connection with the offer and sale of a debt security which is exempt from registration under Section 202(a) of the 1972 Act.

(PSC Bull. Jan./Feb. 1982)

Section 607 Informal Hearings

On January 14, 1981, the Commission revoked the policy published at **PSC Bull. Sept.-Oct. 1976** in which requests for an informal hearing before or meeting with the Commission had to be accompanied by an undertaking to underwrite the cost of stenographic services required for a preparation of the transcript of the meeting together with three copies for the Commission.

The Commission determined that persons engaged in an informal hearing before or meeting with the Commission may make valid statements to the Commission without requiring the presence of a public stenographer. The Commission may request, however, that the person appearing before the Commission memorialize any agreements, undertakings or representations made at such time through a subsequent written letter to the Commission. The Commission also affirmed its policy of not agreeing to hear anyone informally upon the initial presentment of an issue by staff. If no resolution is made after

initial consideration, the Commission will hear informally the person involved or its representatives at a subsequent Commission meeting.

(PSC Bull. June 1986)

Section 609(c) Guidelines for financial statements of non-profit organizations filing a registration statement under Section 205 or 206 of the 1972 Act

Financial statements of non-profit organizations filing registration statements under §205 or §206 of the 1972 Act are subject to the same regulations as financial statements of profit making entities. Accordingly, statements of non-profit organizations must be prepared in accordance with the 1972 Act and the Regulations, particularly Section 609(c) of the 1972 Act and Regulations §609.031, §609.032, §609.033, §609.034 and §609.036. However, the 1972 Act and Regulations are expressed in language more appropriate to commercial and industrial enterprises than to churches, schools, hospitals, voluntary health and welfare organizations, and other eleemosynary institutions. Accordingly, the purpose of this guideline is to present the views of the staff of the Commission as to how the 1972 Act and Regulations relating to financial statements should be interpreted and applied to non-profit organizations.

I

Statements to be Filed

The required financial statements are described in Regulation §609.034. These statements as they apply to non-profit organizations are as follows:

1. A balance sheet of the issuer, dated within 120 days of the date of filing with the Commission. If such balance sheet is not certified, there shall be filed, in addition, a certified balance sheet as of the registrant's last fiscal year unless such last fiscal year ended within 90 days of the date of filing, in which case there shall be filed a certified balance sheet as of the end of the registrant's next preceding fiscal year.

2. The following statements must be prepared for each of the three fiscal years or less, if the issuer and its predecessors have been in existence for less than three years preceding the date of the latest balance sheet filed and for the period, if any, between the close of the latest of such fiscal years and the date of the latest balance sheet filed. These statements shall be certified up to the date of the latest certified balance sheet filed. In addition, the following statements must also be filed for each of the two fiscal years, or less, if the issuer and its predecessors have been in existence for less than five years, preceding the date of the earliest of such certified statements filed as set forth above:

(a) An income statement or its equivalent which could include by way of illustration:

(i) A Statement of Current Funds Revenues, Expenditures and Other Changes (Educational Institutions); or

(ii) A Statement of Support, Revenue, and Expenses and Changes in Fund Balance (Voluntary Health and Welfare Organizations); or

(iii) A Statement of Revenues and Expenses (Hospitals); or

(iv) Any other statement format or presentation which is appropriate under the circumstances provided that it shows the excess of support, revenue and other additions over expenses and other deductions.

It may be useful to provide supplementary financial information such as an analysis of functional expenses.

(b) A Statement of Changes in Financial Position.

(c) A Statement of Changes in Fund Balances. In some cases this may be combined with the Statement of Support, Revenue and Expenses.

II

Generally Accepted Accounting Principles

Both the 1972 Act and Regulations require that financial statements be prepared in accordance with generally accepted accounting principles. Accordingly, the principles set forth in pronouncements of authoritative sources such as the opinions of the Accounting Principles Board, Accounting Research Bulletins and Statements and Interpretations of the Financial Accounting Standards Board ("FASB") and other authoritative sources should be applied unless the subject matter is not applicable.

For registrants in industries for which audit guides have been published, the financial statements should be prepared in accordance with the principles and practices required in those guides. These include Hospital Audit Guide (1972), Audits of Colleges and Universities (1973) and Audits of Voluntary Health and Welfare Organizations (1974). All of the foregoing were published by the American Institute of Certified Public Accountants ("AICPA"). Another audit guide of the AICPA, Audits of State and Local Governmental Units (1974) may have some limited value. On April 1, 1978 the AICPA published an exposure draft of a proposed statement of position entitled Accounting Principles and Reporting Practices for Non-Profit Organizations Not Covered by Existing AICPA Industry Audit Guides. On December 31, 1978 the AICPA published the Statement of Position entitled Accounting Principles and Reporting Practices for Certain Non-Profit Organizations.

Some of the accounting principles which the staff feels must be followed (unless otherwise prescribed by a relevant audit guide) include (but of course are not limited to) the following:

1. Fund accounting should be used,
2. The accrual basis of accounting should be followed.
3. Pledges receivable should be recorded as assets and reported at their net realizable value.
4. Fixed assets are to be capitalized at cost. In the absence of actual historical cost information, the assets should be stated at estimated historical costs.
5. Fixed assets should be depreciated over their estimated useful life.

(PSC Bull. Sept./Oct. 1978)

OFFICE OF THE CHIEF ACCOUNTANT RELEASE NO: 12-OCA-1

SUBJECT

Commission Guidelines Regarding the Use of Non-GAAP Financial Measures and to which Staff must Apply Analysis and Review Pursuant to §609(c) of the 1972 Act for Registration Statements Filed under §205 and §206 of the 1972 Act and in Offerings Exempt from Registration under §202(a), §203(d), §203(p), or 203(o).

BACKGROUND

The Pennsylvania Securities Commission seeks to ensure that prospective investors receive honest, full and fair disclosure of all material information concerning investments through the review of registration and exemption offering material filed with the Division of Corporation Finance and the Office of the Chief Accountant. The Office of the Chief Accountant Staff (staff) has noted the proliferation of financial information and informal financial statements within the materials filed with the Commission that are not in accordance with generally accepted accounting principles (GAAP) and are represented by issuers as comprising their financial position, financial performance or cash flow performance. The SEC has recently promulgated regulations and issued guidelines related to the use of non-GAAP financial

measures. Accordingly, the purpose of this Release is to present the views of the staff of the Commission with respect to the use of non-GAAP financial measures, consistent with the position of the SEC.

STAFF POSITION

USE OF NON-GAAP FINANCIAL MEASURES IN COMMISSION FILINGS UNDER SECTIONS 202(a), 203(d), 203(p), 203(o), 205, or 206.

Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(1) The filer must include the following in the filing:

(i) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(ii) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (1)(i) of this position;

(iii) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(iv) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (1)(iii) of this position.

Notes to Section (1):

1. If a non-GAAP financial measure is made public orally, telephonically, by webcast, by broadcast, or by similar means, the requirements of sections (1)(i) and (1)(ii) of this section will be satisfied if:

(i) The required information in those paragraphs is provided on the filer's web site at the time the non-GAAP financial measure is made public; and

(ii) The location of the web site is made public in the same presentation in which the non-GAAP financial measure is made public.

2. In order to overcome the burden of demonstrating the usefulness of non-GAAP financial measures, included in section (1)(iii), a company must be able to demonstrate that it utilizes the non-GAAP financial measure to internally evaluate performance. If the company is able to overcome this hurdle, and the non-GAAP measure does not violate any of the other prohibitions, the information, in order to not be misleading, should include the following disclosures:

(i) The manner in which management uses the non-GAAP measure to conduct or evaluate its business;

(ii) The economic substance behind management's decision to use such a measure;

(iii) Material limitations associated with the use of the non-GAAP financial measure as compared to the use of the most comparable GAAP financial measure;

(iv) The manner in which management compensates for these limitations when using the non-GAAP financial measure; and

(v) The substantive reasons why management believes the non-GAAP financial measure provides useful information to investors.

(2) A filer must not:

(i) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);

(ii) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

(iii) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(iv) Present non-GAAP financial measures on the face of any pro forma or prospective financial statements or information required to be disclosed under Commission Regulation §609.010; or

(v) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

(3) A filer, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

(4) For purposes of this position, a non-GAAP financial measure is a numerical measure of a filer's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(5) For purposes of this position, GAAP refers to generally accepted accounting principles in the United States, except that

(i) in the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) in the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this position to the disclosure of that measure.

(6) For purposes of this position, non-GAAP financial measures exclude:

(i) operating and other statistical measures; and

(ii) ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(iii) Non-GAAP financial measures do not include operating or other statistics that are not financial in nature. They also do not include measures that are based on GAAP information. The following are examples, although not all inclusive, of items that do not meet the definition of a non-GAAP financial measure:

- Numbers of employees, subscribers, advertisers, stores or customers;
- Return on sales or gross margin computed using GAAP amounts;
- Debt repayments that have been planned, but are not yet made;
- Estimated revenues or expenses of a new product line when the estimates are based on GAAP;
- Measures of profit or loss and total assets for each segment that are disclosed in accordance with GAAP (i.e., Topic 280, Segment Reporting);
- Sales per square foot or sales per employee (assuming the sales figures were calculated in accordance with GAAP);
- Same store sales (again assuming the sales figures for the stores were calculated in accordance with GAAP);
- Operating margin calculated by dividing GAAP revenue into GAAP operating income; and
- Any financial measure required by GAAP, SEC or other system of regulation (e.g., regulatory measures of capital or reserves).

(7) For purposes of this position, non-GAAP financial measures exclude financial measures required to be disclosed by GAAP or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the filer. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.

(8) The requirements of this position shall not apply to investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

**OFFICE OF THE CHIEF ACCOUNTANT
RELEASE NO: 12-OCA-2**

SUBJECT

Commission Guidelines Regarding the Use of Parent Company Financial Statements that is the Sole Guarantor of its Wholly-owned Finance Subsidiary's Securities and to which Staff must Apply Analysis and Review Pursuant to §609(c) of the 1972 Act for Registration Statements Filed under §205 and §206 of the 1972 Act.

BACKGROUND

The Pennsylvania Securities Commission fosters legitimate capital formation through adequate review of registration and exempt offering material filed with the Division of Corporation Finance and the Office of the Chief Accountant, and requires the offering material to include financial statements of the issuer of the securities. Some parent companies in the past have attempted to raise capital through offerings of securities by a subsidiary that are guaranteed by the parent company. In such situations, because guarantees are securities themselves for purposes of the 1972 Act, offering material must include financial information of both the parent and subsidiary companies. However, the Commission on a case-by-case basis has allowed financial subsidiaries issuing securities guaranteed by the parent to include only financial information of the parent company, consistent with SEC Regulation S-X Rule 3-10(b). The purpose of this guideline is to apply this position generally.

STAFF POSITION

FINANCIAL STATEMENTS OF A PARENT COMPANY THAT IS THE SOLE GUARANTOR OF ITS WHOLLY-OWNED FINANCE SUBSIDIARY'S SECURITIES UNDER SECTIONS 205 or 206.

- (3) Finance subsidiary issuer of securities guaranteed by its parent company. When a finance subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:
- (i) The issuer is 100% owned by the parent company guarantor;
 - (ii) The guarantee is full and unconditional;
 - (iii) No other subsidiary of the parent company guarantees the securities;
 - (iv) The parent company's financial statements are filed for the periods specified by Commission Regulation §609.034 and include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities. The footnote also must include the narrative disclosures specified in sections (2) and (3) of this position;
 - (v) The parent company must demonstrate that it can meet the obligations of the full and unconditional guarantee. In the case the parent company does not have independent assets or operations, it will not be considered able to demonstrate an ability to meet the obligations of the full and unconditional guarantee; and
 - (vi) The finance subsidiary must include summary unaudited condensed financial statements (balance sheet and income statement) within the prospectus or offering circular in the form called for and for the periods suggested under the Prospectus Guidelines section 6. There also must be a schedule disclosing amounts and identifying information of the entities and persons to whom they have obligations.
- (4) Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan.
- (5) Provide the following disclosures prescribed with respect to the subsidiary issuers and parent company guarantors:
- (i) The disclosures in paragraphs (3)(i) 1. and 2. in this position shall be provided when the restricted net assets of consolidated and unconsolidated subsidiaries and the parent's equity in the undistributed earnings of 50 percent or less owned persons accounted for by the equity method together exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. For purposes of this test, restricted net assets of subsidiaries shall mean that amount of the issuer's proportionate share of net assets (after intercompany eliminations) reflected in the balance sheets of its

consolidated and unconsolidated subsidiaries as of the end of the most recent fiscal year which may not be transferred to the parent company in the form of loans, advances or cash dividends by the subsidiaries without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of this test, which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction under this position. However, if there are any loan provisions prohibiting dividend payments, loans or advances to the parent by a subsidiary, these are considered restrictions for purposes of computing restricted net assets. When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset levels, or where formal compensating arrangements exist, there is considered to be a restriction under the position because the lender's intent is normally to preclude the transfer by dividend or otherwise of funds to the parent company. Similarly, a provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks and minority interests and noncontrolling interests shall be deducted in computing net assets for purposes of this test.

1. Describe the nature of any restrictions on the ability of consolidated subsidiaries and unconsolidated subsidiaries to transfer funds to the parent company guarantor in the form of cash dividends, loans or advances (i.e., borrowing arrangements, regulatory restraints, etc.).
2. Disclose separately the amounts of such restricted net assets for unconsolidated subsidiaries and consolidated subsidiaries as of the end of the most recently completed fiscal year.

(6) Definitions for the purposes of this position:

(i) A subsidiary is 100% owned if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is 100% owned if the sum of all interests are owned, either directly or indirectly, by its parent company other than:

1. Securities that are guaranteed by its parent and, if applicable, other wholly-owned subsidiaries of its parent; and
2. Securities that guarantee securities issued by its parent and, if applicable, other wholly-owned subsidiaries of its parent.

(ii) A guarantee is full and unconditional, if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

(iii) A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.

(iv) A subsidiary is a finance subsidiary if it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.

(v) A subsidiary is an operating subsidiary if it is not a finance subsidiary.

Note to position:

This position is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (1)(iv) must be modified accordingly.

PART G. SCOPE OF THE ACT

70 P.S. §§1-701-705

64 PA. CODE §7011.010

Section 702 Scope of the Act - Closings in PA

The Commission staff would not recommend enforcement action on the basis of a violation of Section 201 of the Act where a closing takes place in this state provided the offeree was at all times out of the state with respect to any communication made between the offeree and the issuer with respect to a bona fide offer and acceptance of the securities being offered. In this instance, the staff will consider a bona fide offer to occur when the offeree is not induced to leave the state for the purpose of making the offer.

(PSC Bull. June 1986)

PART H. TAKEOVER DISCLOSURE LAW OF 1976

70 P.S. §§71-80

64 PA. CODE §1001.010

Section 3 FINAL ORDER IN THE MATTER OF: MITE CORPORATION and its wholly owned subsidiary, MITE HOLDINGS, INC., together with their respective officers and directors, (Chicago, IL)
and
CHICAGO RIVET & MACHINE CO. (Chicago, IL)

On January 31, 1979 the Commission issued a Final Order in which it determined that Chicago Rivet & Machine Co. is not organized under the laws of Pennsylvania, does not have its principal place of business in Pennsylvania, and does not have its corporate headquarters in Pennsylvania, although it does have sufficient assets to establish substantiality.

In reaching this decision, the Commission applied the standards set forth in the following interpretive opinion:

The term "its principal place of business" as set forth in the definition of "target company" in Section 3 of the Pennsylvania Takeover Disclosure Law shall, unless the context is otherwise, have the same meaning as case law has construed 28 U.S.C §1332(c). Further, where a company operates through subsidiaries, this determination shall be on a consolidated basis.

(PSC Bull. May/June 1979)

Section 4 ANSWERS TO SOME QUESTIONS REGARDING THE TAKEOVER DISCLOSURE LAW

Questions have arisen in regard to certain applications of the Takeover Disclosure Law ("Takeover Law") which became effective on March 3, 1976. The staff is publishing these questions and the staff's answers in the interest of evenhanded regulation. Members of the Bar are cautioned that the answers constitute merely positions taken by the staff and are not rulings of the Commission.

1. Q Is a takeover offer that was commenced prior to the effective date of the Takeover Law and is now in progress subject to the Takeover Law?
- A No.
2. Q If the offeror of a takeover offer commenced prior to the effective date of the Takeover Law increases the offering price after the effective date of the Takeover Law, does such increase constitute a new offer which is then subject to the Takeover Law?
- A No.
3. Q If, during the course of a takeover offer which was commenced prior to the effective date of the Takeover Law, another offeror should make a takeover offer to the target company's shareholders after the Takeover Law becomes effective, is such an offer subject to the Takeover Law?
- A Yes.
4. Q Has the Commission promulgated any forms to be used in meeting the requirement of Section 5 of the Takeover Law?
- A No. Any format in which the required information is submitted is currently acceptable.
5. Q If an offeror friendly to management of the target company should decide to make a takeover offer to shareholders of the target company but the Board of Directors of the target company neither rejects nor recommends the offer, may the offeror give public notice of its intention to make such an offer prior to filing a registration statement with the Commission?
- A Yes, inasmuch as Rule 10b-5 under the Securities Exchange Act of 1934 might require that such information be made public as soon as the intention has been formed. The 20-day registration waiting period will not start running before the registration statement has been filed with the Commission.
6. Q Are the restrictions of Section 7 applicable to a takeover offer that was commenced prior to the effective date of the Takeover Law?
- A No.
7. Q If a takeover offer that is recommended by the target company's Board of Directors is made after the effective date of the Takeover Law, do the filing requirements of Section 6 and the restriction of Section 7 apply to such takeover offer in addition to the filing requirements of Section 8(a)?
- A Yes.
8. Q Must the solicitation materials filed with the Commission pursuant to Sections 5(1) and 6 include all the information required to be set forth in a registration statement filed with the Commission?
- A No. Section 4(a) requires public notice that "additional information about the proposed offer" has been filed with the Commission and is available for public inspection. Although the registration statement must also be sent to the target company and its employees' bargaining representative, the registration statement is not required to be sent to offerees. The language quoted above would thus be unnecessary if it were contemplated that offerees had to be given all the

information contained in the registration statement. The requirement that what is given offerees not be misleading is set forth in Section 6. Section 4(d) gives the Commission the power to summarily delay an offer if it finds the solicitation materials do not provide full disclosure of all material information. A statement in the solicitation materials such as “additional information about the proposed offer has been filed with the Pennsylvania Securities Commission” should be sufficient if the offering materials otherwise comply with the disclosure requirements of the applicable securities laws.

9. Q Does Section 6 of the Takeover Law, requiring the filing of all solicitation materials with the Commission, apply to takeover offers exempt from the registration requirements of Section 4 by virtue of the provisions of Section 8(a)?

A Yes. The Commission must review such solicitation materials and may prohibit the use of solicitation materials deemed false or misleading.

10. Q In the event that any solicitation materials filed with the Commission should, after a takeover offer that is exempt under Section 8(a) has been concluded, prove to be misleading, does the Commission have any enforcement powers with respect to such violations?

A Yes. Sections 401 and 407 of the 1972 Act and the powers of the Commission in respect thereof would be applicable inasmuch as Section 401 applies to the purchase of securities as well as to the offer and sale of securities and Section 407 applies to any document filed with the Commission. However, the Commission cannot take ex post facto enforcement action under the provisions of the Takeover Law in connection with the filing of such misleading information inasmuch as the Commission’s powers under the Takeover Law with respect to transactions exempt under Section 8(a) would seem to be limited to powers specified in Sections 6 and 7, which are applicable only to takeover offers which are in progress. The enforcement powers available to the Commission under Section 11 do not provide for meaningful enforcement action in connection with an exempt transaction which has been concluded, and the enforcement powers of the Commission available under Section 4 are not available in the case of transactions exempt under Section 8(a).

11. Q A merger is proposed in which the minority shareholders of the disappearing company are to receive cash while the principal shareholder of such company is to receive securities of the surviving corporation. The principal shareholder has agreed that he will not vote his shares in favor of the merger unless a majority of the minority shareholders consent to the terms of the merger. Does this transaction constitute an “offer incident to a vote by securities holders ... on a merger” so as to except the transaction from the definition of a “takeover offer” in Section 3 of the Takeover Law?

A The quoted exception in the definition is intended to except from the Takeover Law all transactions in which shareholders in public (and some private) companies provide sufficient information to shareholders on the basis of which to make an informed decision.

(PSC Bull. July/Aug. 1976)

Section 4 STAFF POSITION REGARDING THE RELATIONSHIP BETWEEN ACT 92 OF 1983 AMENDING THE BUSINESS CORPORATION LAW AND THE PROVISIONS OF THE PENNSYLVANIA SECURITIES ACT OF 1972 AND THE TAKEOVER DISCLOSURE LAW

The staff of the Commission has received numerous questions concerning the effect of recently passed Act 92 of 1983 which amended the Pennsylvania Business Corporation Law (“BCL”) with respect to, inter alia, the right of certain shareholders to receive payment for shares following a control transaction.

The following sets forth the position of the staff of the Commission on these issues:

1. Q Does the Commission administer the provisions of Act 92?
A The Commission does not administer, interpret or enforce the provisions of Act 92. The Commission's jurisdiction is limited to the Pennsylvania Securities Act of 1972 ("1972 Act") and the Pennsylvania Takeover Disclosure Law ("TDL").
2. Q Does the distribution of the notice ("Notice") pursuant to Section 910 (c) of Act 92 by a controlling person or group to each shareholder of record of the corporation holding voting shares pursuant to Section 910(c) automatically constitute a "takeover offer" as that term is defined in Section 2 of the TDL?
A The distribution of the Notice does not automatically in all instances constitute a "takeover offer."
3. Q Under what conditions would the distribution of the Notice constitute a "takeover offer"?
A In general, when the transaction is both pursuant to a tender offer and not subject to an Order of the Commission exempting the transaction pursuant to (vii) of Section 3 of the TDL.³⁸
4. Q Under what circumstances would a transaction constitute a "tender offer"?
A For the reasons set forth below, in general, when the transaction is also a tender offer under the Williams Act.
 - (1) The term "tender offer" is not defined in the TDL.
 - (2) Under the BCL the provisions of Section 910 are only applicable to corporations which have a class of voting shares registered under the Securities Exchange Act of 1934.
 - (3) The Commission is directed by the statutes it administers to interpret the laws uniformly with federal interpretations.³⁹ Therefore, it would be likely that the staff would recommend to the Commission to follow interpretations of the Williams Act on the issue as to whether such transactions would involve a "tender offer."
5. Q Under what circumstances would the Commission issue an Order pursuant to (vii) of Section 3 of the TDL as "otherwise as not comprehended within the purposes of this act"?
A The staff of the Commission would recommend favorably to the Commission the issuance of such an Order where the applicant in its request to the Commission has represented, inter alia, substantially all of the following:
 - (1) That the applicant has no desire to acquire additional shares;
 - (2) That the applicant will make no effort to solicit investors to surrender their shares and demand payment;
 - (3) That the applicant will not make any representations designed to coerce investors to surrender their shares and demand payment; such as attempting, pursuant to the applicant's voting powers as a result of becoming a controlling person, to restrict future dividends, change business activities or change management.

38 It is unlikely that exceptions (i) through (vi) could apply to such a transaction.

39 Section 15 of the TDL, in effect, incorporates Section 703(a) of the 1972 Act.

- (4) That the applicant has no present intent to follow the transaction with some form of merger including a freezeout merger, with respect to the corporation; or
 - (5) That the applicant will not engage in any activities designed to directly or indirectly induce an affirmative response to the Notice.
6. Q If the transaction constitutes a “tender offer”, must the offeror comply with the provisions of the TDL?
- A Yes. The Commission has published Interpretive Opinion and Guidelines relating to the harmonization of the commencement, proration and withdraw provisions of the TDL with the Williams Act.
7. Q Does the transaction constitute an “offer” and “sale” under the 1972 Act?
- A Yes. To the extent that the transaction is within the scope of the 1972 Act as set forth in Section 702, the distribution of the Notice would constitute an “offer” to purchase under Section 102(r)(ii) and, if consummated, a “sale” would occur under Section 102(r)(i).
8. Q Would the antifraud provisions of Part IV of the 1972 Act apply?
- A To the extent that the transaction is within the scope of the 1972 Act as set forth in Section 702, the antifraud provisions of Part IV including, but not limited to, Section 401(b) (relating to disclosure) and Section 406 (relating to inside information) would be applicable.

(PSC Bull. May/June 1984)

Section 7(a), (b) INTERPRETIVE OPINION AND GUIDELINES

In accordance with §703 of the 1972 Act (70 P.S. §1-703) which directs the Commission to coordinate its interpretation and administration of the securities laws of Pennsylvania with any related Federal regulation, the Commission hereby issues, pursuant to §604 of the 1972 Act (70 P.S. §1-604), the following Interpretive Opinion and Guidelines concerning compliance with the provisions of the Disclosure Law in the context of the Securities and Exchange Commission Rules 14d-2, 14d-5, 14d-6 and 14d-7 promulgated under the Securities Exchange Act of 1934:

An offer to purchase equity securities of a Pennsylvania target company will not be deemed a “takeover offer” in the context of the meaning of that term in §3 of the Disclosure Law (70 P.S. §73) if the offer is conditioned upon:

- (1) either the registration statement becoming effective under §4 of the Disclosure Law (70 P.S. §74) or an exemption becoming effective under §8 of the Disclosure Law (70 P.S. §78), and
- (2) in either of the above situations no purchases are made prior to such effectiveness.

**Guidelines for the Granting of a Request
for a Waiver or Modification of the Proration
or Withdrawal Time Periods Found in §7(a) and (b)**

The Commission will view favorably requests that the withdrawal time period set forth in §7(a) of the Disclosure Law (70 P.S. §77(a)) and the proration time period set forth in §7(b) of the Disclosure Law (70 P.S. §77(b)) be harmonized with the applicable time periods set forth in the analogous SEC rules if the imposition of the time periods found in §7(a) and §7(b) of the Disclosure Law (70 P.S. §77(a) and (b)) are not necessary for the protection of the offerees. In determining whether the imposition of the above time periods is necessary for the protection of the offerees, the Commission will consider whether sufficient time has elapsed from the dissemination of any corrective or additional disclosure materials (if

any) or modification in terms (if any) in order for the offerees to consider such disclosure or substantive changes.

(11 Pa.B. 1616 (1981))

Section 8(a) STAFF INTERPRETATIONS

The staff has received numerous questions with respect to the procedures to be followed by persons wishing to rely upon the exemption contained in Section 8(a) of the Disclosure Law. The staff has taken the following position in response to those questions:

1. The informational filing requirement set forth in subsection 8(a) (i) can be met by filing either Securities and Exchange Commission Schedule 13D-1 or 14D-1.

2. In order to establish pursuant to the requirements of subsection 8(a)(iii) that the target company acting through its Board of Directors is recommending acceptance of the offer to its shareholders, a copy of the target's corporate minutes reflecting such recommendation accompanied by a certification by the target's Secretary or other authorized person as to the authenticity and correctness of such minutes should be filed.

3. Where the target company's Board of Directors prior to the commencement of the offer recommends and communicates its recommendation to its shareholders (i.e., on an if and when basis), the 8(a) filing can be made either at the time of such recommendation or communication or at any subsequent time prior to the commencement of the offer. However, if the 8(a) filing is not made at the time of the recommendation, the Secretary's certification (discussed in Paragraph 2 above) shall be as of the date of the 8(a) filing.

4. Where an 8(a) filing has been made before the offer commences and the target company's Board of Directors rescinds such recommendation prior to the commencement of the offer, the 8(a) exemption will not be available.

(PSC Bull. May/June 1979)

5. Where an affiliate of the issuer is conducting a tender offer for the issuer's securities pursuant to a vote of existing security holders and intends to rely upon Section 13(e) of the Securities Exchange Act of 1934 and SEC Regulation 13(e)(4) and has filed Schedule 13E-4 with the SEC, the informational filing requirement set forth in subsection 8(a)(i) may be met by filing SEC Schedule 13E-4 with the Commission. In this instance, the offeror did not seek to rely upon the exclusion in Section 3(v) of the Takeover Disclosure Law. Accordingly, this staff position does not preclude an interpretation that Section 3(v) of the Takeover Disclosure Law may provide an exclusion for an offer by the issuer to acquire its own equity securities where the definition of issuer in Section 102(l) of the Pennsylvania Securities Act of 1972 would be construed to include certain affiliates of the issuer.

(PSC Bull. Feb. 1995)

PART I. PENNSYLVANIA INVESTMENT COMPANY ACT OF 1933

7 P.S. §§6051 - 6062 ("ACT 113")

Section §6052 Application of Act 113 to Contractual Plans of Investment Companies

Commission staff had requested the advice of the Attorney General concerning application of the provisions of the Pennsylvania Investment Company Act of 1933, 7 P.S. §§6051 et seq. (Act 113) to contractual plans issued by an investment company registered under the federal Investment Company Act of 1940. Staff also provided the Attorney General with a copy of a contractual plan filed with the Commission.

A contractual plan (also known as a periodic payment plan) offers and sells certificates which represent an interest in an underlying mutual fund. The certificates call for periodic payments over a period of years enabling investors to gradually accumulate shares of the underlying mutual fund. The contractual plan, however, is a separate legal entity distinct from the underlying mutual fund and the

certificates are equity rather than debt securities. When a planholder redeems his certificate, he may receive the cash value of his pro-rata interest or, at his option, shares of the underlying mutual fund equivalent to his pro-rata interest.

In an August 19, 1991 letter to Commission staff, the Review and Advice Section of the Office of Attorney General (Section) advised that Act 113 is not to be invoked for contractual plans where the issuer is under no contractual obligation to repay a fixed amount of the investor's contributions at a future maturity date, but rather agrees to pay the investor the net asset value of his shares upon withdrawal, termination or redemption of his investment.

Citing Attorney General Opinion No. 6 of 1974, the Section stated that the debt-type securities described in that opinion are distinguishable from contractual plans, where the investor expressly agrees to assume some market risk in receiving the net asset value of his investment upon withdrawal, termination or redemption of his contributions, similar to equity-type securities. Therefore, contractual plans similar to the one submitted to the Section for review would not violate Act 113 and invoke the prosecutorial power of the Attorney General under that act.

(PSC Bull. August 1991)

**SUMMARY OF SIGNIFICANT COMMISSION ORDERS
JANUARY 1, 1983 - DECEMBER 31, 2011**

SIGNIFICANT COMMISSION ORDERS

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2.	Waiver of filing period: shareholder meeting on plan of merger and liquidation.	
§ 203(r) Securities transactions exempted from registration:.....		16
1.	Sales to principals (and relatives) of mutual fund sponsor.	
2.	Membership in a purchasing cooperative.	
3.	Pre-effectiveness offers to 125 staff physicians.	
4-5.	§ 203(d) sales to attorneys in firm and officers of registered broker-dealer.	
6.	Exchange offer by Canadian issuer.	
7.	Sales to issuers sponsored by Advanced Technology Centers of Ben Franklin Partnership.	
8.	Debt securities sold to existing members of non-profit organization of professionals.	
9.	Pre-effectiveness offers to 90 licensed healthcare professionals.	
10.	Sales to dealers recommending purchase of services offered by issuer.	
11.	Sales to consultants who are medical doctors.	
12.	Sales of subordinated debentures by non-profit tourist board to its members.	

<u>Citation</u>	<u>Subject</u>	<u>Page</u>
13.	Exchange of first mortgage bonds of purchaser of facility in court supervised sale for outstanding limited obligation bonds of a governmental issuer.	
14.	Recapitalization of physician organization.	
15.	Physician management services organization.	
16.	Offers on the Internet.	
17.	Use of solicitation of interest materials.	
18.	Merger involving venture capital funds and Accredited Investors.	
19.	Options granted to physicians who enter into provider agreements.	
20.	Issuance of stock in payment for legal services.	
21.	Offering of stock solely to dealers selling the issuer's product.	
22.	Exchange offer under SEC Rule 802 exempt.	
23.	Exchange transactions in debt securities with Accredited Investors	
§ 204(a) Increased number of offerees & purchases:.....		21
1.	Tenants and prospective tenants.	
2.	Family members and senior officers of organizing entity.	
3.	Staff physicians of medical facility.	
4.	Staff physicians and dentists and general partners of a magnetic imaging center.	
5.	Staff psychiatrists of psychiatric services organization.	
6.	Staff physicians of ambulatory care center.	
7.	Staff physicians of healthcare service organization.	
8.	Staff of magnetic resonance imaging center with minimum net worth.	
9.	Staff of comprehensive outpatient rehabilitation center.	
10.	Distribution of debt offering to members of church congregation.	
11.	Physicians and hospitals operating a magnetic resonance imaging center.	
12.	Supervisors and senior management who receive substantial disclosure.	
13.	Real estate agents investing in affiliated title company.	
14.	Waiver of ratio in Section 203(p)(iii) waived.	
15.	Waiver of ratio in Section 203(p)(iii) denied.	
§ 205(d).....		23
1.	Waiver of ten day waiting period to five days for F-3 registration statements.	
§ 609(c)		24
1.	Waiver of U.S. GAAP for financial statements in a debt offering by the State of Queensland, Australia.	
Reg. 202.030.....		24
1.	Unrated commercial paper.	
Reg. 202.091.....		24
1.	Shares of professional corporation organized under New Jersey Law.	
Reg. 202.092.....		24
1.	Use of guarantor's unaudited statements with right of rescission for material adverse changes upon receipt of audited statements.	
2.	Master trust indenture of obligated group.	
3.	Supplemental issue of limited obligation bonds of a governmental authority.	
4.	Certified balance sheet waived where guarantor demonstrated high net worth.	
5.	Use of net worth of company that wholly owned managing partner of the guarantor.	

<u>Citation</u>	<u>Subject</u>	<u>Page</u>
Reg. 203.041		26
1.	Waiver of unaudited balance sheet: audited statements within 6 months.	
2.	Waiver of unaudited balance sheet: escrow.	
3.	Waiver of unaudited balance sheet: two years' financial statements and with no material adverse changes.	
4.	Waiver of unaudited balance sheet: sole PA sale of reporting company securities constituting 60% of entire offering.	
5.	Waiver of unaudited balance sheet: foreign manufacturing operations.	
6.	Unaudited statement within 180 days with representation of no material adverse changes.	
7.	Unaudited changes in financial position for 3, 6 and 9 month periods if year end unaudited statements filed when available.	
8.	Mexican statutory accounting rules for financial institutions.	
Reg. 203.151		27
1.	Proxy statement to comply with SEC Rule 14A waived.	
Reg. 203.161		27
1.	Religious non-profit issuer: financial statements available for inspection.	
Reg. 204.010		28
1.	Suitability standards modified.	
2.	Increased number of offerees: staff physicians.	
3.	Waiver of subsection (b).	
4.	Waiver of subsection (b)(2)(v).	
Reg. 205.021		28
1.	Waiver of Form 205: subsidiary of NYSE-listed company.	
2.	Registered exchange offer for Rule 144A securities.	
Reg. 206.010		29
1.	Waiver of filing form 206 for rated asset-backed debt securities.	
Reg. 207.110		29
1.	Waiver of quarterly post-effective reports: limited offering.	
Reg. 302.060		29
1.	Dual agent registration: wholesale/retail.	
Reg. 302.063		29
1.	Credit union service organization securities program.	
Reg. 302.064		
1.	Waiver of agent registration for AMEX broker that conducts no business with the public	30

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Reg. 303.011 Waiver of broker-dealer financial statement audit requirement:..... 30

1. Change of legal organization from partnership to a corporation.
2. No public customers.
3. Significant capital contribution by parent.
4. Acquisition by a bank holding company.
5. Initial capitalization of successor business.
6. Unaudited statements where liabilities of previous business not assumed by successor.
7. Change of legal organization from sole proprietorship to partnership.
8. Declined to accept qualified financial statements.
9. Change of state of incorporation.
10. Introducing broker for other broker-dealers and institutional investors.
11. Pro forma net capital.
12. Qualified auditor's report for applicant not holding customer funds.
13. Change of legal organization from sole proprietorship to corporation.
14. Acceptance of unaudited statements where applicant succeeds to business of a registered broker-dealer.
15. Declined to waive requirement to file GAAP financial statements.
16. Acceptance of unaudited statements where applicant succeeds to the business of a registered broker-dealer that showed excess net worth.
17. Denial of waiver of requirement to file audited balance sheet.
18. Unaudited statements of applicant which was the surviving corporation to a merger with a registered broker-dealer.

Reg. 303.012 Waiver of investment adviser financial statement audit requirement:..... 33

1. Financial planner: no waiver of audit.
2. Tax basis review report: no waiver of audit.
3. Wholly-owned, guaranteed subsidiary of financially strong parent.
4. Decline to accept limited guarantee of a wholly-owned subsidiary by financially strong parent.
- 5-7. Change of legal organization.
8. Audited balance sheet on modified cash basis of accounting.
9. Unaudited statements where applicant is a wholly-owned, guaranteed subsidiary of a financially strong parent.
10. Unaudited statements by applicant to succeed to the business of a registered investment adviser which showed net worth in excess of that required.
- 11-12. Denial of waiver that financial statements must comply with GAAP.
13. Unaudited statements where predecessor investment adviser underwent change in composition of partnership.
14. Qualified opinion accepted.
15. Cash basis accounting accepted.
16. Acceptance of unaudited statement for wholly-owned subsidiary of a parent that had audited consolidated financial statements.
17. Declined to waive requirement to file GAAP financial statements.
18. Accepted financial statements prepared and audited in conformity with U.K. GAAP and GAAS.

Reg. 303.031 Waiver of agent examination requirement:..... 36

- 1-4. Agent: waiver of general securities and USASLE examinations: transactions in limited types of securities solely with institutions.
5. Agent: waiver based upon taking NASD Series 63 exam and exam on certificates of deposit which is to be developed.
6. Waiver of agent examination denied where applicant had disciplinary history.
7. Exam waived where agent dealing solely in U.S. Government securities.

<u>Citation</u>	<u>Subject</u>	<u>Page</u>
Reg. 303.032 Waiver of investment adviser and associated person examination requirement:..... 37		
1-3.	Investment adviser: waiver of examinations based on background, etc.	
4.	Associated persons: waiver of experience requirement.	
5.	Exam waived for CFP designation plus 56 months securities industry experience.	
6.	Exam waiver requests denied where only basis was 42 and 72 months securities industry experience, respectively.	
7.	Exam waiver request denied where only basis was 66 months experience in the banking industry.	
Reg. 303.041 Waiver of broker-dealer net capital requirement:..... 38		
1.	Net capital requirement waived from \$25,000 to \$5,000.	
2.	Waiver of minimum required net capital for merger of successor broker-dealer applicant into predecessor registrant.	
3.	Surety Bond provided and maintained along with an audited statement of financial condition.	
Reg. 303.042 Waiver of investment adviser net capital requirement:..... 38		
1.	Obligations guaranteed.	
2.	Denied for financial planner.	
3.	Pro forma net capital.	
4.	\$7.25 million NASD bond and insurance accepted.	
5.	\$50,000 uniform surety bond accepted.	
6.	Surety Bond provided and maintained in the amount of the net worth deficiency rounded up to the nearest \$5,000.	
Reg. 304.021 Waiver of broker-dealer annual financial reports:..... 39		
1.	Audited statement pending commencement of broker-dealer activities.	
2.	Registration effective in middle of fiscal year.	
3.	No securities business conducted from date of registration.	
4.	Registrant acting solely as agent for a single issuer and not holding clients' funds or securities.	
Reg. 304.022 Waiver of investment adviser annual financial reports: 40		
1.	Wholly-owned, guaranteed subsidiary of a financially strong parent.	
2-3.	Change of registrant's fiscal year end.	
4.	Wholly-owned, guaranteed subsidiary of registered broker-dealer.	
5.	Change of fiscal year required by IRS regulations.	
6.	No business transacted and sole asset is a bank certificate of deposit.	
7.	Waiver of filing reviewed financial statement for investment adviser registered on December 1 with only 2 clients.	
8.	Reviewed balance sheet for a 2-month period permitted due to change in fiscal year.	
9.	Annual reviewed statement of financial condition waived where no business transacted during 2 months from date of registration to end of calendar year.	
10.	Annual reviewed statement of financial condition waived where only 12 accounts managed during 2 months from date of registration to end of calendar year.	
11.	Waiver of reviewed balance sheet where no business activity conducted.	
Reg. 504.060 Waiver of registration of a rescission offer: 41		
1.	Non-profit organization.	
2.	Mutual fund oversales.	
3.	Pursuant to Offer of Settlement.	
4.	Issuer owned by professionals.	
5.	Substantial compliance with Section 206.	

<u>Citation</u>	<u>Subject</u>	<u>Page</u>
6.	Waiver of compliance with Section 206(b)(13) and (14).	
7.	Limited number of offerees.	
8.	Waiver of disqualification provision.	
9.	Sales of mutual fund shares without effective notice filing.	
10.	Sales to less than 25 Pennsylvania investors.	
11.	Sales to 41 Pennsylvania investors in non-compliant Rule 506 offering.	
Reg. 603.031 Confidential treatment:		43
1.	Personal financial statements of individual executive officers or general partners.	
2.	Trade secrets, marketing strategy, etc.	
3.	Broker-dealer as wholly-owned subsidiary of private company.	
4.	Submission of financial information at request of Commission staff.	
5-6.	Confidential treatment of financial statements filed by investment adviser denied.	
7.	Individual financial information submitted with 203(d)(i) waiver request.	
8.	Commission order revoked where confidential information appeared in registration statement.	
9.	Submission of past litigation at request of Commission staff.	
10.	Submission of settlement agreements at request of Commission staff.	
Reg. 606.011.....		48
1.	Use of Mexican statutory accounting for financial institutions.	
Reg. 609.010 Waiver of requirements for use of prospective financial statements		48
1.	Purchaser is venture capital group.	
2.	Disclaimer permitted: product uncertainties.	
3.	Purchasers are general partners with experience.	
4.	Purchasers are present management.	
5.	Purchasers are CPAs with investment experience.	
6.	Issuer formed by experienced investors.	
7.	Supplemental unreviewed projections to accredited investors.	
8-10.	Purchasers are present management.	
11.	Venture capital fund of state employees' retirement system.	
12.	Voluntary assessments of accredited investors.	
13.	Guarantor is a wholly-owned subsidiary of an NYSE listed public company.	
14.	Use of <u>de minimis</u> prospective financial information.	
15.	Wholly-owned subsidiary of a reporting company.	
16.	Independently compiled projections for one month period.	
Reg. 609.032.....		50
1.	Income tax basis of accounting for Subchapter S issuer.	
Reg. 609.034 Waiver of audited financial statement requirement:.....		51
1.	11 insider shareholders: waiver of part of financial statement requirements.	
2.	Voluntary termination of effective period of registration.	
3.	Debt securities of a non-profit corporation secured by a first lien mortgage.	
4.	Proxy materials.	
5.	Reviewed financial statements allowed for newly formed entity in Reg A offering.	

<u>Citation</u>	<u>Subject</u>	<u>Page</u>
Reg. 609.036 Waiver of compliance with GAAP:		52
1.	Annual reports: tax accounting principles permitted after 2 years of GAAP.	
2.	Annual reports: tax basis accounting permitted for low income housing tax credit limited partnerships.	
3.	Annual Reports: omission of income statements denied.	
 <i>Takeover Disclosure Law</i>		
§ 3(vii) Offers not within the meaning of “takeover offer”:		53
1.	Purchase of 12% minority: not a takeover offer.	
2.	Offer to purchase shares of corporation owning country club facilities is not a takeover offer.	
3.	Tender offer by ESOP established by target company.	
§ 8(b) Exemption from registration:		53
1.	Purchase of 37.7% minority.	
2.	Purchase of minority interest subsidiary: overlapping directors.	
3.	Materials filed with the Commission untimely but prior to take down of shares.	
4.	Tender offer by largest shareholder.	
§ 9(b)		54
1.	Time periods harmonized with SEC Rules.	

SUMMARY OF SIGNIFICANT COMMISSION ORDERS

Section 202(i)

1. Where an entity is organized in accordance with Section 642(c)(5) of the Internal Revenue Code; receives transfers of property (qualifying as tax deductible contributions by the donors for the value of the remainder interest) in which the donor maintains a life interest; qualifies to solicit contributions in Pennsylvania; issues a disclosure document to donors describing the consequences of the property transfer; and solicits donations by means of agents or employees who will not receive commissions or other special compensation based on the amount of property transferred, the Commission exempted any security issued or created in connection with such transfers from the registration requirements of Section 201:

United Way of Southeastern Pennsylvania Pooled Income Fund	12/16/80
The Franklin Institute Pooled Income Fund	2/10/81
Abington Memorial Hospital Pooled Income Fund	5/21/81
YMCA of Reading and Berks County Pooled Income Fund	7/15/81
Lehigh University Pooled Income Fund	8/25/81
Jeanes Hospital Pooled Income Fund	12/28/81
League of Women Voters Foundation Pooled Income Fund	3/15/82
Care Pooled Income Fund	6/15/83
Hope College Charitable Gift Annuity	10/12/83
Sewickley Valley Hospital Pooled Income Fund	10/17/83
Hope College Pooled Income Fund #2	11/16/83
GHF Pooled Income Fund	4/2/84
Lankenau Hospital Pooled Income Fund	2/11/85
Chestnut Hill Academy Pooled Fund	10/1/86
Chestnut Hill Hospital Foundation Center Pooled Income Fund	10/1/86
Lehigh University Balance Pooled Income Fund	7/29/87
Lehigh University High Yield Pooled Income Fund	7/29/87
The Academy of the New Church Pooled Income Fund	9/10/87
The General Church of Jerusalem Pooled Income Fund	9/10/87
Shady Side Academy Pooled Income Fund	9/10/87
University of Pennsylvania Balanced Pooled Life Income Fund	9/10/87
Magee-Women's Health Foundation Pooled Income Fund	12/16/87
The Pooled Income Fund #1 of Gettysburg College	2/17/88
The Hill School Pooled Income Fund	5/23/88

2. Where a non-profit fraternal organization offers and sells up to a maximum of \$5,000 unsecured debt securities to each existing member to finance capital improvements on real estate purchased by the organization as its headquarters and provides a disclosure document containing the previous year's compiled financial statements, a restriction that the securities cannot be resold, mortgaged, pledged or transferred by gift, bequest or otherwise, and a provision for redemption together with any unpaid interest if a member should die or move his principal residence more than 50 miles from the headquarters, the Commission exempted the securities from the registration requirements of Section 201:

National Association of Letter Carriers, (Clyde Kelly Branch No. 94)	2/2/83
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3. Where an issuer offers and sells limited obligation debt securities of governmental instrumentalities under Section 202(a) as to which a Guaranty is executed and delivered to the trustee for the benefit of the bondholders in which the Guarantor guarantees full and prompt payment and performance of its obligation under the trust indenture, delivers a letter of credit in favor of the trustee and has an audited fund balance in excess of three times the amount of the securities issued, the Commission exempted the Guaranty from the registration requirements of Section 201:

Sisters of Charity Health Care System

7/18/85

4. The Commission exempted from the registration requirements of Section 201 options on individual stocks issued by a clearing corporation registered under the Securities Exchange Act of 1934 on National Market System stocks that are traded through NASDAQ which are also traded on an exchange listed in Section 202(f) and NASDAQ-Traded Index Options for one year beginning October 1, 1985, provided that the NASDAQ-Traded Options and NASDAQ-Traded Index Options are registered under the Securities Act of 1933, the corporation is registered as a clearing corporation under the Securities Exchange Act of 1934 and any request for extension of the exemption order be accompanied by the results of operations relating to abuse, manipulation or other problems which may have accrued with respect of NASDAQ-Traded Options and NASDAQ-Traded Index Options:

Options Clearing Corporation

4/24/85; 8/28/85; 10/13/87; 7/27/88

5. Where an issuer offers and sells limited obligation debt securities under Section 202(a) as to which a Guaranty is executed and delivered to the trustee for the benefit of the bondholders in which the Guarantor guarantees full and prompt payment of the performance of its obligations in an amount sufficient to pay principal, interest and premium, if any, on the Bonds which is supported by a letter of credit issued by a bank which has a ratio of outstanding letters of credit to shareholders equity as of its last audited financial statements of 3:1 or less and has a rating on its senior indebtedness in the three highest categories of a national rating service, the Commission exempted the Guaranty from the registration requirements of Section 201:

Michigan Job Development Authority

7/20/83

Secondary Distribution of South Henry,

IN School District Lease Rental Obligations

11/7/83

Berks County Industrial Development Authority

11/16/83; 5/21/84; 5/13/85

Montgomery County Industrial Development Authority

12/14/83

Schuylkill County Industrial Development Authority

2/27/85

Lancaster County Industrial Development Authority

4/24/85

Allentown Commercial & Industrial Development Authority

5/13/85

Port Arthur Navigation District

5/29/85

Delaware County Authority

7/8/85

Pennsylvania Higher Educational Facilities Authority

3/19/86

Montgomery County Higher Education and Health Authority

11/10/88

New Jersey Economic Development Authority

6/19/89

Development Authority of Richmond County, GA

6/20/90

6. Where a non-profit corporation designated to be the financing facility for government-guaranteed student loans for a particular state desires to offer and sell bonds which are supported by a letter of credit issued by a bank which has a ratio of outstanding letters of credit to shareholders equity as of the latest audited financial statements of 3:1 or less and a rating on its senior indebtedness in the three highest ratings of a national rating service, the Commission exempted the bonds from the registration requirements of Section 201:

California Student Loan Finance Corporation	2/23/83; 8/24/83; 7/28/86
South Dakota Student Loan Corporation	5/13/85
Nebraska Higher Education Loan Program, Inc.	11/25/85; 12/29/86
Alabama Higher Education Loan Finance Corporation	3/19/86
Iowa Student Loan Liquidity Corporation	7/29/87
Mississippi Higher Education Assistance Corporation	11/24/87; 12/19/89; 1/8/92; 3/18/92
Volunteer State Student Funding Corporation	12/29/89
Student Loan Funding Corporation	2/7/89
Montana Higher Education Student Assistance Corporation	3/29/89

7. Where securities exempt under Section 202(a) are offered and sold with put options attached which are supported by a letter of credit issued by a bank which has a ratio of outstanding letters of credit to shareholders equity as of the latest audited financial statements of 3:1 or less and a rating on its senior indebtedness in the three highest ratings of a national rating service, the Commission exempted the put options from the registration requirements of Section 201:

Auto Club of Michigan Put Options	12/31/83; 12/30/85
Units of Undivided Fractional Interests in Tax Exempt Loans	
Deposited in a Mortgage Trust with Options	1/30/84
Reoffering of Various Maturities of Separate Issues of Government Obligations with	
Tender Option Puts	2/27/84; 6/18/84; 8/29/84; 10/11/84; 4/9/85; 7/24/85; 8/12/85; 6/17/87
Short-Term Tax-Exempt Put Securities	7/9/84; 9/10/84; 10/1/84; 10/11/84
Michigan State Housing Development Authority	9/10/84
Duval County Housing Finance Authority	9/10/84
Nebraska Investment Finance Authority	9/10/84
Virginia Housing Development Authority	9/10/84; 10/31/84
City of Redding, California Demand Purchase Options	9/25/84; 12/4/85
McDonald Tax Exempt Mortgage Trust	11/5/84; 1/2/85
Reoffering of Tax-Exempt Municipal Securities in Portfolio of	
Hartford Accident and Indemnity Co.	12/17/84; 2/11/85
Pru-Bache Reoffering of Government Obligations with	
Put Options	3/20/85; 6/13/85; 9/18/85
Northwestern Mutual Life Insurance Company & Tax-Exempt Mortgage Trust	8/28/85
Prudential-Bache/Greenwich Partners, Inc.	
Reoffering of State and Local Governmental and	
Authority Obligation Bonds with Put Options	4/18/90

8. Where a public offering of corporate debt securities is not registered with the SEC in that notes are payable from drawings under an irrevocable letter of credit issued by a bank to pay an amount not exceeding the aggregate principal of the notes upon maturity and an amount equal to the accredit value of the notes at redemption, acceleration or defeasance and the issuing bank has a ratio of outstanding letters of credit to shareholders' equity as of the latest audited financial statements of 3:1 or less and a rating on its senior indebtedness in the three highest categories of a national rating service, the Commission exempted the debt securities from the registration requirements of Section 201:

Bond Brewing Holdings, Ltd.	12/17/86
Newport News Super 8 Motel, Inc.	2/3/87
Domino's Pizza Capital Corporation	6/24/87
Citicorp North America, Inc.	7/18/88

9. Where an issuer offers and sells limited obligation debt securities under Section 202(a) which are secured by a mortgage note and to which the Federal Housing Administration (FHA) has agreed to insure advances of funds secured by the mortgage and, pursuant to FHA mortgage insurance requirements, the recipient of the bond proceeds delivers to the trustee for the benefit of the bondholders a Guaranty of the payment of the principal or redemption of and interest on the bonds which, on the strength of the FHA mortgage insurance, are rated within the three highest categories of a national rating service, the Commission exempted the Guaranty from the registration requirements of Section 201:

Hospitals and Higher Education Facilities Authority of Philadelphia, PA	1/6/87
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10. Where a non-profit Pennsylvania corporation offers and sells unsecured, non-interesting bearing debt securities, provides a disclosure document and audited financial statements, restricts sales only to its members, prohibits transfer of the debt securities and provides for redemption at the instance of the corporation, the Commission exempted the debt securities from the registration requirements of Section 201:

Wildwood Golf Club	11/10/87
Ligonier Country Club	9/23/03

11. Where a non-profit private institution proposes to offer and sell debt securities, payment of which is secured by an irrevocable letter of credit issued by a bank, and the issuing bank has a ratio of outstanding letters of credit to shareholders' equity as of its latest audited financial statements of 3:1 or less and has a rating on its senior indebtedness in the three highest categories of a national rating service, the Commission exempted the debt securities from the registration requirements of Section 201:

Duquesne University of the Holy Ghost	8/11/87
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13. Where bonds issued by a public instrumentality for the benefit of a housing development are guaranteed by the 11th largest U.S. mutual life insurance company which also is an equity partner in the owner of the development and where the bonds have received the highest rating by a national rating service and the guaranty agreement requires the owner and the insurance company to notify the underwriter, on behalf of the bondholders, of any material changes in the official statement, including any downgrade in the rating of the bonds, the Commission exempted the guaranty from the registration requirements of Section 201:

Harris County Housing Finance Corporation	5/4/88; 10/25/89; 7/9/90
Travis County Housing Finance Corporation	1/9/89
Shelby County, TN Health Education and Housing and Facilities Board	3/28/90
Florida Housing Finance Agency	10/9/90

14. Where an issuer, which is a public instrumentality, proposes to offer and sell bonds and the hospitals receiving the proceeds of the bonds guarantee repayment of the bonds and payment of principal and interest on the bonds will be insured by a municipal bond insurance policy which causes the bonds to be rated in the highest rating category of two national rating services and where the guarantors, in lieu of providing a certified balance sheet and profit and loss statement for each hospital in the offering statement, will provide summary financial information from its audited statements reflecting general fund assets and balances, working capital, long-term indebtedness and a statement by management that there have been no material adverse changes to date in the results of operations of each hospital, the Commission exempted the guarantees from the registration requirements of Section 201:

Montgomery County Higher Education and Health Authority

6/13/88

15. Where a non-profit Pennsylvania corporation proposes to offer and sell bonds exclusively to Pennsylvania residents who hold memberships to finance capital improvements to the country club facilities and provides audited financial information and written disclosure as to issuance and redemption of the bonds, the Commission exempted the debt securities from the registration requirements of Section 201:

Highland Country Club

10/3/88; 3/1/05

16. Where the issuance of limited obligation bonds of a governmental authority is being structured as a supplemental issue under the financing documents of a prior issuance of limited obligation bonds by the same governmental authority for the same project in order to give the new bondholders equal and ratable security in the existing mortgage on the project with the prior bondholders and an independent appraisal report listed the facility's "Sound Value" at approximately \$4.4 million in excess of the total amount of outstanding bonds, the Commission exempted the guaranty being given by the facility for the payment of principal and interest on the bonds from the registration requirements of Section 201 where the guaranty was fully collateralized by a supplemental mortgage and security agreement on all of the existing land and buildings of the facility and all of the disclosures required by Regulation 202.092 will be provided:

**Philadelphia Authority for Industrial Development
(Cathedral Village Project)**

2/27/90

17. Where securities are to be issued solely to members of a class action suit and their counsel as part of a court-approved settlement of the suit and the exemption in Section 203(l) was unavailable in that the issuer failed to notify the Commission of the hearing before the court as required by Regulation 203.120, the Commission exempted the securities from the registration requirements of Section 201:

**Monoclonal Antibodies, Inc.
Utilitech Incorporated
The Diana Corporation**

7/18/90

1/10/91

7/27/92

18. Where a for-profit Pennsylvania corporation offers and sells bonds for the purpose of constructing, owning and operating a golf course and clubhouse facility on land already owned by the corporation and provides offerees with a disclosure document that includes audited financial statements, an escrow of subscriptions, a minimum offering amount and redemption of bonds upon withdrawal, disability or death of a club member, the Commission exempted the bonds from the registration requirements of Section 201:

Maple Moor, Inc. d/b/a Huntsville Golf Club

12/16/91

19. Where a wholly-owned subsidiary of a financially strong New York Stock Exchange listed company enters into standby bond purchase agreements with issuers of series of variable rate municipal bonds obligating the subsidiary to purchase tendered bonds that could not be remarketed and these obligations are unconditionally guaranteed by the parent, (those guarantees being exempt from registration under Section 202(f)), the Commission determined that the obligations and guarantees should be treated in pari passu and exempted the obligations from the registration requirements of Section 201:

AIG Liquidity Corporation

8/19/92; 8/30/95

20. Where a non-profit trade organization whose membership consists solely of state or federally chartered credit unions intends to cause the formation of a for-profit Pennsylvania corporation that will be a credit union service organization and will own and operate a shared branching network to be used by credit union members of the trade organization and where the shares of stock of the credit union services organization can only be purchased by member credit unions that meet certain financial prerequisites and receive approval for the purchase by state or federal government regulators, the Commission exempted the shares from the registration requirements of Section 201:

Pennsylvania Credit Union Service Centers, Inc.

10/19/92

21. Where a non-profit health care organization plans to acquire the assets or outstanding ownership interests in medical practices owned and operated by private physicians or their professional corporations or partnerships in exchange for cash and notes which notes will be non-transferable (except by will or gift to spouses, partners or children of the payee on the note) and will be collateralized by cash placed in an escrow account with an independent commercial bank in an amount sufficient to pay the principal and interest on the notes in full and when due and the financial statements of the non-profit organization will be available to each prospective purchaser of the notes, the Commission exempted the notes from the registration requirements of Section 201:

Critical Care Associates of the University of Pennsylvania Health Systems

12/1/93

22. Where a community foundation qualified to solicit tax deductible contributions under the Internal Revenue Code proposes to establish a charitable gift annuity program by which donors will transfer property to a segregated fund of the foundation and the foundation, in turn, will promise to pay the donor a fixed amount periodically in agreed-upon installments until the death of the donor to be computed by reference to annuity tables published by the National Committee on Gift Annuities, the Commission exempted the securities to be issued or created in connection with the transfer of property by donors to the foundation under this program, provided the annuity fund actuarially is evaluated on a regular basis, written disclosure describing the annuity program is given to offerees, no advertising literature is disseminated by mass media advertising (other than that contained in regular publications of the foundation), none of the persons responsible for soliciting contributions to the foundation through the gift annuity program receives commissions or special compensation based directly or indirectly upon the amount of property transferred or number of annuity contracts issued and all persons who, for compensation, advise the foundation as to the purchase or sale of a security are registered under Section 301 of the 1972 Act.

The Pittsburgh Foundation Gift Annuity Program

4/6/94

23. Where a registered clearing corporation registered with the SEC under the Securities Exchange Act of 1934 proposes to issue options which will trade on the American Stock Exchange, Pacific Stock Exchange and the Chicago Board Options Exchange and those markets will prepare an options disclosure document in accordance with SEC Rule 95-1 and seek to register the options under the Securities Act of 1933, the Commission exempted the options from the registration requirements of Section 201:

Options Clearing Corporation

1/17/96

24. Where a national securities exchange registered with the US Securities & Exchange Commission under the Securities Exchange Act of 1934 has entered into a memorandum of understanding with the North American Securities Administrators Association, a non-profit organization consisting solely of state securities regulators in the United States, provincial securities regulators in Canada and the securities regulatory authority in Mexico, in which the exchange has agreed to maintain and enforce certain numerical and qualitative listing and maintenance standards, corporate governance standards and voting rights provisions, the Commission exempted from the registration requirements of Section 201 the securities listed or approved for listing upon notice of issuance on certain tiers or segments of such exchange and any security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved on such tier or segment and any warrant or right to purchase or subscribe to any of the forgoing.

Chicago Board Options Exchange 11/19/96
Pacific Stock Exchange (Tier 1 only) 11/19/96

25. Where a trust formed by a New York Stock Exchange listed company which owns all of the common stock and voting securities of the trust intends to offer and sell convertible preferred securities to the public and use the proceeds to invest in debentures issued and guaranteed by the listed company, the Commission determined that the convertible preferred securities should be treated in pari passu and exempted the convertible preferred securities from the registration requirements of Section 201:

Vanstar Corporation/Vanstar Financing Trust 2/27/97

26. Where options are issued by the Canadian Derivatives Clearing Corporation (COCC) which is an organization created by the Montreal Stock Exchange, the Toronto Stock Exchange, and the Vancouver Stock Exchange for the purpose of acting as the issuer, clearing facility and primary obligor to its clearing members for transactions in put and call options, is subject to regulation by the governmental authorities of the Provinces of Canada, is in receipt of a no action letter from the SEC that it is not required to register as a clearing agency under U.S. law, and the options are registered with the SEC under the Securities Act of 1933 and are offered and sold in the U.S. only through broker-dealers registered with the SEC and applicable state securities regulators, the Commission exempted the options from the registration requirements of Section 201:

Canadian Derivatives Clearing Corporation 5/7/97

27. Where a title company formed under the laws of Pennsylvania intends to offer and sell common stock only to persons who are admitted to practice law before the Supreme Court of Pennsylvania which shares contain a right by the company to repurchase the shares at a price equal to the share book value at the end of the immediately preceding fiscal year based upon the Pennsylvania Department of Insurance reporting requirements, the Commission exempted the securities from the registration requirements of Section 201:

Penn Attorneys Title Insurance Company 7/1/80

28. Where an existing non-profit golf club proposes to offer and sell bonds solely to club members and the bonds cannot be resold, mortgaged, pledged, or transferred by gift, bequest or otherwise but may be redeemed together with any accrued and unpaid interest should the bondholder die or move his principal residence more than 50 miles from the club property, the Commission exempted the bonds from the registration requirement of Section 201:

Edgewood Country Club 1/21/81

29. Where an existing non-profit dining and social club proposes to offer and sell bonds solely to club members and the bonds cannot be resold, mortgaged, pledged, or transferred by gift, bequest or otherwise but may be redeemed together with any accrued and unpaid interest should the bondholder die and where the club will provide a disclosure document to all offerees including all material information, including financial information, about the club and the offering, the Commission exempted the bonds from the registration requirement of Section 201:

Bethlehem Club

11/9/81

30. Where a non-profit organization enters into charitable remainder unitrusts and charitable remainder annuity trust agreements and jointly invests the assets received under trust agreements for which the non-profit serves as trustee and where: (1) each prospective donor is given a written disclosure document which fully and fairly describes the consequences of a transfer of funds or property to the non-profit organization, (2) none of the persons responsible for soliciting of individuals to enter into these agreements receives, directly or indirectly, commissions or other remuneration based upon the amount of cash or property transferred under the agreements, (3) a person who, for compensation, advises the non-profit organization in the purchase or sale of securities in its management of trust assets or otherwise acts as an investment adviser is either registered with the Commission as an investment adviser or is a federally covered adviser and (4) any advertising literature used by the non-profit organization in the solicitation of prospective donors complies with the anti-fraud requirements, the Commission exempted the agreements from the registration requirements of Section 201:

The Lutheran Church – Missouri Synod Foundation

2/20/01

31. Where a non-profit limited liability company intends to establish a tuition prepayment plan qualified under §529 of the Internal Revenue Code, offer and sell certificates representing annual tuition benefits at any of the undergraduate institutions participating in the plan which offers and sales will be effected through a broker-dealer registered under the 1972 Act, hold the proceeds from the sale of the certificates in a trust for the exclusive use of the designated beneficiaries of the certificates that will not be commingled with other assets of the trust, and appoint a SEC registered investment adviser (which also is a federally-chartered savings bank) as trustee of the trust; and where the owners of the certificates may cancel at any time following the first anniversary of purchase and will receive a refund of any unused prepaid tuition amounts subject to an adjustment for the investment performance of the trust up to a maximum return of 2% or a maximum loss of 2% compounded annually, the Commission exempted the certificates from the registration requirements of Section 201:

Tuition Plan Consortium, LLC

7/24/03

Section 203(d)(i)

1. Where an investor purchased securities of an issuer under this section to be paid in installments and the investor subsequently was unable to maintain the purchase obligations due to a severe adverse financial event, the Commission waived the requirement of this section where the subsequent purchaser agreed to hold the securities for the remainder of the original 12 month period and the original sale was made in conformity with program suitability standards, if any:

Greenbriar Associates

9/21/83

2. Where investors who bought equity securities under this section receive a tender or exchange offer for all of the issuer's outstanding equity securities, the Commission waived the requirements of this section:

United States Health Care Systems, Inc.	9/21/81
PV Consumer Discount Company	3/5/82
General Database Technology, Inc.	5/18/83
CareerSystem, Inc.	5/18/83
Home Medical Systems, Inc.	6/26/85
Petrarch Systems, Inc.	8/12/85

3. Where an investor purchasing securities of an issuer under this section dies prior to the expiration of 12 months from the purchase date, the Commission waived the requirement of this section where the subsequent purchaser agrees to hold the securities for the remainder of the original 12 month period.

Amherst Village, Ltd.	10/23/80
Cable House Associates	10/23/80
Highland Oaks Associates	10/23/80
Huntingdon Towers Associates, L.P.	3/19/84
Strouse Greenberg Properties X, L.P.	2/27/85
Lake Ariel Bancorp, Inc.	5/6/85
The Lifesound Company, L.P.	11/18/85
Formative Technologies, Inc.	12/29/86

4. Where investors who bought equity securities under this section receive a pro rata offer from another entity to purchase a percentage of the investors' securities, the Commission waived the requirements of this section:

Cardiac Fitness Center of Erie, Inc.	4/16/86
Sequel Data Communications, Inc.	6/6/86

5. Where investors, which were associated with a New York Stock Exchange listed company, bought securities of an issuer which purchase constituted an unintended breach of the company's Code of Corporate Behavior in that the offer to purchase securities of the issuer represented a corporate opportunity which should have been offered first to the company, the Commission waived the requirements of this section to facilitate rescinding the initial transaction which had the effect of placing each party in the position as if the transaction had never taken place:

Tel-line Information Distribution System, Inc.	6/26/86
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6. Where an issuer in the sole transaction under this section sold securities to a company and, subsequent to the date of the transaction, the purchaser desired to contribute the securities to a new corporation (which it helped form) as part of the initial capitalization, as long as the new corporation agreed to hold the securities for the remainder of the original 12 month period, the Commission waived the requirements of this section:

Northwest Facilities and Systems, Inc.	11/26/86
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7. Where an issuer which sold shares in the past 12 months under this section will, pursuant to a business reorganization, be merged into a new entity whereby the shareholders will receive promissory notes of the new entity in exchange for the shares which will then be cancelled and where the notes of the new entity will be sold under this section and contain the 12 month agreement, the Commission waived the requirements of this section with respect to the exchange of the shares for the notes:

Computerized Carrier Systems of America, Inc.	8/20/86
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8. Where an issuer sold securities under this section to an employee of another company with which the issuer had a computer software development contract and the employee/investor was terminated from employment and desired to transfer the security of the issuer to the company (his former employer), the Commission waived the requirements of this section where the subsequent purchaser agreed to hold the security for the remainder of the original 12 month period:

REMT Associates

5/11/87

9. Where securities were sold under this section to an individual which ownership was originally intended to be allocated evenly between his two sons and the father now desired to sell the securities to effect the original intent, the Commission waived the requirements of this section where the sons agreed to hold the securities for the remainder of the original 12 month period:

Valad Partners, L.P.

5/27/87

10. Where an issuer made an offering of common and preferred shares of stock and sold only preferred shares to a management level employee because he intended to leave the employ of the issuer shortly after offering and the employee later elected to remain with the issuer and desired to exchange his preferred shares for shares of common stock, the Commission waived the requirements of this section provided the purchaser agreed to hold the common stock for the remainder of the original 12-month holding period:

Joy Technologies, Inc.

4/4/88

11. Where an issuer that offered and sold securities for the purpose of raising capital solely from shareholders of a roofing company to buy the building currently leased to the roofing company agreed to repurchase securities from a purchaser of the issuer's stock who also was a shareholder in the roofing company upon his election to leave the roofing business for the original purchase price, the Commission waived the requirement of this section:

RMDV Realty, Inc.

3/23/88

12. Where an issuer offered and sold a limited partnership interest in an organization providing billing services to the medical profession to a physician who purchased in his corporate capacity and later, upon advice of his financial advisor, requested that the limited partnership interest be transferred to him in an individual capacity, the Commission waived the requirement of this section, provided the individual agreed to hold the limited partnership interest for the remainder of the original 12-month holding period:

Physicians Billing Associates

12/9/88

York Ridge Apartment Associates

12/21/94

York Ridge Apartment Associates

12/21/94

13. Where a general partner of a limited partnership engaged in providing diagnostic medical services purchased three limited partnership interests for the same price and on the same terms as all other limited partners, including signing an agreement not to resell the interests for 12 months from the date of purchase, and later desired to sell one unit to a physician, the Commission waived the requirement of this section, provided the purchaser agreed to hold the interest for the remainder of the original 12 month holding period and the selling general partner received the unanimous approval of the transaction from the other general partner and all limited partners:

Doylestown Diagnostic Partners, L.P.

1/9/89

14. Where an issuer desired to offer and sell market auction preferred stock with a minimum purchase of \$1 million only to Accredited Investors in Pennsylvania, the Commission waived the requirement of this section:

The Rank Organization	8/30/89
Redland Plc	12/6/89
Redland Preferred Stock Plc	2/27/90
Pearson Plc	7/18/90

15. Where an issuer proposes to offer and sell market auction preferred stock with a minimum investment of \$500,000 only to Accredited Investors in Pennsylvania, the Commission waived the requirement of this section:

Elf Aquitaine U.K. (Holdings) Plc	5/4/90; 7/15/92
Beazer Investments Plc	6/13/90
Tarmac Plc	9/17/90
BT Overseas Finance, N.V.	2/3/93

16. Where an issuer offered and sold debt securities to a Pennsylvania resident, who purchased through his deferred benefit pension plan and later, upon advice of his financial advisor, terminated the pension plan and simultaneously rolled over all assets into a profit sharing plan, the Commission waived the requirement of this section, provided the profit sharing plan assumed all obligations agreed to by the pension plan including an agreement to hold the debt securities for the remainder of the original 12-month holding period:

Hidden Acres Associates	7/18/90
Bridgeview, Inc.	4/27/92

17. Where the U.S. Department of Health and Human Services issued “safe harbor” regulations with respect to criminal prosecution or imposition of civil sanctions for violations of medicare anti-kickback requirements by referring physicians possessing ownership interests in a medical facility after the issuer offered and sold units of limited partnership interests in reliance on Section 203(d), the Commission waived the 12-month holding period in order for the investors in the issuer to comply with these regulations:

Centre Commons MRI, Ltd.	11/20/91
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18. Where in a private offering, a general partner of a limited partnership purchased all of the remaining unsold units of the limited partnership and signed an agreement to hold the units for 12 months thereafter proposes to sell a portion of these units to one or two other existing limited partners who will be afforded de novo withdrawal rights under Section 207(m) and will agree to hold the units for the remainder of the original 12 month holding period, the Commission waived the requirement of this section:

Persona Rehab Association	9/30/92
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19. Where holders of debt securities of a company who had received shares of common stock of the company as a result of non-payment of the notes were afforded the opportunity to exchange those shares for shares of another company that had purchased 90% of the outstanding shares of the company, the Commission waived the requirements of this section, provided that the investors agreed to hold the shares of the acquiring company for the remainder of the original 12-month holding period:

Versus Technology Limited	11/18/92
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20. Where a Pennsylvania business corporation within the last 12 months sold securities under Section 203(d) and Regulation 204.010 to 34 physicians and one non-physician rehabilitation therapist and the corporation now intends to convert to a Pennsylvania professional corporation and, in connection with the proposed conversion, the corporation has offered to re-purchase the securities sold to the non-physician rehabilitation therapist, the Commission waived the requirements of this section:

Greater Pittsburgh Orthopedic Alliance, Ltd.

10/27/93

21. Where three individual Pennsylvania residents purchased securities under this section as an “investment group” by which all three members maintained beneficial ownership in the shares but only one member was a holder of record and where the investment group later desired to establish record ownership among all members and where the purchase by the three persons forming the investment group did not result in the issuer exceeding numerical limitations on sales under this section and where the individuals represented that they would hold the securities for the remainder of the original 12 month holding period, the Commission waived the requirements of this section:

Numrex Corporation

10/5/94

22. Where securities were sold under this section to a profit sharing plan maintained by an employer of a Pennsylvania resident, which resident had sole authority to direct investments in the plan and was sole beneficial owner of the plan’s assets, and where the Pennsylvania resident desired, upon recommendation of his financial advisor, to transfer the securities from the plan into an individual retirement account, the Commission waived the requirements of this section, provided the Pennsylvania resident would hold the securities for the remainder of the original 12 month holding period:

York Ridge Apartment Associates

12/21/94

23. Where the securities were sold under this section to a husband and wife holding as joint tenants and the husband and wife, upon the recommendation of their financial advisor, desired to transfer the securities to the wife as sole owner, the Commission waived the requirements of this section, provided the wife would hold the securities for the remainder of the original 12 month holding period:

York Ridge Apartment Associates

12/21/94

24. Where securities were sold under this section to a husband who intended to purchase the securities jointly with his wife but erroneously completed the subscription documents in his name only and now wishes to transfer the securities to himself and his wife as joint tenants, the Commission waived the requirements of this section, provided the husband and wife hold the securities for the remainder of the original 12 month holding period:

York Ridge Apartment Associates

1/18/95

25. Where securities were sold under this section to a husband and the husband, upon recommendation of his estate planning advisor, desires to transfer one-half of his interest in the securities purchased to his wife and subsequently jointly transfer the securities to a family limited partnership, the Commission waived the requirements of this section, provided the family limited partnership held the securities for the remainder of the original 12 month holding period.

Meadowbrook Equity Fund, LLC

4/10/96

26. Where securities were sold under this section and the purchaser subsequently established a family limited partnership of which the general partner is a Pennsylvania corporation whose shareholders are immediate family members of the purchaser and the purchaser desires to contribute the securities purchased to the capital of the partnership, the Commission waived the requirements of the section, provided the family limited partnership held the securities for this remainder of the original 12 month holding period.

Freemarkerts Online, Inc.

12/4/96

27. Where interests in a limited partnership were sold under this section in an offering that allowed a purchaser to redeem the interests for net asset value at specific periods stated in the offering memorandum and the offering required that all purchasers be Accredited Investors whose purchase did not exceed 10% of the purchaser's net worth (exclusive of home, furnishings and automobiles) and the minimum purchase amount was \$250,000 or more, the Commission waived the requirements of this section with respect to redemptions which may occur within the 12 month holding period:

DWR/JWH Futures Fund, L.P.

9/4/96

ML/AIG Multi-Strategy Fund, Ltd.

9/4/96

28. Where an issuer, which is subject to the reporting requirements of the Securities Exchange Act of 1934, sold non-transferable warrants under this section which warrants and shares underlying the warrants were the subject of a registration statement filed under section 5 of the Securities Act of 1933 that became effective with the U.S. Securities and Exchange Commission, the Commission waived the requirements of this section with respect to the re-sale of the stock issued upon exercise of the non-transferable warrants.

McHenry Metals Golf Corp.

3/9/99

29. Where the purchaser of securities of an issuer under this section is obligated to pay for the securities in several installments and the purchaser subsequently encounters adverse economic circumstances that were unforeseen at the time of purchase which make it impossible for the purchaser to make the required installment payments and the purchaser seeks to sell the securities to another person, the Commission waived the requirement of this subsection provided the subsequent purchaser agreed to hold the securities for the remainder of the original 12 month period:

Abbey Road Farms

7/18/82

Yellow Springs Associates

9/21/83

30. Where a purchaser of securities of an issuer under this section is an officer or director of the issuer and seeks to sell the securities to another person who either is an officer or director of the issuer or who will become an officer or director of the issuer upon the purchase of the securities, the Commission waived the requirement of this subsection provided the subsequent purchaser agreed to hold the securities for the remainder of the original 12 month period:

Food Management Services, Inc.

7/28/81

Dolores Torres Tortilla Factory, Inc.

3/9/83

Smithwick's Exchange, Inc.

3/9/83

Section 203(d)(iii)

1. Where a non-profit Pennsylvania religious organization files under Section 203(d) to exempt the sale of unsecured subordinated promissory notes and requested permission to mail a brochure explaining the debt offering to its members, the Commission waived the mass mailing prohibition of subsection (d)(iii), provided that the material contained in the brochure did not rise to the level of an offer, the brochure would be mailed only to current members of the congregation and the issuer otherwise would comply with all of the requirements of Section 203(d) and Regulation 204.010:

Derry Presbyterian Church

6/16/93

Section 203(i)

1. Where an issuer files under Section 203(i) to exempt the offer and sale of stock under dividend reinvestment and stock purchase plans for which a registration statement filed with the SEC had become effective on such an earlier date as to make compliance with the two business day filing requirement of this section impossible, the Commission waived such requirement where the issuer is otherwise in compliance with the requirements of this section:

Vermont Financial Services Corporation	5/2/83
Upper Peninsula Power Company	10/11/83
McCormick & Company, Inc.	11/16/83
First American Corporation	7/30/85
First Amarillo Bancorporation, Inc.	2/20/85
National City Bancshares, Inc.	4/11/90
First Michigan Bank Corporation	8/15/90
F&M Bancorp	7/29/91
Volunteer Bancshares, Inc.	8/7/91
S&T Bancorp, Inc.	1/8/92

2. Where an issuer files under Section 203(i) to exempt the offer and sale of stock underlying warrants or as part of an exchange offer for which a registration statement filed with the SEC had become effective on such an earlier date as to make compliance with the two business day filing requirement of this section impossible, the Commission waived such requirement where the issuer is otherwise in compliance with the requirements of this section and all warrants or other securities subject to the warrants or exchange offer were obtained by Pennsylvania residents in compliance with the 1972 Act:

Astradyne Computer Industries, Inc.	5/2/83
Tape Specialty, Inc.	5/2/83
Clini-Therm Corporation	6/27/83
Bionomics Sciences International Corporation	10/12/83
Digital Switch Corporation	6/27/84
Trimdyne, Inc.	8/14/84
Senior Service Corporation	3/10/88
Montana Naturals International, Inc.	8/3/88
A.J. Ross Logistics, Inc.	12/29/88
Boston Technology, Inc.	3/29/89
Valley Forge Scientific Corporation	12/18/90
Merit Medical Systems	4/10/91
Marrow-Tech Incorporated	4/23/91
U.S. Transportation Systems, Inc.	7/29/92

Section 203(l)

1. Where a corporation, as part of a court approved settlement of a class action law suit, plans to issue shares of common stock and non-transferable coupons exchangeable for common stock to its counsel in payment of fees and the securities will be issued in reliance upon Section 3(a)(10) of the Securities Act of 1933 and a copy of the stipulation of Settlement, Judgement and Notice were filed with the Commission seven days prior to the date of issuance of the shares, the Commission waived the 10-day filing requirement of this section:

Tandon Corporation

7/5/88

2. Where an Indiana mutual life insurance company filed with the Commission a Notice of Public Hearing together with a copy of the Plan of Conversion two days prior to the date the matter was to be considered by the Indiana Insurance Commissioner during a hearing on the conversion of the insurance company from a mutual to a stock company, the Commission waived the 10-day filing requirement of this section:

Mutual Security Life Insurance Company

7/27/88

Section 203(o)(i)

1. Where proxy materials have been filed with the Commission under this section for the merger of a bank into a one-bank holding corporation which materials also have been reviewed and approved by the SEC, the Commission waived, in part, the ten day filing period required under this section:

**Peoples National Bancorp, Inc.
Community Independent Bank, Inc.**

**2/21/84
3/27/85**

Section 203(q)

1. Where under Section 203(q), Form 203-Q was filed two days prior to the distribution of equity securities of a wholly-owned subsidiary by its parent, both of which are public companies with equity securities registered with the SEC under Section 12 of the Securities Exchange Act of 1934, the Commission waived the requirement that Form 203-Q be filed ten calendar days prior to the date of the distribution:

Viragen, Inc.

11/5/86

2. Where Form 203-Q was filed eight days prior to a special shareholders meeting where a vote would be taken on the immediate distribution of shares in connection with a plan of merger and liquidation, the Commission waived the requirement that Form 203-Q be filed ten calendar days prior to the date of distribution:

KTB Enterprises

8/24/88

Section 203(r)

1. Where principals, as that term is defined in §203.184, and principals' relatives of a sponsor of mutual funds and its affiliated investment adviser and investment management entities desire to purchase shares in a new mutual fund to be registered under the Investment Company Act of 1940, in which they have been instrumental in planning and organizing, prior to the effectiveness of the registration statement to be filed under the Securities Act of 1933, the Commission exempted the offers and sales to such principals and their relatives from the registration requirements of Section 201 prior to the effectiveness of the 1933 Act registration statement, provided that (1) no person will become a principal for the primary purpose of obtaining this exemption; (2) the new fund will not sell its shares prior to registration under the 1940 Act and filing a registration statement with the SEC; (3) each person will receive a copy of the preliminary and final prospectus; and (4) the new fund's registration statement will be amended to disclose relevant information concerning sales made and proceeds received under this exemption:

Delaware Management Company, Inc.

10/7/85

2. Where a corporation which operates as a purchasing cooperative for retail dealers who sell hardware, lumber or building supplies offers and sell stock without any filing required by the SEC which evidences membership in a cooperative and does not possess the ordinary characteristics of a corporate equity security, the Commission exempted the offer and sale of stock from the registration requirements of Section 201, provided that the issuer files annually with the Commission updated disclosure material, including certified financial statements to be used in connection with such offers and sales:

**American Hardware Supply Co.
Hardware Wholesalers, Inc.**

**8/28/85; 10/18/85
8/25/85**

3. Where an issuer has been formed to promote and develop venture opportunities related to healthcare services and all of the securities to be offered and sold are exempt from registration with the SEC under §4(2) of the Securities Act of 1933 but are the subject of a registration statement filed with the Commission under Section 206 will be owned by a hospital and physicians on its medical staff, the Commission exempted from the registration requirements of Section 201 offers to 125 persons prior to the effectiveness of the registration statement under Section 206:

**Sewickley Valley Hospital HPJV, Inc.
Butler Memorial Hospital HPJV, Inc.
Somerset Doctors Corporation
Altoona Physicians Corporation**

**3/20/85
5/28/86; 1/19/88
11/12/87
3/23/88**

4. Where an issuer offers its general counsel an opportunity to purchase securities and the law firm serving as general counsel has a policy that any business opportunity coming to the attention of an individual attorney must be offered to the firm, the Commission exempted the offer and sale of such securities from the registration requirements of Section 201 provided that all of the attorneys of the firm who purchase the securities agree to the re-sale restriction imposed by Section 203(d)(i), a provision which applied to the same class of the securities issued in a simultaneous private placement offering:

Term-Tronics, Inc.

6/15/86

5. Where an issuer is a savings association (in organization) which filed under Section 203(d) to offer and sell securities and the partners in the law firm representing the issuer in such offering and the officers, directors and general partners of the selling agent which is a broker-dealer registered under Section 301 desire to purchase securities of the issuer, the Commission exempted offers and sales of such securities from the registration requirements of Section 201, provided that the purchasers agree in writing not to resell the securities for a period of 18 months from the date of purchase:

**Blank, Rome, Comisky & McCauley;
Sovereign Savings Association (In Organization);
Butcher & Singer, Inc.** **10/22/84**

6. Where an issuer desires to effect an exchange offer with Pennsylvania residents, all except one of which are accredited investors, of stock and warrants for oil and gas limited partnership interests, which shares will be freely tradable in Canada where the issuer is a reporting issuer and has securities listed on the Toronto and Montreal Stock Exchanges and which cannot be sold to U.S. citizens or persons buying on account of U.S. citizens, the Commission exempted the exchange offer from the registration requirements of Section 201:

Trilogy Resource Corporation **11/19/84; 11/24/87**

7. Where a corporation sells securities to an Advanced Technology Center which manages the investment of Ben Franklin Partnership funds and performs due diligence on each potential investment and where all investments are reviewed and approved by an independent advisory board comprised of venture capitalists, technical experts, lawyers and accountants, the Commission exempted the offer and sale of the securities from the registration requirements of Section 201:

Phospho-Energetics, Inc. **1/13/87**
Mother's Work, Inc. **1/13/87**
BioChem Technology, Inc. **1/13/87**
U.S. Vision, Inc. **5/4/88**
Telebase Systems, Inc. **1/25/89**
Dynamic Digital Displays, Inc. **3/7/90**
Sicom Systems, Inc. **8/21/90**

8. Where a non-profit organization of professional engineers offers and sells up to a maximum of \$10,000 unsecured debt securities to each existing member to finance renovations to its headquarters and retire a second mortgage and provides a disclosure document, an investor suitability standard, and an option to have the securities repurchased upon death, resignation or relocation of the professional, the Commission exempted the securities from the registration requirements of Section 201:

Fourth Avenue Associates **12/17/86**

9. Where an issuer has been formed to operate an existing licensed medical laboratory and all the securities to be offered and sold are exempt from registration with the SEC under §4(2) of the Securities Act of 1933 but are the subject of a registration statement filed with the Commission under Section 206 and the securities will be offered exclusively to healthcare professionals licensed to practice allopathic or osteopathic medicine or dentistry in Pennsylvania or operators or administrators of nursing homes or hospital facilities, the Commission exempted from the registration requirements of Section 201 offers to 90 such persons prior to the effectiveness of the registration statement under Section 206:

SCL Medical Laboratory **4/25/88**

10. Where an issuer engaged in the business of contract central station monitoring of alarm security systems proposes to issue shares of common stock, in a transaction exempt from registration with the SEC under Rule 504 of Regulation D promulgated under the Securities Act of 1933, to local alarm system sales and installation dealers in quantities directly related to the number of customers which the dealers recommend to the issuer for the purpose of instilling loyalty and a personal interest in the issuer's success and where delivery of the shares will be accompanied by a written document explaining that the shares are entitled to vote and receive dividends when declared and where the issuer has provided a written undertaking to comply with Regulation 606.011, the Commission exempted the transaction from the registration requirements of Section 201:

Security Command Center, Inc.

8/17/87

11. Where an issuer, engaged in the business of franchising services and equipment at rehabilitation facilities, proposes to offer and sell common stock to its consultants, all of whom are medical doctors, for \$.0001 per share to reward them for loyalty and each person will be provided a letter identifying the type of security, voting and dividend rights, and financial statements for the past two years and where the issuer has provided a written undertaking to comply with Regulation 606.011, the Commission exempted the transaction from the registration requirements of Section 201:

American Rehab, Inc.

10/26/87

12. Where an issuer, which is an existing non-profit corporation engaged in promoting tourism, proposed to offer and sell \$500,000 in 20 year 6% subordinated bonds exclusively to Pennsylvania residents to finance capital improvements to a visitors center and where the issuer provided a disclosure document, set suitability standards, provided restrictions on resales, and provided for certain redemption provisions, the Commission exempted the debt securities from the registration requirements of Section 201, provided that the issuer supply the offerees with GAAP basis financial statements for the two years ended June 30, 1989, accompanied by a standard review report by a CPA:

Pennsylvania Dutch Tourist Bureau

11/27/89

13. Where limited obligation bonds of a governmental authority were issued as a financing vehicle for construction of a retirement and intermediate care facility upon which the trustee for the bondholders subsequently filed an action to foreclose the mortgage on the facility inasmuch as interest payments on the bonds were two years in arrears, the Commission exempted the issuance of first mortgage bonds by the successful bidder to purchase the facility pursuant to a court ordered and supervised sale in exchange for the outstanding limited obligated bonds issued by the governmental authority from the registration requirements of Section 201:

O.F.C. Corporation

4/20/90

14. In a transaction where the issuer was established to effect a recapitalization of an existing company through a merger, the merger transaction was approved by the board of directors of the existing company, the number of shareholder involved in the transaction was 38, all the shareholders were licensed physicians involved in providing professional services through the existing company to HMOs, self-insured employers and other payers, and the shareholders received substantial written proxy materials describing the merger transaction, including a compiled balance sheet and statement of operations and retained earnings and statement of cash flow for two years and a nine month stub period, the Commission exempted the transaction from the registration requirements of Section 201:

New Prime Care, Inc.

5/3/95

15. Where a single share of stock each is proposed to be offered and sold pursuant to a private placement memorandum for \$1.00 to 125 physicians licensed to practice medicine in the Commonwealth for a maximum aggregate offering price of \$125.00 in order for them to participate in a for-profit management services organization (“MSO”) that will provide administrative and management services and where such stock is non-transferable except to back to the issuer and is redeemable upon termination of the physician’s participation in the MSO for not more than \$1.00 per share, the Commission exempted the shares from the registration requirements of Section 201:

Insurer Physicians of Harrisburg, Inc.	12/31/95
Insurer Physicians of York, Inc.	3/27/96
Insurer Physicians of Reading, Inc.	4/24/96

16. Where an issuer places a communication on the Internet or World Wide Web (Internet) designed to raise capital (Internet Offer), the Commission has exempted the Internet Offer from the registration requirements of Section 201 and has waived the advertising requirements of Commission Regulation 606.031 with respect to such offers if the Internet Offer indicates, directly or indirectly, that the securities are not being offered in Pennsylvania, an offer is not otherwise specifically directed to any person in Pennsylvania by, or on behalf of, the issuer and no sales of the issuer’s securities are made in Pennsylvania as a result of the Internet Offer:

Offers (But not Sales) Effected Through the Internet that do not Result in Sales in Pennsylvania	9/1/96
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17. Where an issuer has complied with the requirements and conditions described in Commission Release 94-CF-1 concerning use of solicitation of interest materials prior to the registration of securities under Section 205 or 206 of the 1972 Act, the Commission exempted the solicitation of interest materials from the registration requirements of Section 201:

Freewing Aerial Robotics Corporation	10/9/96
Summit Surgery Center LP/Surgery Center Associates, LLC	2/2/99
Proposed Pennsylvania Stock Property and Casualty Company Jointly Owned by Tuscarora Wayne Group, Inc. and Keystone Insurers Group, Inc.	6/11/02
Lifetime Security Plan, LLC	11/19/02
Gettysburg Equestrian Limited Partnership	4/15/03
Keystone Capital Investors, LLC	8/21/03
Statewide Receivables, Inc.	6/16/09

18. Where an issuer, as part of a proposed plan of merger, intends to issue common stock to certain security holders of the company to be acquired and those security holders are venture capital funds, officers, directors of the company and individual investors who the acquiror has reasonable grounds to believe are Accredited Investors and the venture capital funds control the company and none of the common stock holders of the company to be acquired will receive shares of the acquiror, and the issuer will prepare a disclosure document in connection with the proposed merger transaction, the Commission exempted the transaction from the registration requirements of Section 201:

SDI, Inc.	7/9/96
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19. Where an issuer intends to enter into a global risk contract with one or more health insurance companies that is a licensed health maintenance organization in Pennsylvania to provide patient care through provider agreements with physicians licensed to practice medicine in Pennsylvania and proposes to grant options to purchase common stock of the issuer only to such physicians who enter into provider agreements and such options will not vest until two years following the date of grant, will terminate if the physician terminates a relationship with the issuer before the options vest, will be exercisable at not more than the fair market value of the underlying common stock at the date of grant and, prior to exercise of the options, the physician will receive a copy of the stock option plan, a summary of the material terms of the plan, information about the risks associated with an investment in the issuer's common stock and financial statements as of a date not more than 180 days prior to the exercise of the option satisfying the requirements of Part F/S of Form 1-A under Regulation A of the Securities Act of 1933, the Commission exempted the offer and sale of the options and underlying common stock from the registration requirements of Section 201:

Renaissance Medical Management Company, Inc.

4/6/99

20. Where an issuer made a filing with the Commission under Section 203(t) for the sale of common stock only to Accredited Investors and, as part of the same offering of securities, the law firm which acts as counsel to the issuer agreed to accept \$20,000 of common stock in exchange for legal services but the law firm would not qualify as an Accredited Investor, the Commission exempted the offer and sale of the common stock to the law firm from the registration requirements of Section 201:

Net Health Systems, Inc.

12/7/99

21. Where a company that designs and manufactures high-end performance bicycles forms an issuer to retail high end performance bicycle components and accessories on the World Wide Web and 51% of the issuer will be evidenced by Class A Units at \$1,000 per Class A Unit which will be offered to existing dealers of the company's products on the basis of one Class A Unit for each independently owned and operated bicycle shop and the remaining 49% of the issuer will be held by a subsidiary of the company that will purchase Class B Units at \$1,000 per Class B Unit, the Commission exempted the transaction from the registration requirements of Section 201:

Specialized Dealers Direct LLC

10/19/99

22. Where a foreign corporation proposes an exchange tender offer with U.S. shareholders of its subsidiary and the offering qualifies for an exemption from registration with the U.S. Securities and Exchange Commission ("SEC") under SEC Rule 802 in that the U.S. shareholders of the subsidiary own no more than 10% of the shares subject to the exchange tender offer, the Commission exempted the transaction from the registration requirements of Section 201:

Fenics Limited

6/6/00

23. Where the following requirements are met: (1) a person who owns outstanding debt securities (and any related guarantees) exchanges those securities for debt securities (and any related guarantees) of the same issuer which are the subject of an effective registration statement filed with the United States Securities and Exchange Commission (SEC) under Section 5 of the Securities Act of 1933 (15 U.S.C. § 77(e)) (Exchange Transaction); and (2) the outstanding debt securities (and any related guarantees) are "restricted securities" as that term is defined in SEC Regulation 144(a)(3) (17 C.F.R. § 230.144(a)(3)); and (3) no consideration is paid by the owner of the outstanding debt securities (and any related guarantees) in connection with the Exchange Transaction; and (4) there are no material differences in the terms of the outstanding debt securities (and any related guarantees) and the debt securities (and any related guarantees) which are the subject of the Exchange Transaction, the Commission exempted the securities from the registration requirements of Section 201.

**Securities Transaction Exemption For SEC Rule 144A Exchange
Transactions in Debt Securities with Certain Accredited Investors**

3/16/04

Section 204(a)

1. Where an issuer is offering and selling securities under Section 203(e) and (d) to own and operate a medical office building adjacent to an existing hospital solely to tenants of the building, doctors (or their professional corporations) which are interested in leasing space in the building, doctors on the hospital staff and the hospital, the Commission increased the number of offerees under Section 203(e) to 100 and purchasers under Section 203(d) to 50 provided that the securities otherwise will be sold in compliance with all of the other requirements of Section 203(d):

Forty-fourth Street Associates	3/5/84
Medical and Conference Center Associates	5/29/84
PR Reading, LLC	6/22/10

2. Where three related entities organize an issuer to offer and sell securities solely to family members and senior officers of one of the organizing entities and its wholly-owned subsidiaries to construct and own an office building to be leased to the organizing entities, the Commission increased the number of offerees under Section 203(e) to 125 and sales under Section 203(d) to 70, provided that the securities otherwise will be sold in compliance with all of the other requirements of Section 203(d):

The Pitcairn Company; Evans-Pitcairn Corporation; Pitcairn, Inc.	8/20/84
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3. Where an issuer has been formed to market services of physicians to purchasers of medical care and all the stock offered and sold under Section 203(d) and (e) will be made to physicians on the staff of one medical facility who have a net worth (exclusive of home, furnishings and automobiles) of \$2,500, the Commission increased the number of offerees under Section 203(e) to 150:

Physicians Associates, Inc.	1/22/86
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4. Where a limited partnership issuer is offering and selling securities under Sections 203(e) and (d) solely to physicians and dentists with medical staff privileges at healthcare institutions affiliated with the owner or one of the four general partners and to corporate affiliates of the general partners in order to own and operate a magnetic imaging center, the Commission increased the number of offerees under Section 203(e) to 125 and the number of purchasers under Section 203(d) to 70, provided that the securities otherwise will be sold in compliance with all of the other requirements of Section 203(d):

Lehigh Magnetic Imaging Center	8/11/86
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5. Where an issuer, engaged in the business of providing psychiatric services, is offering and selling securities under Sections 203(e) and (d) solely to psychiatrists who have active staff privileges at local hospitals or professional corporations in which they are shareholders and where an investor must meet a minimum suitability standard of five times the purchase price of the total investment (exclusive of home, furnishings and automobiles), the Commission increased the number of purchasers under Section 203(d) to 70, provided the securities otherwise would be sold in compliance with all of the other requirements of Section 203(d):

Main Line Health Care Group, Inc.	4/4/88
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6. Where an issuer, engaged in the business of operating an ambulatory care center, is offering and selling securities under Sections 203(e) and (d) solely to physicians, osteopathic physicians, dentists and podiatrists who have medical affiliations with certain hospitals mentioned in the offering memorandum and the limited partnership agreement, and who will become and remain members of the medical staff of Community Ambulatory Care Center and possess a net worth of \$50,000 (exclusive of home, furnishings and automobiles), the Commission increased the number of purchasers under Section 203(d) to 70 and the number of offerees under Section 203(e) to 125:

CACC Associates Limited Partnership	10/17/88
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7. Where an issuer, engaged in the business of providing healthcare services, is offering and selling securities solely to the sponsoring hospital and members of a physicians's association who are both members of the hospital's active medical staff and the association, the Commission increased the number of purchasers under Section 203(d) to 70 and number of offerees under Section 203(e) to 106:

Magee Womancare Network, Inc.

12/21/88

8. Where an issuer, proposing to engage in the business of operating a magnetic resonance imaging center, is offering and selling limited partnerships interests under Sections 203(e) and (d) solely to physicians, osteopathic physicians, dentists, podiatrists, and healthcare facilities resident in the immediate locale of the proposed business and which possess a net worth (exclusive of homes, furnishings and automobiles) of \$75,000, the Commission increased the number of purchasers under Section 203(d) to 70 and the number of offerees under Section 203(e) to 125:

Valley Magnetic Resonance Imaging Center

9/27/89

9. Where an issuer, proposing to engage in providing comprehensive outpatient rehabilitation services, offers and sells limited partnership interests solely to licensed physicians and dentists who are members of the medical staff or rehabilitation facility identified in the offering memorandum and duly licensed speech, occupational and physical therapists who are affiliated with the medical or rehabilitation facility, the Commission increased the number of purchasers under Section 203(d) to 70 and the number of offerees under Section 203(e) to 125:

Uniontown/Harmarville Rehabilitation Center, Ltd.

11/15/89

10. Where a church proposed to offer and sell debt securities to no more than ten members of its congregation in reliance on Regulation 203.187 but distributed a flyer concerning the offer and sale of such securities to approximately 400 members of its congregation, the Commission waived the public media and mass mailing prohibition imposed by Regulation 203.187(a)(5), provided that the church represented it otherwise would meet all of the requirements of Regulation 203.187; the debt securities would be offered and sold only to members of congregation; a written disclosure document containing financial statements and an appraisal of the property to be mortgaged would be prepared and distributed to prospective purchasers and, if the church decided to sell to more than ten members of the congregation, it would comply with all of the requirements of Section 203(d):

Neffsville Mennonite Church

10/9/90

Trinity Evangelical Lutheran Church

10/6/93

11. Where an issuer, which plans to engage in the business of operating a magnetic resonance imaging center, proposes to offer and sell limited partnership interests under Sections 203(e) and (d) solely to physicians, osteopathic physicians, dentists and health-care related entities (including hospitals) resident in the immediate locale of the proposed business, the Commission increased the number of purchasers under Section 203(d) to 70 and the number of offerees under Section 203(e) to 125:

MRI of Easton

6/19/91

12. Where a Pennsylvania company proposed to sell 4,400 shares of its stock for a maximum aggregate offering amount of \$109,648 solely to supervisory and upper management personnel of the company and its wholly-owned subsidiary under Section 203(d) and the prospective purchasers received substantial disclosure materials, including a registration statement previously filed by the company with the U.S. Securities and Exchange Commission, the Commission increased the number of purchasers under Section 203(d) to 66:

Koppers Holdings Corporation

3/20/91

13. Where an issuer engaged in the business of providing title insurance proposes to offer and sell securities solely to licensed real estate agents or operations managers affiliated with the issuer who are residents of Pennsylvania, are purchasing with investment intent for their own account and not with a view to reselling or distributing the securities, and have no conflicts of interest with any other business that provides title insurance, the Commission permitted a reasonable increase in the number of purchasers under Section 203(d) and the number of offerees under Section 203(e):

Abstract 100 Ltd.	5/7/96
Homesale Settlement Services, Ltd.	4/7/98; 12/23/03
Westgo III Abstract LLC	9/6/00
Central Penn Settlement Services, LLC	10/10/00
Services Abstract Company	4/2/02
Marathon One, LLC	6/25/02
Chesco Land Transfer, L.P.	2/18/04
Power Settlement Services, LLP	5/29/07

14. Where a non-profit religious corporation whose most recent audited financial statement showed an unrestricted fund balance of \$5.8 million proposes to offer and sell, under a firm underwriting agreement with a registered broker-dealer, first mortgage bonds to fund additions to its existing improved property pursuant to a fixed price or guaranteed maximum price contract with a performance bond and where the proceeds will be escrowed in a segregated restricted account to be used solely for the physical improvements and where the amount of the bonds will be 80.1% of the value of the corporation's existing premises, the Commission waived the requirement of Section 203(p)(iii) that the total amount of the bonds not exceed 75% of the present value of the existing land and buildings:

Faith Community Church of West Covina, CA	3/21/00
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15. Where a non-profit religious corporation whose most recent audited financial statement showed an unrestricted fund balance of \$744,349 proposes to offer and sell, under a firm underwriting agreement with a registered broker-dealer, first mortgage bonds to fund improvements on existing unimproved land which it owns pursuant to a fixed price or guaranteed maximum price contract with a performance bond and where the proceeds will be escrowed in a segregated restricted account to be used solely for the improvements and where the amount of the bonds will be 451.3% of the value of the corporation's existing unimproved land, the Commission denied a request to waive the requirement of Section 203(p)(iii) that the total amount of the bonds not exceed 75% of the present value of the existing land and buildings:

Fresno Christian Schools, Fresno, CA	4/25/00
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Section 205(d)

1. Where a registration statement on SEC Form F-3 was filed under Section 205, the Commission waived the requirement of Section 205(c)(2)(ii) that the registration statement be on file for at least ten days to five days:

Hanson Overseas B.V.	7/24/95
ICI Wilmington Inc.	9/10/97

Section 609(c)

1. Where a corporate instrumentality of the State of Queensland, Australia, proposed to offer and sell debt securities which are guaranteed by the State Treasurer of Queensland on behalf of the Government of Queensland and filed a registration statement under Schedule B of the Securities Act of 1933 with the Commission containing financial statements prepared in accordance with the provisions of the Queensland Financial Administration and Audit Act and Australian Accounting Standards, the Commission waived the requirement of this section that financial statements must be prepared in accordance with generally accepted accounting principles in conformity with standards promulgated by the American Institute of Certified Public Accountants:

**Queensland Treasury Corporation
Government of Queensland**

5/23/90

Regulation 202.030

1. Where an issuer proposes to issue and sell its unsecured notes with a maturity not to exceed 270 days from the date of issue in denominations of not less than \$25,000; has a net worth liquidity position, recent financial performance, aggregate indebtedness and access to additional channels of borrowing comparable to those organizations whose commercial paper has been rated within the three highest ratings as determined by Standard & Poor's or Moody's or two highest ratings as determined by Fitch's; and the issuer has not applied for a rating because it plans to sell the notes locally and does not view a rating as a requirement for marketing purposes, the Commission determined that the notes have credit characteristics equivalent to comparable issuers which have received ratings set forth in subsection (b)(1):

**Continental Bancorp, Inc.
Finance America Corporation**

**4/13/83
6/1/83**

Regulation 202.091

1. Where an independent physicians association plans to offer and sell shares of capital stock in a professional corporation to be formed under the professional corporation law of New Jersey to the medical staff of a hospital located in New Jersey, some of whom are Pennsylvania residents, and where the provisions of the New Jersey professional corporation law are substantially similar to the Pennsylvania professional corporation law and pose no conflict in purpose or intent, the Commission waived the requirement of subsection (b) that the professional corporation must be organized under the laws of Pennsylvania.

Independent Physicians Association of Mercer Medical Center, P.C.

6/22/94

Regulation 202.092

1. Where an issuer, which is a public instrumentality, proposes to offer and sell bonds and the user of the proceeds of the bonds guarantees payment of principal, interest and premium, if any, on the bonds and the guarantor's fiscal year ended within 60 days prior to the commencement of the bond offering, the Commission waived subsection (a)(4)(ii)(A), provided that the official statement contain unaudited financial statements of the user for the year ending December 31 and a representation that the bondholders have a right of rescission in the event the audited financial statements for the same period contained a material adverse change in financial condition:

The Health Services Authority of Hazelton

4/4/88

2. Where an issuer, which is a public instrumentality, proposes to offer and sell bonds which are subject to a master trust indenture entered into by an obligated group that jointly and severally guarantees payment on all notes issued at any time under such indenture, the Commission waived the requirements of subsection (a)(7)(iii), (8)(ii) and 8(iii)(B) and (C), with respect to the guaranty, provided that the user (which also, at this time, is the sole member of the obligated group) represented that it would notify the trustee for the bonds within 24 hours of the time it became insolvent and the trustee for the bonds represented that it would notify the bondholders within 30 days following receipt of an auditor's report to the guarantor containing a going concern qualification or notification that the guarantor is insolvent:

New Hampshire Higher Education and Health Facilities Authority **9/27/89**

3. Where the issuance of limited obligation bonds of a governmental authority is being structured as a supplemental issue under the financing documents of a prior issuance and re-financing of limited obligation bonds by the same governmental authority for the same project to give the new bondholders equal and ratable security in the existing mortgage on the project with prior bondholders and an independent appraisal report listed the facility's "Sound Value" at approximately \$9 million in excess of the total amount of outstanding bonds and independent forecasted financial statements indicated that the facility would have sufficient cash available to cover debt service of the limited obligation bonds being issued, the Commission waived the requirements of subsection (a)(6)(i) with respect to the offering of the bonds:

**Philadelphia Authority for Industrial Development
(Cathedral Village Project)** **3/29/93**

4. Where an issuer offers and sells limited obligation debt securities under Section 202(a) as to which a Guaranty is executed and delivered to the trustee for the benefit of the bondholders in which the Guarantor guarantees full and prompt payment of the performance of its obligations in an amount sufficient to pay principal, interest and premium, if any, on the bonds but the Guarantor did not meet the requirement of Regulation 202.092 of having a certified balance sheet and profit and loss statement dated within 120 days but did have unaudited financial information for that period and where the Guarantor also had a high fund balance to bond offering ratio in excess of that required by Regulation 202.092, the Commission waived the requirement of the regulation of having a certified balance sheet and profit and loss statement dated within 120 days:

Louisiana Public Facilities Authority	9/29/82, 4/27/83
Berks County Municipal Authority	11/3/82
Hospital Facilities Authority for the City of Gresham, OR	5/2/83
Board of Commissioners of the Port of New Orleans	5/9/83
City of Virginia Beach, VA Development Authority	9/1/83
Radnor Corporation	12/5/83

5. Where an issuer offers and sells limited obligation debt securities under Section 202(a) as to which a Guaranty is executed and delivered to the trustee for the benefit of the bondholders in which the Guarantor guarantees full and prompt payment of the performance of its obligations in an amount sufficient to pay principal, interest and premium, if any, on the bonds but the Guarantor did not meet the net worth requirements of Regulation 202.092 but the company that wholly owned the managing partner of the Guarantor had a net worth in excess of \$700 million, the Commission waived the Guarantor net worth requirement of the regulation:

City of Westchester, NY Industrial Development Agency **9/29/82**

Regulation 203.041

1. Where an issuer filing for an exemption under Section 203(d) has provided in the disclosure material audited financial statements dated within 6 months of such filing, the Commission waived the requirement to submit an audited balance sheet dated within 120 days of filing:

American Bankshares	10/31/84
Edward S. Pantzer (Franklin Office Associates)	6/26/85
Bancshares 2000, Inc.	9/23/85

2. Where a regulated insurance company filing under Section 203(d) to sell securities to one Pennsylvania resident requested a waiver from filing an unaudited balance sheet within 120 days due to a number of accounting uncertainties which would not be resolved until year end financial statements were completed within two months of filing, the Commission waived the requirement, provided that investor funds be placed in escrow until the company forwarded the year end financial statements to the investor and gave him time for analysis:

M Life Insurance Company	12/10/84
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3. Where an issuer has filed a balance sheet, statement of retained earnings, statement of income, and statement of changes in financial position for at least the past two years and the issuer prepares financial statements only once a year and represents that there have been no material adverse changes since the last financial statements, the Commission waived the requirement to submit an unaudited balance sheet dated within 120 days of filing:

E. G. Capital Management, Inc.	11/25/85
DeRand Corporation of America	12/18/85
Bio/Data Corporation	3/26/86

4. Where an issuer filing for an exemption under Section 203(d) to sell 60% of the shares being offered to one Pennsylvania resident which is a corporation that has had free access to the books and records of the issuer and the issuer is a reporting company under the Securities Exchange Act of 1934 and has filed with the Commission its most recent Securities & Exchange Commission Form 10-K and 10-Q, the Commission waived the requirement to submit an unaudited balance sheet and profit and loss statement dated within 120 days of filing:

Systems Assurance Corporation	1/6/87
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5. Where an issuer filing for an exemption under Section 203(d) was unable to provide an unaudited balance sheet and profit and loss statement within 120 days of the date of filing because its operations were conducted mainly through a wholly-owned British manufacturing subsidiary, the Commission waived the requirement to submit an unaudited balance sheet and profit and loss statement dated within 120 days of filing if the issuer (1) placed all funds received from the sale of securities to Pennsylvania investors into a separate escrow account with a bank and provide Commission staff with a copy of the escrow agreement; (2) provided the Commission and all Pennsylvania investors with a copy of the issuer's March 31, 1987, consolidated financial statements as soon as they are available; (3) afforded all Pennsylvania investors the right to rescind their purchase of the securities offered for a period of 10 days following receipt of the March 31, 1987 financials, and (4) effected no transfer of funds from the escrow account for the benefit of the issuer until all Pennsylvania investors had either rescinded or declined to rescind their purchase of the securities and that all investors who elected to rescind their purchase had the total amount of their investment returned to them:

Vital Science Corporation	5/27/87
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6. Where an issuer, filing under Section 203(d), provided reviewed financial statements, including a balance sheet and a profit and loss statement dated within 180 days of the date of filing and the issuer provided a written representation that there had been no adverse material changes to the condition of the issuer since the date of the financial statements, the Commission waived the requirement that an unaudited balance sheet and profit and loss statement be dated within 120 days of the date of filing:

Halcyon Group, Ltd.

12/16/87

7. Where a Canadian corporation filed under Section 203(d) to sell securities as part of an exchange tender offer by one broker-dealer for the shares of another broker-dealer included unaudited interim reports consisting of consolidated statements of change in financial position for a three, six and nine month period ending September 30, the Commission waived the requirement that an unaudited balance sheet and profit and loss statement be dated within 120 days of the date of filing, provided the issuer file its unaudited year-end financial statements when they became available:

E. A. Viner Holdings Limited

2/24/88

8. Where one of the largest financial services holding companies in Mexico proposed to make a \$1.2 billion global offering of stock which would be sold in the U.S. in the form of Rule 144A American Depository Receipts only to Qualified Institutional Buyers under SEC Rule 144A and Accredited Investors under Rule 501 of SEC Regulation D that possess a minimum net worth of \$5 million and make a minimum purchase of \$500,000 and where the offering circular contained financial statements prepared in accordance with Mexican statutory accounting rules for financial institutions, the Commission waived the requirement that the financial statements comply with U.S. generally accepted accounting principals:

Grupo Financiero Banamex Accival S.A. de C.V.

5/27/92

Regulation 203.151

1. Where a public company files under Section 203(o)(ii) to acquire all of the assets of six Pennsylvania limited partnerships and a Pennsylvania corporation for cash and convertible unsecured promissory notes whose average principal amount is \$14,300 each and the acquisition is subject to majority approval of the limited partners of each limited partnership which, in the aggregate, involve 69 Pennsylvania residents and these persons have received a copy of the acquiror's recent registration statement filed with the SEC containing audited financial statements for the last three fiscal years as well as a copy of the acquiror's unaudited balance sheet and income statement for the most recently completed fiscal year, the Commission waived the requirement of subsection (a) that the disclosure comply with SEC Rule 14A:

Medifit of America, Inc.

2/3/93

Regulation 203.161

1. Where a religious non-profit issuer offering and selling debt securities secured by all of the real estate owned by the issuer and supported by a bank letter of credit undertakes to inform each debt holder that copies of the issuer's financial statements are available for inspection at the issuer's offices, the Commission waived the requirement to distribute an annual report to security holders within 120 days of the end of the issuer's fiscal year, including a balance sheet and income statement for the preceding fiscal year prepared by an independent accountant or CPA, including an accountant's opinion as to the financial condition of the issuer:

Beth El Temple

12/5/83

Regulation 204.010

1. Where an issuer selling securities under Section 203(d) to purchase and operate an existing professional office building on the campus of a medical center sells only to prospective tenants of the building who are on the medical or dental staff of the medical center, the Commission modified the suitability requirements in subsection (a)(1)(iii)(C):

Professional Office Building Associates

4/25/85

2. Where a professional corporation is offering and selling its securities under Section 203(d) and (e) only to physicians who are employed or affiliated with a hospital to operate and manage the hospital's short procedure unit and total sales will not exceed 35, the Commission waived the provisions of subsection (a)(2)(i) to permit offers to be made solely to the 140 physicians who are employed or affiliated with the hospital:

PCOM SPV Associates, P.C.

4/24/85

3. Where the provision of subsection (a) become unavailable to an issuer subsequent to filing for an exemption under Section 203(d), the Commission declined to make a determination under subsection (c)(2) but waived the provisions of subsection (b) for the continued sale of the issuer's securities in this state:

Arizona Development Partners The Birches

7/8/85

4. Where the provisions of subsections (a)(1)(iii) and (2)(iii) became unavailable to an issuer in that a director of the issuer is subject to a 1984 federal court order to comply with the reporting requirements of Section 16 of the Securities Exchange Act of 1934 and a written representation was filed with the Commission stating that the violations were technical in nature and there had been no allegation of fraud or material misrepresentations having been made in connection with any securities activity, the Commission waived the disqualification in subsection (b)(2)(v):

Cardinal Health Systems, Inc.

10/13/87

Regulation 205.021

1. Where an issuer is in existence for less than 3 years, files a registration statement with the SEC on Form S-3, and is a wholly-owned subsidiary of a New York Stock Exchange listed company, the Commission waived the requirement to file Form 205 under subsection (a):

AT&T Credit Corporation

3/11/85

2. Where an issuer files a registration statement under Section 205 to effect, in a offering which is not firmly underwritten by a registered broker-dealer, an exchange of registered securities of the issuer for identical securities of the issuer which previously had been offered and sold to Qualified Institutional Investors in a private transaction under SEC Rule 144A, the terms of which required the issuer to file a registration statement for the exchange offer within a finite number of days from the Rule 144A transaction, the Commission waived the requirement to file Form 205 under subsection (a):

Core-Mark International, Inc.	11/19/96
Renaissance Cosmetics, Inc.	11/19/96

Regulation 206.010

1. Where an issuer has filed a registration statement under Section 206 for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance are to be rated in one of the top three rating categories by one or more nationally recognized statistical rating organizations, which registration statement was filed as a shelf-registration with the SEC under SEC Rule 415, the Commission waived the requirement to file Commission Form 206:

Lehman Structured Assets, Inc.	7/6/94
IBM Credit Receivable Lease Asset Master Trust	8/17/94

Regulation 207.110

1. Where an issuer files a registration statement under Section 206 which is not subject to registration under the Securities Act of 1933, plans to offer securities to a limited number of investors and seeks to reduce accounting expenses, the Commission waived the requirement to file post effective quarterly reports required under subsection (a):

Hanmar Associates XXIII	3/4/85
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Regulation 302.060

1. Where individuals requested dual registration as agents for one broker-dealer which will engage exclusively in the wholesale underwriting of affiliate sponsored mutual funds and for another broker-dealer engaging in retail securities activities, the Commission waived the condition of subsection (1):

Sovereign Advisers, Inc.	2/2/83
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Regulation 302.063

1. Where a credit union wishes to make available to its members a securities program through its credit union service organization which will have a contract with a registered broker-dealer and the service organization's employees may be registered as agents of the broker-dealer and registered agents of the broker-dealer may render investment advice and the credit union and the credit union service organization have filed substantial undertakings with the Commission relating to compliance and investor protection matters, the Commission waived the requirements of this section:

Pennsylvania State Employees Credit Union	2/1/95
The Police and Fire Federal Credit Union	12/31/96
SunEast Federal Credit Union	9/10/97

Regulation 302.064

1. Where a broker-dealer who is registered as a broker-dealer with the Commission and the SEC, is an associate member of the American Stock Exchange, and engages exclusively in proprietary trading for its own account and does not conduct any business with the public and desires to open an office in Pennsylvania, the Commission waived the requirement of subsection (1) with respect to its agents:

Lieber & Weissman Securities, L.L.C. 12/23/97

Regulation 303.011

1. Where a predecessor registered broker-dealer changed its legal organization from a partnership to a corporation, the Commission accepted unaudited pro forma consolidated statements of financial condition and waived the certification requirement of subsection (b):

L. F. Rothschild, Unterberg, Towbin, Inc.	1/10/86
Bear, Stearns & Co. and Bear, Stearns Corporation	9/4/85
Goldberg Securities, Inc.	5/22/85
Arthurs, Lestrangle and Company, Inc.	7/14/86
Perry Investments, Inc.	9/11/86
Cable, Howse & Rogan, Inc.	10/26/87
Communications Equity Associates, Inc.	1/19/88
Baker Watts & Co., Inc.	3/10/88
Bartlett & Co., Inc.	3/10/88
R. C. Stamm & Company, Inc.	3/16/88
A. M. Kronfeld & Company, Inc.	7/18/88
S. W. Ryan & Company, Inc.	9/6/88
H.C. Wainwright & Company, Inc.	11/28/90
Gerard Klauer Mattison & Company, Inc.	7/8/91

2. Where an applicant for registration as a broker-dealer will engage exclusively as a market maker on the Philadelphia Stock Exchange and will deal solely for its own account without public customers, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b):

Philadelphia Trading, Inc. 8/5/85

3. Where an applicant for registration as a broker-dealer filed an unaudited statement of financial condition demonstrating that its net capital was approximately \$800 below the minimum requirement and when the parent then made a \$500,000 capital contribution to the applicant, the Commission did not require an updated audited statement of financial condition as required in subsection (b) to demonstrate compliance with the minimum net capital requirement:

Walnut Street Securities, Inc. 5/22/85

4. Where an applicant for registration as a broker-dealer is scheduled to be acquired by a bank holding company and, as a condition of the acquisition, the applicant must have secured all necessary regulatory approvals to commence business, and the applicant does not have audited financial statements at the time of filing, the Commission waived the requirements of subsection (b) for purposes of the acquisition and upon the applicant's representation that it would not conduct any business in Pennsylvania prior to submitting an audited financial statement meeting the requirements of this section:

NABAC Investment Services Corporation 2/3/87

5. Where an applicant for registration as a broker-dealer is to succeed to the business of another broker-dealer registered since 1983 receives a transfer of assets from the predecessor for initial capitalization which is in excess of the net capital requirement, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b):

Rittenhouse Financial Securities, Inc. 5/27/87

6. Where an applicant for registration as a broker-dealer is to succeed to the business of another registered broker-dealer whose financial statements are qualified due to a legal suit for \$6.7 million in damages but such liability will not be transferred to the applicant, the Commission accepted unaudited statements of financial condition and waived the certification requirements of subsection (b), provided the applicant filed an unaudited statement within 150 days of the end of the predecessor's fiscal year with satisfactory disclosure:

Underwood, Neuhaus & Company, Inc. 7/29/87

7. Where a predecessor registered broker-dealer changed its legal organization from a sole proprietorship to a partnership, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b):

DuPat Financial Strategies Independent Financial Group 8/24/87
ACA/Prudent Investors Planning Company 8/28/91

8. Where an applicant for registration as a broker-dealer submitted a statement of financial condition which contained a qualified auditor's opinion because of uncertainties regarding the ultimate outcome of two legal actions against the applicant, the Commission declined to waive the requirement of subsection (b) that an unqualified opinion must accompany the statement of financial condition of the applicant:

Heinsma Corporation 9/30/87

9. Where a predecessor registered broker-dealer changes its state of incorporation but its ownership and corporate structure otherwise remains unchanged, the Commission waived the requirements of this regulation:

Securities Network, Inc. (Arizona)
Securities Network, Inc. (Delaware) 11/24/87
Grenelefe Reality, Inc. (Florida)
Grenelefe Reality, Inc. (Delaware) 1/19/88

10. Where an applicant for registration as a broker-dealer will be acting only as an introducing broker for other broker-dealers and institutional investors on a fully-disclosed basis, has a net capital of \$11,594 based on an unaudited statement of financial condition which exceeds the applicable \$5,000 minimum net capital requirement and, but for having a place of business in Pennsylvania, the applicant would be exempt from registration under Section 302(a), the Commission waived the certification requirement of subsection (b):

Cheswick Securities, Inc. 5/4/88

11. Where an applicant for registration as a broker-dealer was formed to succeed to the business of three federally registered broker-dealers and has filed pro forma financial statements to reflect a resulting net capital of approximately \$60 million, the Commission waived the certification requirement of subsection (b):

LIT America, Inc. 6/1/88

12. Where an applicant for registration, which would not hold customer accounts, initially filed a qualified auditor's report which included language concerning the applicant's ability to continue in existence pending raising funds from the sale of limited partnership interests by a corporate general partner which owned the applicant and where the auditor submitted a subsequent letter indicating that sufficient funds had been raised for the applicant to continue in existence, the Commission waived the unqualified opinion provision under subsection (b):

Dexter Yeager Securities, Inc. 7/5/88

13. Where a predecessor registered broker-dealer changed its legal organization from a sole proprietorship to a corporation, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b) for the initial registration of the successor broker-dealer:

Stein Abbott & Company
Stein Abbott & Company, Inc. 9/27/89
Michael N. Taglich
Taglich Brothers, D'Amadeo, Wagner & Company, Inc. 4/15/92

14. Where an applicant for broker-dealer registration intending to succeed to the business of a registered broker-dealer filed Form BD accompanied by unaudited statements of financial condition indicating a total net capital of \$2.1 million and the most recent audited statements of financial condition of the registrant indicated a net capital of \$1.9 million, the Commission accepted the unaudited statements of financial condition of the applicant and waived the certification requirement of subsection (b) for the initial registration of the successor broker-dealer:

Glickenhau & Company - New Jersey
First Institutional Securities Corporation
Broadway Financial Investment Services Corporation 8/30/89

15. Where an applicant for broker-dealer registration requested a waiver of the requirement to file an audited statement of financial condition prepared in conformity with generally accepted accounting principles (GAAP) on the basis that the applicant was newly formed and had not completed its first year of operations, the Commission denied the request in that, without an audit, there was no reasonable assurance as to whether the financial statements (which were prepared by management) complied with GAAP and are free from material misstatements.

Stephen Investment Securities, Inc. 11/15/89
Simmons & Company International 2/27/90
Whitehouse & Moore Investments, Inc. 3/7/90
RE Investment Corporation 9/5/90
LaJolla Capital Corporation 11/7/90
Champion Securities Corporation 7/8/91

16. Where an applicant for broker-dealer registration intending to succeed to the business of a registered broker-dealer files Form BD accompanied by unaudited statements of financial condition indicating actual net capital in excess of the required net capital, the Commission accepted the unaudited statements of financial condition and waived the certification requirement of subsection (b) for the initial registration of the successor broker-dealer:

Carter Hovis & Kaplan, L.P. 11/15/89
OTA Limited Partnership 2/21/90
USF&G Investment Services, Inc. 6/20/90
Cumberland Brokerage Corporation 1/10/91
Reich & Tang Distributors, L.P. 3/20/91
Manufacturers Hanover Futures & Options, Inc. 9/11/91

17. Where an applicant for registration as a broker-dealer filed Form BD accompanied by unaudited statements of financial condition as of a date within 45 days of filing and an audited balance sheet as of the end of the prior year and requested a waiver of the requirement to file an audited balance sheet as of a date within 45 days of filing in that an audit of the applicant will be conducted within the next two months and the applicant did not want to incur additional expense to prepare a separate audited balance sheet, the Commission denied the request:

BANCBOSTON Securities, Inc.

12/19/89

18. Where a registered broker-dealer merged into an inactive business corporation which acquired the assets, assumed the liabilities and continued the broker-dealer activities of the predecessor and the successor corporation filed an application for registration as a broker-dealer whose unaudited statement of financial condition indicated that both the successor and predecessor company met the required net capital, the Commission accepted the unaudited statement of financial condition and waived the certification requirement of subsection (b):

Swanson Financial International, Inc.

7/9/90

Regulation 303.012

1. The fact that an applicant for registration as an investment adviser intended to limit its business to financial planning was not a sufficient basis for the Commission to waive the audited statement of financial condition requirements of subsection (b):

Charles D. Meyer d/b/a Cape Code Yacht Charters

10/16/85

2. Where an investment adviser applicant submitted financial statements prepared in conformity with the income tax basis of accounting accompanied by an accountant's compilation and review reports, the Commission declined to grant a waiver of the requirements of this section:

Gofen and Glossberg, Inc.

10/15/86

3. Where an investment adviser applicant is a wholly-owned, guaranteed subsidiary of a financial strong mutual insurance company, the Commission accepted unaudited statements of financial condition and waived the certification requirement:

SMA Financial Advisory Services, Inc.
Cavalier Financial Planners, Inc.

12/3/86

5/23/88

4. Where an investment adviser applicant is a wholly-owned, guaranteed subsidiary of a financially strong parent but the guaranty is not a continuing guaranty and only obligates the parent to contribute funds sufficient to satisfy the \$20,000 minimum net capital requirement, the Commission declined to waive the audited financial statement requirement:

Transamerica Advisors, Inc.

12/3/86

5. Where a predecessor registered investment adviser changed its legal organization from a partnership to a corporation, the Commission accepted unaudited pro forma consolidated statements of financial condition and waived the certification requirement of subsection (b):

Stein Roe & Farnham
Sinach/Flinn, Elvins Capital Management, Inc.

7/28/86

10/3/88

6. Where a predecessor registered investment adviser changed its legal organization from a corporation to a partnership, the Commission accepted an unaudited statement of financial condition and waived the certification requirement of subsection (b):

Oppenheimer Capital Corporation
Oppenheimer Capital 3/16/88

7. Where a predecessor registered investment adviser changed its legal organization from a partnership to a sole proprietorship, the Commission accepted an unaudited statement of financial condition and waived the certification requirement of subsection (b):

Bucks-Mont Financial Services
Dawson & Associates 1/18/89

8. Where an applicant for registration as an investment adviser filed an audited balance sheet prepared as of November 30, 1988, on a modified cash method of accounting rather than in conformity with generally accepted accounting principles (GAAP) which indicated a tangible net worth of \$6.2 million, the Commission waived the requirement that the balance sheet be prepared in conformity with GAAP, provided the applicant filed an unaudited interim balance sheet as of within 45 days of filing of the application and a reviewed balance sheet prepared in accordance with GAAP as of November 30, 1988:

C.H. Dean & Associates, Inc. 12/6/89

9. Where an investment adviser applicant is a wholly-owned, guaranteed subsidiary of a financially strong parent which prepares only annual consolidated financial statements, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b):

Boston Securities Counsellors, Inc. 8/8/90
Franklin Management, Inc. 8/19/91
Independence One Capital Management Corporation 7/15/92
First Albany Investors Management, Inc. 8/11/93
Univest Financial Planning Corporation 11/22/94
Firstar Investment Research & Management Company 5/24/95
Lombard Advisers, Inc. 8/30/95
Scott & Stringfellow Capital Management, Inc. 12/23/96

10. Where an investment adviser applicant is to succeed to the business of another registered investment adviser and submits an unaudited statement of financial condition indicating current net capital and future capitalization upon consummation of the succession sufficient to meet net capital requirements, the Commission accepted the unaudited statement of financial condition and waived the certification requirement of subsection (b):

Thomson Advisory Group, Inc. 10/31/90
Commonwealth Investment Counsel, Inc. 2/24/92

11. Where an applicant for registration as an investment adviser requested a waiver of the requirement to file an audited statement of financial condition prepared in conformity with generally accepted accounting principles (GAAP) on the basis that the applicant is a subchapter S corporation and does not retain clients' funds or securities, the Commission denied the request in that, without an audit, there was no reasonable assurance as to whether the financial statements (which were prepared by management) complied with GAAP and were free from material misstatements:

Ganucheau & Associates, Inc. 12/27/90

12. Where an applicant for registration as an investment adviser requested a waiver of the requirement to file an audited statement of financial condition prepared in conformity with generally accepted accounting principles on the basis that the applicant was a sole proprietorship and that he did not maintain custody of client funds in excess of 6 months or charge fees in excess of \$500, the Commission denied the request:

Kenneth J. Gerbino & Company

2/14/91

13. Where a predecessor registered investment adviser formed as a partnership underwent a change in the composition of the partnership and filed a new application to succeed to the business of the predecessor, the Commission accepted an unaudited statement of financial condition and waived the certification requirement of subsection (b):

Cumberland Advisors

8/7/91

14. Where an applicant for registration as an investment adviser filed a statement of financial condition which contained a qualified opinion of the independent auditor, but the matters to which the qualification related were not relevant to the determination whether the applicant complied with the investment adviser capital requirements in Regulation 303.042, the Commission accepted the statement of financial condition as filed and waived the requirement of subsection (b) for an unqualified opinion:

Navellier & Associates

7/27/92

Harris Associates, L.P.

8/19/92

15. Where an applicant for registration as an investment adviser filed a statement of financial condition prepared upon the cash basis of accounting which it had employed for the past 33 years, and where the applicant's use of cash basis of accounting rather than the accrual basis of accounting required by generally accepting accounting principles (GAAP) resulted in a decrease in assets and net worth from what the values would have been under GAAP, and where there were no other material differences between the applicant's cash basis of accounting and GAAP, the Commission waived the requirement of subsection (b) that the statement of financial condition be prepared in accordance with GAAP:

Reed, Connor & Birdwell, Inc.

11/2/92

16. Where an applicant for registration as an investment adviser filed an unaudited statement of financial condition (balance sheet) as of a date when it was a wholly-owned subsidiary of a bank holding company whose consolidated balance sheet was audited by an independent auditor who performed certain agreed upon procedures with respect to the applicant's balance sheet, the Commission waived the certification requirement of subsection (b), provided that the statement of financial condition is prepared in conformity with generally accepted accounting principles, including appropriate footnotes:

Howe & Rusling, Inc.

12/2/92

17. Where an investment adviser applicant, in consideration of the submission of financial statements accompanied by an accountant's compilation report, requested that the Commission waive the certification requirement of subsection (b), the Commission denied the request in that, without an audit, there was no reasonable assurance as to whether the financial statements complied with GAAP and are free from material misstatements:

Eager Street Asset Management

9/8/93

18. Where an investment adviser applicant is domiciled in the United Kingdom and filed financial statements that were prepared in accordance with U.K. generally accepted accounting principles and audited using U.K. generally accepted auditing standards that showed a tangible net worth of approximately \$15.6 million and the minimal differences between U.S. GAAP and GAAS and U.K. GAAP and GAAS were adequately disclosed, the Commission waived the certification requirement in subsection (b) that the financial statements be prepared in accordance with U.S. GAAP and audited in accordance with U.S. GAAS:

Ivory & Sime PLC

12/15/93

Regulation 303.031

1. Where a registered broker-dealer engages exclusively in securities transactions involving U.S. government and federal agency securities, money market securities, or foreign currency options with other broker-dealers, institutional investors or foreign banks, the Commission waived for its agents the general securities examination requirement of subsection (a)(1):

**PNC Capital Services, Inc.
Carroll McEntee & McGinley Incorporated**

**5/9/83; 3/26/84
5/16/84**

2. The waivers to certain of those agents described in the preceding paragraph were not rescinded even where the broker-dealer began to conduct a general retail securities business through other registered agents who satisfied the general knowledge examination requirements of subsection (a)(1):

PNC Capital Services, Inc.

11/25/85

3. Where a registered broker-dealer engages exclusively in foreign currency options with other broker-dealers, institutional investors, and foreign banks, the Commission waived the "USASLE" examination requirement for agents in subsection (a)(2):

PNC Capital Services, Inc.

5/9/83; 3/26/84

4. The waivers to those agents described in the preceding paragraph were not rescinded even where the firm began to conduct a general retail securities business through other registered agents who satisfied the "USASLE" examination requirement of subsection (a)(2):

PNC Capital Services, Inc.

11/25/85

5. Where a Pennsylvania registered broker-dealer which is a wholly-owned subsidiary of a New York state chartered savings bank wishes to establish offices in a chain of department stores staffed with its employees who will meet requirements for registration as agents and sell only certificates of deposit issued by financial institutions insured by the FDIC or FSLIC, the Commission waived the examination requirements of subsection (a)(2), provided each employee take and pass the NASD Series 63 exam, take and pass an examination on certificates of deposit when such exam is developed by the NASD and no employee will sell to any person a certificate of deposit whose principal and accrued interest exceeds \$100,000:

GDM Securities, Inc.

3/29/89

6. Where an agent applicant with a disciplinary history requested a waiver of the agent examination requirement of this section, the Commission denied the request:

**Smartwood Hesse, Inc.
Philadelphia Investors, Ltd.**

**1/18/90
7/9/90**

7. Where an agent applicant who successfully completed the USASLE examination will deal solely in U.S. Government securities and as the NASD and SEC do not require any examination for individuals who limit themselves to dealing solely in U.S. Government securities and as there is no examination presently available whose scope is limited to the market in U.S. Government securities, the Commission waived the examination requirement in subsection (1):

National Investment Funds, Inc.

6/17/92

Regulation 303.032

1. Where an applicant for registration as an investment adviser was formed as a result of the restructuring of the operations of a bank, the Commission waived the general securities examination and "USASLE" examination requirement of subsection (b)(1) for the associated persons of the applicant who were previously employed by the bank in the same capacity:

Manufacturers Hanover Investment Corporation
Meridian Investment Company

9/5/84
3/4/85

2. Based upon educational backgrounds, business experience, and plans of business, the Commission waived the "USASLE" examination requirement of subsection (b)(1) for associated persons:

BMI Capital Corporation
Ultravest Group, Inc.
Integrated Asset Management Corporation

6/11/84
6/13/85
10/16/85

3. Based upon business experience and plan of business, the Commission waived the general knowledge examination requirement of subsection (b)(1) for associated persons:

Integrated Asset Management Corporation

10/16/85

4. Based upon the associated persons' registration as agents with an affiliated Pennsylvania registered broker-dealer, the Commission waived the experience requirement of subsection (b)(3):

Principal Financial Advisors, Inc.

12/9/88; 2/7/89; 6/28/89; 8/11/89; 9/17/90

5. Where an associated person or a registered investment adviser held a designation as a Certified Financial Planner and possessed 56 months of experience in the securities industry, the Commission waived the examination requirement of subsection (b)(1):

J&A Financial Group, Inc.

10/16/89

6. Where associated persons of a registered investment adviser requested a waiver of the examination requirement of subsection (b)(1) on the basis of 42 and 72 months experience in the securities industry, respectively, the Commission denied the requests:

J&A Financial Group, Inc.
The Ayco Corporation

10/16/89
12/19/89

7. Where an applicant for registration as an associated person of a registered investment adviser requested a waiver of the examination requirement of subsection (b)(1) on the basis of 66 months of experience in the banking industry managing trust accounts and as a portfolio manager, the Commission denied the request:

McGlenn Capital Management, Inc.

9/8/93

Regulation 303.041

1. Where a person applied for broker-dealer registration (1) intending to succeed to the brokerage activities of its parent (which is withdrawing its broker-dealer application) and (2) would be subject to a \$5,000 net capital requirement in Pennsylvania if it were required to be registered with the NASD and the SEC (which it is not) and the applicant's parent (1) had executed an unconditional guaranty with respect to any claims against the broker-dealer applicant and (2) has shareholders' equity in excess of \$1 million as of its last audited financial statements, the Commission waived the net capital requirement from \$25,000 to \$5,000:

NPI Securities, Inc.

10/25/89

2. Where the applicant for registration as a broker-dealer which does not meet the minimum net capital requirement plans to merge into and succeed to the business of a registered broker-dealer and the pro forma statement of financial condition of the successor applicant, giving effect to the merger, indicates that the successor applicant will exceed substantially the minimum net capital requirement, the Commission waived the requirement that the applicant meet the minimum net capital requirement:

Goldman Sachs Money Markets, L.P.

10/16/91

3. Where an applicant for broker-dealer registration that does not meet the net capital requirement and based on its plan of business does not require registration with the SEC or FINRA, the Commission permitted the applicant to satisfy the net capital requirement by providing (and maintaining) a Surety Bond along with an audited statement of financial condition:

Association of Counselors for Equity Services, Inc.

3/13/09

Regulation 303.042

1. Where a financially strong related party guaranteed all Pennsylvania debts and obligations which might be incurred by an applicant for registration as an investment adviser, the Commission waived the minimum net capital requirements for investment advisers as set forth in subsection (a):

Manufacturers Hanover Investment Corporation

5/21/84

Lutheran Brotherhood Research Corporation

4/24/85

Amvest Capital Management

9/4/85

Cavalier Financial Planners, Inc.

5/23/88

Butcher Tax Services, Ltd.

9/26/88

Legg Mason Capital Management, Inc.

5/4/89

Univest Financial Planning Corporation

11/22/94

Scott & Stringfellow Capital Management, Inc.

12/23/96

2. The fact that an applicant for registration as an investment adviser intended to limit its business to financial planning was not a sufficient basis for the Commission to waive the minimum net capital requirements for investment advisers set forth in subsection (a):

Charles D. Meyer d/b/a

Cape Cod Yacht Charters

10/16/85

3. Where an applicant for registration as an investment adviser was formed to succeed to the business of another registered investment adviser and had tangible net worth of \$100 or less based on its audited statement of financial condition but had a tangible net worth of over \$3 million based on a pro forma statement of financial condition, the Commission waived the requirements of subsection (a)(3):

Thomson McKinnon Holdings, Inc.	
Thomson McKinnon Asset Management, L.P.	12/2/87
Delaware Management Company, Inc.	
Rodney Sub-2 Corporation	5/23/88

4. Where an applicant for registration as an investment adviser has substantial intangible assets of approximately \$24.8 million and a NASD Blanket Bond, an Errors and Omissions Policy and a Crime Policy which provides coverage in the amounts of \$250,000, \$5 million and \$2 million, respectively, the Commission waived the net capital requirement of subsection (a)(2):

The Ayco Company, L.P.	5/3/95
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5. Where an applicant for registration as an investment adviser, which was not registered as a broker-dealer and desired to hold custody of clients' funds and securities, has substantial intangible assets of approximately \$186,500 and a tangible net worth deficiency of approximately \$161,000 but filed a Uniform Surety Bond Form in the amount of \$50,000, the Commission waived the net capital requirement of subsection (a)(2):

Fiduciary Counsel, Inc.	6/26/96
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6. Where an applicant for investment adviser registration that maintains discretionary control over a client's funds and/or securities (but not custody) and does not meet the net worth requirement, the Commission permitted the applicant to satisfy the net worth requirement by providing (and maintaining) a Surety Bond in the amount of the net worth deficiency rounded up to the nearest \$5,000:

Boniface Portfolio Consulting, Inc.	5/27/09
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Regulation 304.021

1. Where a registered broker-dealer had not engaged in securities activities, the Commission accepted the registrant's unaudited FOCUS Report and waived the requirement for an audited annual report of financial condition as required in subsection (b)(1) until the registrant commenced securities activities:

JacksonCross Investments, Inc.	11/25/86
First Atlantic Group	10/1/86
Capitalink Securities Corporation	2/25/87
Griffin Brokerage Services Corporation	6/17/87
R.R.Y. Securities Corporation	6/17/87

2. Where a broker-dealer with a June 30 fiscal year was registered in January with initial audited net capital of \$150,000, the Commission waived the requirement that the registrant's financial statements for its initial period of operation (January 9 to June 30) be audited, provided that the audited financial statements for the subsequent fiscal year cover the period from the date of registration:

Laverell, Reynolds Securities, Inc.	8/27/86
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3. Where a recently registered broker-dealer conducted minimal or no securities business in Pennsylvania from the date of registration to the close of its fiscal year on December 31, the Commission waived the requirement of subsection (b)(1), provided that the applicant's audited statement of financial condition for the succeeding fiscal year cover the period from the date of registration:

A.M. Kronfeld & Company	3/16/88
Kevin, Hart, Kronfeld & Company, Inc.	3/16/88
Barron Chase Securities, Inc.	6/1/88
E.C. Long, Inc.	10/3/88
Cheswick Securities, Inc.	8/30/89
Biltmore Securities, Inc.	7/9/90
Bomar Securities, L.P.	8/15/90
Williams Mackay Jordan & Mills, Inc.	3/20/91
D.P. Martin Securities Corporation	5/15/91
Dollar Dry Dock Investment Services, Inc.	7/8/91
Quaker Securities, Inc.	7/8/91
Marks Properties	8/28/91
Intelligent Brokerage Services, Inc.	10/7/91
Saperston Financial Group	11/12/91

4. Where a registered broker-dealer has acted solely as an agent for a single issuer which promptly transmits all fund and securities to such issuer from only 2 clients in this state does not otherwise hold funds or securities or owe monies or securities to customers and which submitted internally prepared financial statements, the Commission waived the requirement for an annual audited report of financial condition required by subsection (b)(1):

Walter William Meixner, III	12/18/90
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Regulation 304.022

1. Where an investment adviser applicant is a wholly-owned, guaranteed subsidiary of a financially strong Pennsylvania registered broker-dealer, the Commission waived the requirement that the financial statements, which were presented on a modified cash basis, be presented on a GAAP basis:

Webster Management Corporation	7/7/85; 7/8/87
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2. Where an investment adviser registrant changed its fiscal year end from October 31 to December 31, the Commission waived the requirement of this section for the 2 month period where the subsequent audited financial statements of the registrant would cover the 14 month period, ending December 31 of the subsequent year:

Evans & Moxon Capital Management, Inc.	4/22/87
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3. Where an investment adviser registrant changed its fiscal year from September 30 to December 31, the Commission waived the requirement of subsection (c) where the subsequent reviewed report of financial condition would cover the 15 month period, ending December 31 of the subsequent year:

Complete Investment Management	3/16/88
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4. Where an investment adviser applicant is a wholly-owned, guaranteed subsidiary of a Pennsylvania registered broker-dealer, the Commission accepted unaudited statements of financial condition and waived the certification requirement of subsection (b):

Butcher Tax Services, Ltd.	9/26/88
Legg Mason Capital Management, Inc.	5/4/89

5. Where a registered investment adviser changed its fiscal year end pursuant to IRS regulations from July 31 to December 31, the Commission waived the requirement of this section, provided that the audited report on financial condition for fiscal year ended December 31, 1989, cover the entire period from the date of the last certified report:

CCC Advisors, Inc.

4/25/89

6. Where an investment adviser registrant did not transact business for the remainder of the calendar year in which it was registered and the sole asset of the investment adviser was a \$15,000 certificate of deposit, the Commission waived the requirement to file a reviewed statement of financial condition as of the end of that calendar year:

Security Financial Asset Management, Inc.

7/26/89

7. Where an investment adviser was registered on December 1 and had only 2 clients during that calendar year, the Commission waived the requirement to file a reviewed statement of financial condition as of the end of that calendar year:

Yardley Consulting & Financial Services, Inc.

7/26/89

8. Where a registered investment adviser changed its fiscal year from October 31 to December 31, the Commission waived the certification requirement of subsection (b) covering the 2 month period, provided the registrant agreed to provide a reviewed balance sheet:

Ultravest Group, Inc.

1/17/90

9. Where an investment adviser did not transact business from the date he was registered to the end of that calendar year and the sole asset of the investment adviser was a checking and money market account, the Commission waived the requirement to file a reviewed statement of financial condition as of the end of that calendar year:

Thomas J. Scott

5/23/90

10. Where an investment adviser registrant managed only twelve accounts during the 54 days from the date of registration to the end of that calendar year and was in compliance with the net capital requirement, the Commission waived the requirement to file a reviewed statement of financial condition as of the end of the calendar year:

Gregory Scott Chelap

6/13/90

11. Where an investment adviser conducted no activities from the date of registration to the end of that calendar year, the Commission waived the requirement to file a reviewed statement of financial condition as of the end of that calendar year:

Lorraine M. Howard
d/b/a Howard Investment Group

7/8/91

Regulation 504.060

1. Where a non-profit issuer offered and sold unsecured debt securities without an effective registration or exemption from registration under the 1972 Act to more than 25 persons within a 12 month period and subsequently filed with the Commission a disclosure document and two years of audited financial statements (revealing a substantial unrestricted fund balance) to effect a rescission offer under Section 504(d), the Commission waived the registration requirements of subsections (a) and (b):

Brethern Village

12/5/83

2. Where registered investment companies offered and sold shares in various mutual funds without an effective registration or exemption under the 1972 Act to more than 25 persons within a 12 month period and subsequently filed with the Commission documents indicating that (1) each mutual fund had an effective registration with the SEC at the time of sales to Pennsylvania investors; (2) each Pennsylvania investor received a prospectus at the time of sale; (3) each mutual fund has instituted controls to prevent oversales in the future and (4) a rescission offer to each Pennsylvania investor has been made in accordance with Section 504(d), the Commission waived the requirements of subsections (a) and (b):

Fidelity Fund, et al	8/11/86
Hampshire Funding, Inc.	6/3/87
Mutual Beacon Fund, Inc.	12/16/87

3. Where, pursuant to an Offer of Settlement of staff allegations of violations of the 1972 Act which was accepted by the Commission, distributors of shares of stock in publicly traded companies in a secondary distribution of such shares undertook to effect a rescission offer for the shares of such companies, which were unaffiliated with the distributors, the Commission waived the requirements of this section provided that the rescission offerees be provided the most recently available information about the publicly-traded companies, including but not limited to, annual reports and SEC filings on Form 10-K and 10-Q:

Barclay Publishing, Inc. and Unity Publishers Corporation	2/24/88
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4. Where an issuer offered and sold securities without an effective registration or exemption from registration under the 1972 Act to more than 35 persons within a 12-month period and subsequently filed a disclosure document with the Commission to effect a rescission offer under Section 504(d) to the limited number of investors, all of whom were professionals familiar with the type of business in which the issuer proposed to engage, the Commission waived the requirements of this section:

Westmoreland County Lawyers Abstract Company, Inc.	1/6/88
Haverford MRI Associates	1/6/88
Lankenau Physicians Associates, Inc.	2/17/88

5. Where an issuer offered and sold unsecured debt securities without an effective registration or exemption from registration under the 1972 Act to more than 35 persons within a 12-month period and subsequently filed with the Commission a completed Form 206, an extensive disclosure document that included audited financial statements for the rescission offer, thereby filing most, but not all, documents required under subsection (a), the Commission waived the further requirements of that section:

Good Enterprises, Ltd.	5/12/88
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6. Where a company determined to offer to rescind the sale of common stock made in connection with a plan of merger adopted by the shareholders and complied with Regulation 504.060(a) by following the procedures for registration by qualification, the Commission waived compliance with the requirements of Section 206(b)(13) and (14) to file a specimen stock certificate and an opinion of counsel on the legality of the securities to be issued in that those requirements are more appropriate to a transaction involving newly issued shares rather than an offer to repurchase:

Main Line Bancshares	7/9/90
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7. Where an issuer offered and sold securities without an effective registration or exemption from registration under the 1972 Act to more than 35 persons within a 12-month period and subsequently filed a disclosure document with the Commission to effect a rescission offer under Section 504(d) to a limited number of investors, the Commission waived the requirements of this section:

Vista Bancorp, Inc.	10/7/91
Immuno Response Technology, Inc.	11/20/91
T.A. of Harrisburg, LLP	1/25/00
Homesale Settlement Services, L.P.	8/27/07
Coudersport Mercantile, Inc.	5/4/10

8. Where a person pled guilty to a single charge of conspiracy to commit mail fraud over nine years ago who now serves as the president and chief executive officer of an issuer that desires to effect a rescission offer in Pennsylvania utilizing Commission Form RO for a possible violation of Section 201 of the 1972 Act for a total offering amount of \$800, the Commission waived the disqualification provisions in subsection (b)(1)(i):

HMI International Limited	7/6/94
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9. Where an open-end management investment company offered and sold shares to 80 persons in Pennsylvania aggregating \$313,000 during a period when there was no effective notice filing with the Commission and elects to effect a rescission offer to Pennsylvania purchasers under Section 504(d), and where the securities sold were registered with the SEC and where each Pennsylvania investor received a prospectus at the time of purchase, the Commission waived the requirements of subsections (a) and (b).

Aetna Series Fund	4/7/98
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10. Where an issuer offered and sold securities without an effective registration or exemption from registration under the 1972 Act to 25 or fewer purchasers within a consecutive 12 month period and subsequently filed a disclosure document with the Commission (including a compiled balance sheet and profit and loss statement) to effect a rescission offer under Section 504(d) to the limited number of investors, the Commission waived the requirements of subsection (a) and (b).

Farmers Equipment and Supply Co., Inc.	5/21/84
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11. Where an issuer offered and sold securities to 41 Pennsylvania residents in a securities offering which it believed was in compliance with SEC Rule 506 but which, in fact, did not comply with the requirements of SEC Rule 506 in that certain purchasers may not have been accredited investors or sophisticated purchasers within the meaning of SEC Rule 506 and the issuer sought to effect a rescission offer in accordance with Regulation 506.060, the Commission waived the requirements of subsections (a) and (b).

AlphaSource Procurement Systems, L.P.	3/20/01
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Regulation 603.031

1. Where an issuer files a registration statement under Section 205 or 206 for a public offering and submits personal financial statements of individual executive officers or general partner(s), the Commission has treated the personal financial statements as confidential:

Allen-Newcastle-Heritage Real Estate Partners I	11/25/85
Participating Development Fund 86	2/13/86
Corporate Pension Investors	2/13/86
I.R.E. Growth Fund, Ltd. - Series 29	2/24/86
American Cable TV Investors 4, Ltd.	2/24/86
Real Estate Income Partners III	4/8/86
Corporate Property Associates 7	4/8/86

Volador Equity/Income Fund '86-7	4/23/86
Carlyle Real Estate Partnership XVI	5/21/86
Participating Income Properties II, L.P	3/16/86
Meridian Healthcare Growth Income Fund, L.P.	3/16/88
Corporate Property Associates 9, L.P.	3/8/89
Pacesetter I, L.P.	7/14/86
Medical Income Properties	8/11/86
Rancon Income Fund I	8/11/86
Freeman Growth Plus, L.P.	8/20/86
Growth Hotel Investors II	8/20/86
JMB Income Partners Ltd. XIII	8/20/86
Secured Investment Resources Fund	10/1/86
Holco Secured Mortgage Investment III	10/15/86
Public Storage Properties XIX	2/25/87
Rancon Development Fund VI	3/9/87
Regional Laboratory Associates	5/11/87
Star Partners, III, Ltd.	5/14/90
Uniprop Income Fund III	8/21/90
Participating Income Properties III, L.P.	11/28/90
Brauvn Corporate Lease Program IV, L.P.	1/8/92
Rent-Way, Inc.	6/16/93
Boston Financial Tax Credit Fund VIII	11/8/93
SMR Natural Gas Income Fund 1995	10/19/94
Pennsylvania Physician Healthcare Plan, Inc.	5/24/95, 7/24/95
The Med-Design Corporation	7/12/95
Singer Financial Corporation	6/25/97; 8/11/99
Summerwood Associates	10/5/99
Onconova Therapeutics, Inc.	12/7/99

2. Where an issuer demonstrates that it is engaged in a very competitive business and disclosure of material filed with the Commission to its competitors would adversely affect its trade secrets, financial and marketing strategy, customer lists or ability to remain competitive and the material requested to be made confidential is narrow in scope to address only the aforementioned issues, the Commission has treated certain portions of materials filed with the Commission by the issuer as confidential:

Phar-Mor, Inc.	12/18/84; 1/10/86; 7/15/87; 2/27/89; 7/19/89; 10/6/89; 10/9/90; 1/8/92
Lucid, Inc.	3/5/86
Armstrong Cement Supply, Inc.	10/29/86
Oaktree Technology Corporation	2/3/87
Real Estate Financing Partnership	4/22/87
WGM Holdings, Inc.	6/24/87
Graphic Industries, Inc.	7/15/87
Equitable Realty Income Fund I, L.P.	7/15/87
Talon, Inc.	7/29/87
ConfereX Corporation	8/17/87
Mattson Instruments, Inc.	9/10/87
United Electric Corporation	9/10/87
Iconnex Corporation	11/24/87; 11/30/88; 2/27/90
Patrick Racing, Inc.	11/24/87
L. J. Wells Development Drilling Program	1/19/88
Suprex Corporation	6/13/88; 6/19/89
Coniston Institutional Investors, L.P.	4/25/89
Coniston Partners	4/25/89
35th Strouss Associates	6/12/89
Alphatronix, Inc.	6/19/89; 7/30/90
Zilog Acquisition Corporation	6/19/89

Cree Research, Inc.	6/19/89; 1/29/90
Kidder, Peabody Group, Inc. 1989	
Merchant Banking Co-Investing Plan	6/28/89
Applied Benefits Research, Inc.	7/10/89
Koppers Holdings Corporation	10/16/89; 3/20/91
Actronics, Inc.	10/25/89
Enjoi Corporation	10/25/89
Genesis Seed Corporation	10/25/89
Mid-American Waste Systems, Inc.	12/19/89
American Medical Laboratories	1/8/90
Fallon, Inc.	2/12/90
International Broadcast Systems, Inc.	3/7/90
Computer Sales International, Inc.	3/8/90
United Meridan Corporation	3/28/90; 6/19/91
Lane Enterprises, Inc.	4/4/90
Environmental Management Services, Inc.	6/5/90
Fleishman-Hillard, Inc.	6/5/90
ZS Forest Products, L.P.	5/1/91
GGI Holding Corporation	10/7/91; 8/19/92
Human Designed Systems, Inc.	9/11/91
San Jacinto Holdings, Inc.	9/11/91
Sentage Holding Corporation	7/8/91; 8/19/92; 7/28/93; 10/8/97
HEM Pharmaceuticals Corporation	1/8/92
Idetek, Inc.	2/24/92
EPIC Holding, Inc.	3/18/92
Emergency Medical Advisers	3/18/92
Murray-Bart Associates	3/18/92
USPCI of Pennsylvania, Inc.	4/27/92
City Pride Bakery	6/17/92
Contrologic, Inc.	8/19/92; 10/6/93
Voicecom Systems, Inc.	9/30/92
Applied Concepts, Inc.	10/19/92
Parfum Grasse, Inc.	12/14/92
Longview Development, Inc.	1/15/93
DSP Semiconductors USA, Inc.	5/5/93
Children's Concept, Inc.	5/7/93; 6/2/93
Automated Healthcare, Inc.	5/19/93; 4/6/94; 8/30/95
MMC Acquisition Co.	11/8/93
Star Fleet Investments, Ltd.	12/15/93
Superconducting Core Technologies, Inc.	2/23/94; 5/3/95
Pinnacle Associates, Inc.	3/10/94
Cornelius & Gump Woodworks, Inc.	3/23/94
Comtech Labs, Inc.	5/18/94
Children's Concept, Inc.	5/25/94
Vesta Medical, Inc.	6/22/94
Requisite, Inc.	8/8/94
Objective Communications, Inc.	8/3/94
Pitcairn Group, L.P.	8/17/94
Superconducting Core Technologies, Inc.	9/7/94
Federated Investors	10/19/94
Airtrain Corporation	11/2/94
Mercury Limited Associates	11/9/94
Trackmobile Corporation	12/21/94
Tun Tavern Brewing Company, Inc.	12/21/94
Dignified One, L.P.	1/4/95
Dealer's Alliance Credit Corporation	4/49/95

Vascor, Inc.	5/24/95
Lifecore, Inc.	6/14/95
Dartmouth Capital Group, L.P.	10/18/95
Gannett Fleming Affiliates, Inc.	11/29/95; 2/27/97; 11/25/97; 11/24/98; 11/29/00; 11/27/01; 12/10/02; 1/6/04; 12/4/07; 11/18/08; 12/15/09; 12/14/10; 12/6/11
Sidehill Copper Works, Inc.	1/7/96
Freemarkets Online, Inc.	2/7/96
G & V Ventures, L.P.	2/22/96
Visual Interface, Inc.	3/27/96
Schreiber Foods, Inc.	4/10/96; 10/9/96
Mercury Recovery Systems, Inc.	4/10/96
REMCO, Inc.	5/7/96
Magicmaker, Inc.	5/29/96
Mainline Desktop Publishing Co.	5/29/96
Tiernan Communications, Inc.	5/29/96
National Energy Buying Cooperative, LLC	6/12/96
Bridgeville Hospitality Partners, L.P.	7/9/96
VK/AC Holding, Inc.	8/7/96
VarTec Telecom, Inc.	10/9/96; 6/4/97
Clarity Telecom Holdings, Inc.	11/22/96
Healthcare Capital Corp.	11/22/96
Healthcare Hearing Clinics, Inc.	11/22/96
Mountain Top Associates	2/27/97
Zefer Operations, Inc.	8/6/97
Overland Associates	12/23/97
Infosage, Incorporated	3/19/98
Torrent Networking Technologies Corp.	4/7/98
St. Joseph Hospital, Inc.	6/25/98
South West Land Associates	6/25/98
Castle City Associates	1/20/99
Tpresence, Inc.	1/25/00
NetSanity	2/8/00
Marqlin Corporation	5/9/00
Business Auction Web, Inc.	7/11/00
DealerDirect, LLC	10/10/00
Madison Home Associates	8/21/01
Associated Packaging	12/27/01
Brentwood Towne Square Associates	11/26/02
Warburg Pincus Private Equity IX, L.P.	9/7/05
Pennsylvania Partnership Group, LP	1/3/06
Pennsylvania Partnership Group, LLP	1/3/06

3. Where an applicant for registration as a broker-dealer, which is a wholly-owned subsidiary of a company primarily engaged in agribusiness that is privately owned, lists beneficial owners of stock of the privately held parent and certain additional disclosures, the Commission treated as confidential schedule A of Form BD and portions of page 2 to Form U-4 for the beneficial owners of the parent corporation:

Cargill Investor Services, Inc.	10/3/88
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4. Where an issuer filed a registration statement with the Commission under Section 205 or 206 and, in response to staff comments, also filed internally prepared financial projections which were not made publicly available by the issuer and contained commercially sensitive information, the Commission treated such financial projections as confidential:

Verax Corporation	7/19/89
Arvida/JMB Partners, Ltd. II	10/25/89
Paine Webber Preferred Yield Fund, L.P.	3/28/90
Hovnanian Enterprises, Inc.	4/15/92
Automobile Credit Finance 1992-II, Inc.	11/18/92
Pennsylvania Physician Healthcare Plan, Inc.	5/24/95; 7/24/95
Med-Design Corporation	7/12/95

5. Where an investment adviser registrant doing business as a sole proprietorship filed with the Commission the required annual statement of financial condition and requested confidential treatment thereof, stating that he would prefer that the financial information not be made publicly available without his prior consent, the Commission denied the request as the registrant failed to make a proper showing to justify confidential treatment:

N.W. Altemus & Company	5/1/91
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6. Where an investment adviser registrant doing business as a corporation which is jointly owned by two individuals filed with the Commission the required annual statement of financial condition and requested confidential treatment thereof, stating that the joint owners did not wish to make public their personal affairs, the Commission denied the request as the registrant failed to make a proper showing to justify confidential treatment:

Evans & Moxon Capital Management, Inc.	5/1/91
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7. Where an issuer in connection with a request for a waiver of the provisions of Section 203(d) (i), submitted financial information with respect to the individual investor who would benefit from such waiver, the Commission treated the individual financial information as confidential:

Meadowbrook Equity Fund, L.P.	4/10/96
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8. Where an issuer received a Commission order treating a material contract as confidential that had been filed with the Commission in connection with an offering under Section 203(d) and subsequently disclosed portions of such contract in a prospectus contained in a registration statement filed with the Commission under Section 206, the Commission granted the issuer's request to revoke its original order granting confidentiality.

Tun Tavern Brewing, Inc.	5/7/96
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9. Where an issuer made a filing with the Commission under Section 203(s) and, in response to staff comments, also filed details regarding past litigation which contains information that the issuer is legally bound to maintain as confidential, the Commission treated such material as confidential:

Siegfried Resources, L.L.C.	7/6/05
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10. Where an issuer made a filing with the Commission under Section 206 and, in response to staff comments, also filed Settlement Agreements which contain information that the issuer and the opposing parties are contractually committed to maintain as confidential, the Commission treated such material as confidential:

Grace Brethren Investment Foundation, Inc.	1/5/05
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Regulation 606.011

1. Where one of the largest financial services holding companies in Mexico proposed to sell shares of a \$1.2 billion offering of stock in Pennsylvania under Section 203(d) which stock would be sold in the U.S. in the form of Rule 144A American Depositary Receipts only to Qualified Institutional Buyers under SEC Rule 144A and Accredited Investors under Rule 501 of SEC Regulation D that possess a minimum net worth of \$5 million and make a minimum purchase of \$500,000 and where the offering circular contained financial statements prepared in accordance with Mexican statutory accounting rules for financial institutions, the Commission waived the requirement that the annual financial information that must be provided to Pennsylvania residents comply with U.S. general accepted accounting principles:

Grupo Financiero Banamex Accival S.A. de C.V.

5/27/92

Regulation 609.010

1. Where a venture capital group, not meeting the definition of institutional investor in Regulation 102.111, is purchasing a minimum of \$500,000 or more of securities of an issuer in a single transaction, is managed professionally, constitutes a legitimate investment entity and not an alter ego of its members, and is not required to be registered under the Investment Company Act of 1940, the Commission waived the independent review requirement of subsection (d)(2)(i):

Actronics, Inc.

7/20/84

Formative Technologies, Inc.

8/6/84

CEO Venture Fund

1/15/86

2. When an accounting firm, because of uncertainties related to the development and sale of an issuer's product, gives a qualified report on the financial forecast contained in the offering materials but does not believe any of the significant assumptions in the financial forecast are unreasonable, the Commission waived the requirement of subsection(d)(3)(iv) that a report accompanying a financial forecast not contain a disclaimer with respect to the reasonableness of the assumptions:

Interspec, Inc.

3/16/83

3. Where an issuer utilizes financial projections in a private placement memorandum and the only sales in Pennsylvania will be made to a general partnership whose general partners have all previously participated in the purchase of securities in private placement transactions, the Commission waived the independent review requirement of subsection (d)(2)(i):

Kentek Information Systems, Inc.

11/28/84

4. Where an issuer has prepared and reviewed financial forecasts of the operations of a business, the purchase of which will be made with the proceeds from the sale of the issuer's securities, and the sale of the issuer's securities will be made solely to the present operating management of the business, the Commission waived the requirement of subsection (d)(2)(i) that the financial forecast be reviewed by an independent person subject to disclosure of that fact in the memorandum:

B.S. Holding Corporation

9/9/85

5. Where an issuer has prepared and reviewed financial projections and where all sales in Pennsylvania will be made to certified public accountants who are experienced in tax shelter investments, have annual income in excess \$100,000 as well as substantial net worth and are partners in the accounting firm which is affiliated with the issuer, the Commission waived the requirement of subsection (d)(2)(i) that the financial projections be reviewed by an independent person:

Massapequa Associates

4/11/84

Chesapeake Associates, L.P.

4/9/85

6. Where a Pennsylvania issuer was formed by prospective investors who all had substantial business experience and an opportunity to examine the books and records of the enterprise to be taken over by the issuer in a Pennsylvania community which would otherwise have been closed by the parent corporation, the Commission waived the review requirements of subsection (d)(3) and permitted the issuer to use a compilation report on the financial projections prepared by an independent certified public accountant:

North American Carbon, Inc.

5/21/86

7. Where an issuer utilizes financial forecasts reviewed in accordance with subsection (d)(3) and supplements the financial forecast with financial projections which were not reviewed in accordance with subsection (d)(3) by an independent person to offer and sell securities to only one person in Pennsylvania who is an accredited investor as that term is defined in SEC Rule 501(a) of Regulation D, the Commission waived the requirements of subsection (d)(2)(i) requiring preparation by an independent person and the review requirement of subsection (d)(3) for the review of the supplemental financial projections:

Treemont Investors

5/21/86

8. Where an issuer utilizes financial forecasts to offer and sell securities to a member of the senior management of a company the issuer intends to acquire in a leveraged buyout by senior management and the financial forecasts have not been reviewed, the Commission waived the review requirements of subsection (d)(3):

Aancor Holdings, Inc.

4/8/86; 4/23/86

9. Where an issuer has filed for an exemption under Section 203(d) to sell securities to management employees of the issuer ranging from the chief executive and financial officers to the controller of the issuer's largest operating unit, all of whom are closely involved in, and knowledgeable about, the issuer's operations, and where the offering material contained prospective financial statements that were not examined or reviewed by an independent qualified person, the Commission waived the review requirements of subsection (d):

Joy Technologies, Inc.

6/17/87

10. Where an issuer has filed for an exemption under Section 203(d) to sell securities in Pennsylvania only to 5 persons, each of whom were engaged in a business relationship with, and an existing stockholder of, the issuer; familiar with the issuer's business; and received annual and quarterly reports of the issuer and where the offering material contained prospective financial statements that were not examined or reviewed by an independent qualified person, the Commission waived the review requirements of subsection (d):

Allied Acquisition Corporation

6/3/87

11. Where, to satisfy administrative requirements for investments made by a state employees' retirement system, two venture capital funds were formed rather than one and each fund will make identical investments on the same terms and, if treated on a consolidated basis, the criteria for institutional investor status would have been met, the Commission waived the review requirement of subsection (d)(2):

Suprex Corporation

5/4/88

BDS, Inc.

7/18/88

Iconnex Corporation

11/10/88

Media Cybermetrics, Inc.

12/9/88

12. Where an issuer is offering and selling limited partnership interests only to accredited investors in Pennsylvania which allows voluntary assessments of the limited partners for the purchase of additional property and where the offering documents to be distributed to prospective investors contain prospective financial statements by a certified public accountant, an opinion of counsel that the interests will be legally issued and, except for the voluntary assessments, fully paid and non-assessable and a statement that no penalty will be imposed if the investor elects not to make the voluntary assessment, the Commission waived the requirement of subsection (c)(6):

Atlantic Coast Storage Associates

11/24/87

13. Where a registration statement was filed with the Commission under Section 205 for first mortgage notes to be issued by a New York Stock Exchange listed company and guaranteed by a wholly-owned subsidiary which is not a reporting company and the registration statement contained prospective financial statements, the Commission waived the review requirements of subsection (d):

Wheeling Pittsburgh Steel Corporation

11/12/91

14. Where the Official Statement for the issuance of limited obligation bonds of government industrial development authorities contains financial statements of a wholly-owned subsidiary of a company whose stock is quoted on the NASDAQ National Market System which will be loaned the proceeds from the sale of the bonds and the financial statements include eleven months of known financial results, one-half month of known variables and two weeks of unknown variables at the time of the first closing of the bonds, the Commission waived the review requirement of subsection (d):

**\$17,600,000 Bonds issued by the Montgomery County (PA)
Industrial Development Authority, the Chester County(PA)
Industrial Development Authority and the New Jersey Economic
Industrial Development Authority for the benefit of Geriatric
and Medical Services, Inc.**

5/15/92

15. Where a registration statement for the offer and sale of debt securities was filed under Section 205 and included prospective financial statements for a wholly-owned subsidiary of the issuer who was subject to the periodic reporting requirements of the Securities Exchange Act of 1934, the Commission waived the review requirement of subsection (d):

**Grand Casinos Resorts, Inc.
Riverwood International USA, Inc.**

**10/18/95
3/27/96**

16. Where an issuer filed disclosure documents with the Commission in connection with an offering under Section 203(d) to a restricted class of security holders that contained prospective financial statements for a period of one month which were compiled by an independent reviewer and the issuer filed a written representation that it believed the prospective financial statements to represent reasonable and achievable results, the Commission waived the review requirement of subsection (d):

B-L Australia, Inc.

5/29/96

Regulation 609.032

1. Where a company filed a notice with the Commission to sell securities in Pennsylvania pursuant to Section 203(d) and such company was a successor to a sole proprietorship which prepared financial information using the income tax basis of accounting and where, as a condition of purchase of the securities, each purchaser had to agree that the issuer would be taxed as a Subchapter S corporation under the Internal Revenue Code, the Commission waived the requirement of subsection (a)(2) and permitted the disclosure document to contain financial information using the income tax basis of accounting:

Audio Video Concepts Franchising, Inc.

6/23/98

Regulation 609.034

1. Where an issuer filed proxy materials with the Commission under Section 203(o)(ii) to merge its operating companies into wholly-owned subsidiaries, and the materials contained a balance sheet dated within 120 days of the filing and two years of certified financial statements and the total number of shareholders after the merger would be 11, all of whom are officers and directors of the parent company or relatives of such persons, the Commission waived the requirement to submit financial statements conforming to subsection (2):

Mr. Goodbuys Corporation

12/5/83

2. Where an issuer agreed to terminate an offering under Section 206 prior to the end of 1 year plus 120 days from the date of its latest audited financial statements, the Commission waived the requirement that the financial statements be dated within 120 days of the date of filing:

Delaware Valley Community Investment Fund, Inc.

7/28/86

3. Where an issuer is offering and selling debt securities of a non-profit corporation under Section 203(p) which are secured by a first lien mortgage and includes in its offering materials an audited balance sheet for the two most recent fiscal years and audited financial statements for the last fiscal year, the Commission waived the provisions of this section:

Eskaton Properties, Inc.

1/25/89

4. Where a public company files under Section 203(o)(ii) to acquire all of the assets of six Pennsylvania limited partnerships and a Pennsylvania corporation for cash and convertible unsecured promissory notes whose average principal amount is \$14,300 each and the acquisition is subject to majority approval of the limited partners of each limited partnership which, in the aggregate, involve 69 Pennsylvania residents and these persons have received a copy of the acquiror's recent registration statement filed with the SEC containing audited financial statements for the last three fiscal years as well as a copy of the acquiror's unaudited balance sheet and income statement for the most recently completed fiscal year, the Commission waived the requirement that the acquiror provide an audited balance sheet dated within 120 days of filing:

Medifit of America, Inc.

2/3/93

5. Where a newly formed issuer proposes to engage in the business of developing a for-profit golf course, club house and driving ranges in Pennsylvania and seeks to conduct a public offering of common stock with a minimum of \$650,000 and a maximum of \$3,000,000 pursuant to Section 205 and in reliance upon SEC Regulation A under the Securities Act of 1933 and the issuer has not engaged in any material operations to date, the Commission waived the requirement for audited financial statements, provided that the disclosure document contain financial statements of the issuer reviewed by an independent certified public accountant in accordance with generally accepted accounting principles and the issuer agreed to distribute annually to its shareholders audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

Penngolf Corp.

10/5/99

Regulation 609.036

1. Where an issuer of a federally registered tax-advantaged, public direct participation program will provide financial statements prepared and certified in accordance with generally accepted accounting principles in annual reports to its security holders for the initial two years and on the basis of tax accounting principles thereafter, the Commission waived the requirement of subsection (a)(2) that financial statements in annual reports to security holders be audited and prepared in conformity with generally accepted accounting principles:

Delta Western Oil Company

7/17/86

2. Where a real estate limited partnership, whose principal objective is to generate tax credits involving low-income housing, sold securities in Pennsylvania under Section 203(d), the Commission waived the requirement that annual reports to security holders in Pennsylvania under Regulation 606.011 be prepared in conformity with generally accepted accounting principles (GAAP) where, in lieu of GAAP statements, tax basis financial statements prepared under the accrual method will be sent to Pennsylvania investors and a copy of these financial statements first provided to investors after the date of this waiver will be filed with the Commission:

Laurelwood Properties, L.P.	7/9/90
Elm Tree Properties, L.P.	7/9/90
Alderwood, L.P.	7/9/90
Lindon Properties, L.P.	7/9/90
Oakwood Properties, L.P.	7/9/90
Spruce Tree Properties, L.P.	7/9/90
Maplewood Properties, L.P.	7/9/90
Poplar Properties, L.P.	7/9/90
Pine Tree Properties, L.P.	6/11/91
Willow Tree Properties, L.P.	6/11/91
Hazelwood Properties, L.P.	8/28/91
Beech Tree Properties, L.P.	10/7/91
White Oak Properties, L.P.	2/24/92
Magnolia, L.P.	8/19/92
Rosewood Properties, L.P.	2/3/93
Bayberry Properties, L.P.	3/17/93
Tamarack Properties, L.P.	8/12/93
Conifer Properties, L.P.	9/22/93
Alpine, L. P.	2/9/94
Applewood Properties, L.P.	11/22/94; 3/1/95
Chestnut Properties, L.P.	3/8/95
Cedar Tree Properties, L.P.	5/24/95
Springtree Properties, L. P.	8/30/95
Walnut Properties, L.P.	8/7/96

3. Where an issuer sold securities in Pennsylvania solely to accredited investors in reliance on Section 203(d) and Regulation 204.010 and, with respect to complying with the annual financial reporting requirements to security holder under Regulation 606.011, wishes to distribute financial information which is prepared in accordance with United Kingdom GAAP, does not include consolidated information of its parent company and does not contain its income statements, the Commission waived the requirement of subsection (a)(1)(ii) to distribute financial statements that do not include those of its parent company, waived the requirement of subsection (a)(2) to permit distribution of financial statements prepared in accordance with United Kingdom GAAP and denied the request to waive the requirement of subsection (a)(1)(i) to omit income statements from the annual financial information to be provided to Pennsylvania security holders:

Goldman Sachs International

4/19/95

TAKEOVER DISCLOSURE LAW

Takeover Disclosure Law (“TDL”)

Section 3(vii)

1. Where a company entered into an Agreement for Purchase and Sale of another business whereby it owned 72% of the outstanding shares of common stock with a right to purchase an additional 16% of the outstanding shares from current management of the business, the Commission determined that an offer by the company to purchase the remaining 12% interest of minority shareholders was not a takeover offer under the TDL because it was not being made for the purpose of, and, was not having the effect of changing or influencing the control of the issuer:

S.F.E.C., S.A.

12/17/84

2. Where a non-profit country club made an offer to purchase the shares of a business corporation which owns the real estate and improvements thereon constituting the country club facilities to those shareholders of the business corporation who were not also members of the country club but former club members, their heirs or legatees, the Commission determined that the offer to purchase was not comprehended within the purposes of the Takeover Disclosure Law and excluded it from the definition of takeover offer:

Radnor Valley Country Club

11/7/90

3. Where a company intends to form an employee stock ownership plan which, subject to the approval of the company’s board of directors and the beneficial shareholders, will make a written tender offer to purchase a percentage of the company’s outstanding stock and where the employees stock ownership plan may make similar tender offers in the future and where the tender offers neither will affect control of the company nor result in the departure of business from the Commonwealth, the Commission determined that the tender offer is exempt from the definition of takeover offer:

Alco Industries, Inc.

9/9/92; 4/9/97; 12/9/97

Section 8(b)

1. Where a company entered into a Stock Purchase Agreement with another business whereby it acquired 62.3% of the outstanding shares of common stock; made an offer to purchase the remaining 37.7% from 126 shareholders by means of a tender offer on the same terms; had assets of over \$2 million and employed 66 persons in Pennsylvania; the Commission exempted the tender offer from the registration requirements of Section 4:

G.N.I., Inc. - William G. Johnston Company

1/18/84

2. Where a corporation, which has acquired from an affiliated company in an arms-length transaction 1,362,074 shares of common stock representing 79.4% of the outstanding shares of a business, made a tender offer for the remaining 19.6% of the shares, and where the majority of the board of directors of the target also are directors of the purchasing corporation, which is an arrangement that the directors of the target believed could constitute a conflict of interest for them to recommend the tender offer to the shareholders who held the 19.6% of the shares outstanding, the Commission exempted the tender offer from the registration requirements of Section 4:

Multivest Corporation

3/30/87

3. Where the Offer to Purchase stated that the board of directors of the target corporation unanimously approved the takeover offer and plan of merger and recommended that the target company's shareholders accept the offer and approve the merger but had not timely filed materials with the Commission necessary to establish the availability of a Section 8(a) exemption from registration under the Takeover Disclosure Law nor had taken down any shares tendered pursuant to the offer, the Commission exempted the offer from the registration requirements of Section 4:

Arctic Acquisition Corporation

7/18/88

4. Where the chief executive officer, president, director and largest shareholder of an issuer makes a tender offer to purchase all the outstanding common stock of the issuer which he does not hold currently for cash at the current book value of the issuer's common stock which is \$.09 per share above the current bid price on the OTC Bulletin Board for an aggregate maximum value of \$342,591.15 and where the issuer's board of directors determined not to take a position with respect to the tender offer inasmuch as the size of the tender offer and the current financial condition of the issuer did not warrant the expense of obtaining an independent fairness opinion and where the offeror represented in a filing made with the Commission that his personal available assets and his personal bank line of credit were adequate to purchase all the shares that may be tendered pursuant to the offer, the Commission exempted the tender offer from the registration requirements of Section 4:

Kevin W. Galbraith

7/20/94

Section 9(b)

Where a company has offered to purchase all the outstanding shares of a Pennsylvania company and the offer is subject to Rule 14d-5 and 14d-7 of the U.S. Securities and Exchange Commission ("SEC") promulgated under the Williams Act, the Commission harmonized the withdrawal time periods set forth in section 7(a) of the TDL and the proration time period set forth in Section 7(b) of the TDL with the applicable time periods set forth in the corresponding SEC Rules:

Berry Acquisition Company	2/13/86
Swan Acquisition Corporation	5/7/86
BII Acquisition Company	6/13/86
HPC Acquisition Company	8/6/86
NVA Acquisition One Inc., NVA Acquisition Two Inc.	10/9/86
Santa Monica Partners	5/11/87
Econocom Finance, N.V.	11/10/87
NX Acquisition Corporation	1/25/88
BNS, Inc.	3/23/88
Trio Acquisition Corporation	12/29/88
ValueVision International, Inc.	3/10/94
Atlantic Acquisition Corporation	11/6/96; 2/27/97
PMA Acquisition Corporation	8/12/98

**COMPILATION OF
STAFF NO-ACTION LETTERS
JULY 1, 1980 - DECEMBER 31, 2009**

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
80-1	7/17/80	Hamel, Park, McCabe & Saunders Washington, D.C.	First Financial Savings and Loan Association	Section 102	Stock issued by a savings and loan association in a conversion from mutual to stock form is exempt from registration, the bank need not register as a broker-dealer.
				102(e)(i); 102(e)(ii)	
				Section 202 202(b)	
80-2	8/18/80	Schenck, Price, Smith & King Morristown, NJ	Horizon Bancorp Dividend Reinvestment and Stock Purchase Plan	Section 102	Stock issued by a NYSE listed company in a dividend reinvestment plan is exempt from registration; the company need not register as a broker-dealer.
				102(e)(ii)	
				Section 202 202(f)	
80-3	8/18/80	Wolf, Block Schorr and Solis-Cohen Philadelphia, PA	Dreyfus Gold Deposits, Inc.	Section 102	A sale of securities does not take place when a company engages in the purchase and sale of gold on behalf of investors on a commission basis but provides no investment advice; does not exercise any discretionary powers to purchaser or sell gold on behalf of customers; and does not make any guarantee of profits or the availability of a market.
				102(t)	
				Section 202	
80-4	7/17/80	Stroock & Stroock & Lavan New York, NY	Air Express International Corporation	202(b)	See Letter #80-1
	8/18/80			202(f)	See Letter #80-2
	8/18/80			202(f)	The distribution of securities, listed on the American Stock Exchange, in a liquidation plan is exempt from registration.
80-5	8/18/80	Alston, Miller & Gaines Washington, DC	The Citizens and Southern National Bank	Section 203 203(o)	Stock issued in a reorganization and merger pursuant to shareholder approval is exempt from registration.
80-6	9/30/80	Butler, Binion, Rice, Cook & Knapp Houston, TX	Southland Royalty Company	Section 102	Distribution of assets in two trusts to the shareholders of the corporation that created the trusts is exempt when approved by the vote of the shareholders; neither the company nor the trust must register as a broker-dealer; the officers and employees of the company and the trusts need not register as agents.
				102(c) 102(e)	
				Section 203 203(o)	

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
				Section 102	
80-7	9/3/80	Shaw, Pittman, Potts & Trowbridge Washington, DC	B.F. Saul Real Estate Investment Trust	102(c) 102(e) Section 202 202(f)	Senior notes issued by a real estate investment trust whose shares of beneficial interest are traded on the New York Stock Exchange are exempt from registration; the trust need not register as a broker-dealer; the officers, employees and the trustee need not register as agents.
				Section 102	
80-8	10/2/80	Pepper, Hamilton & Scheetz Philadelphia, PA	Grand Oak Nursing Home Project	102(t) Section 202 202(a)	First mortgage revenue bonds issued by the authority are exempt from registration; the guaranty to the authority of payments by the user pursuant to an installment sale agreement between the authority and the user is not within the statutory definition of a security.
				Section 201	
80-9	9/3/80	Peter J. Broullire III Albuquerque, NM	Bank Securities, Inc.	201 Section 301 301	A tender offer by a non-Pennsylvania issuer involving one Pennsylvania shareholder with no commissions being paid in connection with such offer is exempt from registration.
				Takeover Disclosure Law	
				Section 4	
				Section 202	
80-10	10/2/80	Jones, Bird & Howell Atlanta, GA	University West Trade Center, Atlanta, Georgia	202(a)	First mortgage bonds issued by an instrumentality of a political subdivision are exempt from registration.
	10/2/80			202(a)	See Letter #80-8
80-11	9/3/80	Dilworth, Paxson, Kalish & Levy Philadelphia, PA	Sunrise Savings and Loan Association	202(b)	Public offering of securities by a federally- insured savings and loan association is exempt from registration.
	9/3/80			202(f)	See Letter #80-7
				Section 203	
80-12	9/3/80	Buchanan, Ingersoll, Rodewald, Kyle & Buerger Pittsburgh, PA	Millcraft Industries, Inc. Global Travel Agency, Inc.	203(b) 203(f)	Securities issued and exchanged in a reorganization of principals of affiliated companies is exempt.
	9/3/80			203(f)	See Letter #80-12

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80-13		Kenneth R. Shutt, Esq. Harrisburg, PA	Inservco Insurance Services, Inc. ESL, Inc. Pennsylvania National Mutual Casualty Insurance Company	203(f)	Sale of common stock of a company to the parent company is exempt from registration as part of the initial capitalization.
80-14	10/9/80	Grogan, Graffam, McGinley, Solomon & Lucchino Pittsburgh, PA	Three Rivers Energy Resources Co.	203(f)	A company composed of two individuals may be counted as one for purposes of computation under this section if such company was not organized for the purpose of acquiring the securities offered.
	9/30/80			203(o)	See Letter #80-6
				Section 301	
	9/3/80			301	See Letter #80-9
				Takeover Disclosure Law	
	9/3/80			Section 4	See Letter #80-9
				Section 102	
80-15	11/6/80	Bourne, Noll & Kenyon Summit, NJ	The Summit Bancorporation - The Maplewood Bank and Trust Company	102(e)(ii) Section 203 203(o)	Neither a bank holding company that acquires all of the outstanding capital stock of a bank incident to a vote of the security holders in exchange for preferred shares of the bank holding company capital stock, nor the bank being acquired, are included in the statutory definition of broker-dealer; the exchange of securities of the bank holding company for those of the bank is a transaction exempt from registration.
				Section 102	
80-16	12/29/80	Buchanan, Ingersoll, Rodewald, Kyle & Buerger Pittsburgh, PA	Life Care Retirement Communities	102(t)	A residency agreement for a retirement community that provides for an entrance endowment, income from which is used to reduce the monthly fee payable by the residents, that is refundable upon termination of the agreement under specified circumstances, which grants a revocable license to occupy and use space in the community, and which bestows rights under the agreement that are not assignable and do not inure to the use or benefit of the residents= heirs, legatees, assignees or other representatives is not within the statutory definition of security.

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Section 203					
80-17	11/19/80	Blackwell, Walker, Gray, Powers, Flick & Hoehl Miami, FL	GAC Corporation	203(k)	Securities issued pursuant to confirmed plans in bankruptcy proceedings are exempt from registration.
80-18	12/29/80	McDermott, Will & Emery Chicago, IL	Food Fair, Inc.	203(k)	Securities issued pursuant to confirmed plans in bankruptcy proceedings are exempt from registration.
80-19	11/12/80	House, Homs & Jewell, P.A. Little Rock, AR	First National Bank of El Dorado	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
80-20	11/13/80	Robert M. Bearman, Esq. Denver, CO	Energy Capital Development Corporation	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
80-21	11/20/80	Hunter, Houlihan, Maclean, Exley, Dunn & Connerate, P.C. Savannah, GA	The First National Bank of Valdosta	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
80-22	12/12/80	Tillinghast, Collins & Graham Providence, RI	Old Stone Corporation	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
80-23	12/29/80	Rubin Baum Levin Constant & Friedman New York, NY	Kenton Corporation	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
	11/6/80			203(o)	See Letter #80-15
80-24	12/17/80	Mesirov, Gelman, Jaffe, Cramer & Jamieson Philadelphia, PA	Allenwear, Ltd.	203(r) Regulation .203.184	Securities which are offered and sold by the issuer to the directors of the issuer who are active in the management of the issuer are exempt from registration.

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Section 205					
80-25	11/20/80	James L. Evers Nanuet, NY	ENTEC Products Corporation	205	A former employee and holder of the employer=s securities which were registered by coordination in Pennsylvania, and as a condition for registration in Pennsylvania, were required to be held in escrow for two years from the date of purchase, could sell such securities to another employee and director of the issuer if the purchaser would agree to hold the stock for the remainder of the escrow period.
Section 202					
80-26	2/24/81	Dechert Price & Rhoades Philadelphia, PA	Gloucester Township Housing Finance Corporation	202(a)	Bonds issued by a corporate instrumentality of a body corporate & politic which is organized pursuant to an enabling state statute are exempt from registration.
Section 203					
80-27	1/26/81	Rubin Baum Levin Constant & Friedman New York, NY	Kenton Corporation	203(l)	Where as a result of a prior merger, warrants outstanding of the disappearing corporation became exercisable for a stated principal amount of debentures of the surviving corporation and where the surviving corporation now wishes to exchange a different principal amount of the same debenture for each warrant in a transaction exempt under 3(a)(9) of the Securities Act of 1933, registration under Section 201 is not required.
80-28	2/27/81	Liverant, Senft and Cohen York, PA	York Bank and Trust Company	203(o)	Securities issued, incident to a vote of the security holders, by the surviving corporation in exchange for the securities of a corporation that is to be merged into the issuing corporation are exempt from registration.
Section 102					
80-29	3/16/81	Kemp, Smith, White, Duncan & Hammond El Paso, TX	The El Paso Electric Company	102(c) 102(e)	The offer and sale of common stock of an electric public utility, where the issuance of such security is regulated by a governmental authority of the United States, is exempt from registration, the utility is excluded from the definition of broker-dealer and its employees, officers and directors are excluded from the definition of agent.
Section 202					
				202(b)	

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Section 102					
80-30	3/4/81	Stroock & Stroock & Lavan New York, NY	First City Federal Savings and Loan Association	102(c) 102(e)	Common stock issued by a savings and loan association pursuant to a conversion from a federal mutual to a federal stock savings and loan association is exempt from registration; the association is excluded from the definition of broker-dealer and its employees, officers and directors are excluded from the definition of agent.
Section 202					
				202(b)	
Section 102					
80-31	3/4/81	Stroock & Stroock & Lavan New York, NY	Park Federal Savings and Loan Association	102(c) 102(e)	Common stock issued by a savings and loan association pursuant to a conversion from a federal mutual to a federal stock savings and loan association is exempt from registration; the association is excluded from the definition of broker-dealer and its employees, officers and directors are excluded from the definition of agent.
Section 202					
				202(b)	
Section 102					
80-32	3/2/81	James R. Fitzgerald, Esquire Pittsburgh, PA	Royal Aloha Vacation Club	102(t)	A membership in a vacation club which gives members a license to occupy existing ready-for-occupancy condominium units and where all of the member=s notes evidencing the proceeds from the offer and sale of such memberships are assigned to the club for payment of the obligations and encumbrances outstanding against the existing condominium units is excluded from the definition of a security.
Section 202					
80-33	3/16/81	Isham, Lincoln & Beale Chicago, IL	Illinois Health Facilities Authority	202(a)	The offer and sale of revenue bonds issued by a public instrumentality of a state are exempt from registration.
80-34	3/4/81	Orrick, Herrington & Sutcliffe San Francisco, CA	Alameda County Board of Education Public Facilities Corporation	202(a)	The offer and sale of bonds issued by an instrumentality of a political subdivision of a state are exempt from registration.
	3/16/81			202(b)	See Letter #80-29
	3/4/81			202(b)	See Letter #80-30
	3/4/81			202(b)	See Letter #80-31

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
				Takeover Disclosure Law	
80-35	3/27/81	Nogi, O=Malley & Harris, P.C. Scranton, PA	Scranton Corporation	3(iv)	A tender offer whereby the offeror will not have acquired more than 2% of the same class of equity securities of the target company within the preceding 12-month period is excluded from the definition of takeover offer.
				Section 102	
80-36	6/26/81	Pacht, Ross, Warne, Bernhard & Sears, Inc. Los Angeles, CA	Wincorp Industries, Inc.	102(e)	The parent corporation and its wholly-owned subsidiaries involved in a reorganization which is incident to a vote of the security holders are exempt from registration as broker-dealers.
				Section 202	
80-37	5/6/81	Ballard, Spahr, Andrews & Ingersoll Philadelphia, PA	The Puerto Rico Medical, Industrial and Pollution Control Facilities Financing Authority	202(a) 202 (f)	Bonds issued by an instrumentality of a state for the benefit of a corporation on the New York Stock Exchange are exempt; securities deemed to be present in a transaction where the underlying credit of the corporation would flow through to the bondholders are exempt from registration.
				Section 203	
80-38	6/25/81	Isham, Lincoln & Beale Chicago, IL	Illinois Health Facilities Authority	202(a) 202(b) 203(c)	Revenue notes issued by a public instrumentality of a state as defined in Section 102(u) are exempt from registration; and the issuance of transferable irrevocable standby letter of credit of a bank which is secured by a mortgage and pledge of assets is exempt from registration.
				Section 203	
80-39	6/16/81	Venable, Baetjer and Howard Baltimore, MD	Mercantile Bankshares Corporation	203(o)	A transaction in which securities are issued by the acquiring bank in exchange for all of the outstanding stock of two other banks pursuant to a merger agreement which was incident to a vote of the security holders of each bank is exempt from registration.

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80-40	6/25/81	Venable, Baetjer and Howard Baltimore, MD	Rowland Land Company	203(o)	A transaction in which units of limited partnership interests are issued in exchange for all the outstanding shares of a corporation pursuant to a plan of reorganization where the limited partnership is to be formed and the corporation liquidated and where such plan was incident to a vote of the security holders is exempt from registration.
80-41	6/26/81	Rosenblum, Rabkin, Parish, Jack, Bachli & Bacigalupi San Francisco, CA	North Valley Bancorp	203(o)	A transaction in which securities are issued by the surviving corporation, incident to a vote of security holders, in exchange for the securities of a corporation that is to be merged into the issuing corporation is exempt from registration.
	6/25/81			203(c)	See Letter #80-38
				Section 207	
80-42	6/26/81	Kutak Rock & Huie Omaha, NE	Blue Jay Energy Corp.	207(g)	Securities of an issuer being held by a former officer and director of the issuer which are subject to an escrow agreement may be repurchased by the issuer for nominal consideration if the securities to be transferred remain in escrow. Persons holding securities of an issuer which are subject to an escrow agreement may transfer their shares for non-cash consideration to persons who owned securities of the issuer prior to the transfer if the securities to be transferred remain in escrow.
				Section 102	
81-1	7/31/81	Eric R. Fischer, Esquire Boston, MA	First National Boston Corporation	102(e) Section 202 202(f)	Common stock listed on the NYSE and issued under automatic dividend reinvestment and common stock purchase plan are exempt from registration pursuant to Section 202(f); neither the issuer nor the employees would be a broker-dealer within the meaning of Section 102(e) of the 1972 Act.
				Section 102	
81-2	7/30/81	Robert G. Bailey, Esq. Stamford, CT	The Continental Group, Inc.	102(c) 102(e)(ii) Section 202 202(f)	Common stock to be issued pursuant to a plan of merger by a corporation whose common stock is fully listed on the NYSE is exempt from registration; the corporation is excluded from the definition of agent and broker-dealer.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
	7/31/81			202(f)	See Letter #81-1.
	7/30/81			202(f)	See Letter #81-2.
Section 203					
81-3	7/21/81	Skadden, Arps, Slate, Meagher & Flom New York, NY	Commonwealth Oil Refining Company, Inc.	203(k)	A transaction in which securities are issued pursuant to a Chapter XI plan of reorganization and recapitalization which has been confirmed by a Bankruptcy Court and where such court retains jurisdiction and custody of the debtors and their property until closing is exempt from registration.
81-4	7/30/81	Robert S. Davies, Esquire Los Angeles, CA	AMCAP Fund, Inc.	203(o)	A transaction in which securities are to be issued pursuant to a merger agreement which is incident to a vote by the security holders is exempt from registration.
Section 202					
81-5	8/18/81	Krank, Gross & Casper Lancaster, PA	Municipal Acceptance Corporation	202(b)	Bonds guaranteed by a bank are exempt from registration.
Section 102					
81-6	10/5/81	Drinker, Biddle & Reath Philadelphia, PA	Lehigh University Pooled Income Fund	102(c) 102(e)(ii)	Employees of a non-profit entity maintaining a fund which qualifies as a recipient of tax-deductible contributions under Section 642(c)(5) of the Internal Revenue Code of 1954 who are compensated on a fixed basis for the time devoted to all fund-raising activities, a portion of which is spent soliciting gifts for such funds, are excluded from the definition of agent and are not required to register as agents under the Act; such fund is excluded from the definition of broker-dealer and is not required to register as a broker-dealer under the Act where the securities are being sold pursuant to the exemption contained in Section 202(i) of the Act.
81-7	10/27/81	Cartano Botzer Larson & Birkholz Seattle, WA	Washington Energy Company/ Washington Natural Gas Company	102(c) 102(e) Section 203 203(c)	A transaction where securities are to be issued to an insurance company is exempt from registration; the issuers and employees, officers & directors of the issuer of securities in a voluntary plan of exchange are exempt from registration as broker-dealers and agents.

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Section 102					
81-8	9/15/81	Myron G. Lappen, Esq. Allentown, PA	Biljon Corp./Keystone Consumer Club	102(t)	A consumer club membership which confers on its holders nothing more than the right to purchase goods or services from a participating merchant member at a discount from the regular charges is not a security as that term is defined in Section 102(t).
Section 202					
81-9	9/28/81	Lourie, Curlee and Swerling Columbia, SC	Anchor Bank of South Carolina	202(b)	Securities issued by a bank are exempt from registration.
Section 203					
81-10	10/9/81	Niesar, Moody, Hill, Masley & Kregskin San Francisco, CA	Mark Systems, Inc.	203(l)	A transaction where securities to be issued are exempt from Section 5 of the Securities Act of 1933 by virtue of Section 3(a)(10) and where the Commission has been given notice of any hearing referred to in Section 3(a)(10) is exempt from registration.
81-11	10/27/81	Vorys, Sater, Seymour & Pease Columbus, OH	Beacon Mutual Indemnity Co.	203(l)	A transaction where securities to be issued are exempt from Section 5 of the Securities Act of 1933 by virtue of Section 3(a)(10) and where the Commission has been given notice of any hearing referred to in Section 3(a)(10) is exempt from registration.
	10/27/81			203(c)	See Letter #81-7.
81-12	9/17/81	Warner, Fox & Seely Port St. Lucie, FL	Merger of Port St. Lucie Bank and Treasure Coast Bancorp, Inc.	203(o)	A transaction in which securities of a bank holding company are to be exchanged for the common stock of a bank which, incident to a vote of security holders, will be merged into the bank holding company is exempt from registration.
81-13	9/25/81	Stradley, Ronon, Stevens & Young Philadelphia, PA	General Data Systems	203(r) Regulation 203.184	A transaction in which stock is issued to a company, wholly-owned by two individuals both of which are principals of the issuer as defined in Regulation 203.184, is exempt from the registration requirements of Section 201.

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				Section 102	
81-14	11/16/81	Bingham, Dana & Gould Boston, MA	First Bancorp of N. H., Inc.	102(c) Section 203 203(o)	A transaction in which securities of a bank holding company are to be exchanged for the common stock of a bank which, incident to a vote of security holders, will be merged into the bank holding company is exempt from registration; neither is the bank holding company required to register as a broker-dealer nor are its officers and directors required to register as agents.
				Section 102	
81-15	11/2/81	Alston, Miller & Gaines Atlanta, GA	Citizens and Southern Bank of Gwinnett	102(c) 102(e) Section 203 203(o)	A transaction in which securities of a bank holding company are to be exchanged for the common stock of a bank which, incident to a vote of security holders, will be merged into the bank holding company is exempt from registration; neither is the bank holding company required to register as a broker-dealer nor are its officers and directors required to register as agents.
				Section 102	
81-16	11/23/81	Fenwick, Stone, Davis & West Palo Alto, CA	American Pacific State Bank	102(c) 102(e) Section 203 203(o)	A transaction involving the issuance of securities pursuant to a reorganization and merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration; neither is the bank required to register as a broker-dealer nor are its officers and directors required to register as agents.
				Section 102	
81-17	11/23/81	Rhoads, Sinon & Hendershot Harrisburg, PA	Union National Bank and Trust Company	102(c) 102(e) 102(j) Section 203 203(o)	A transaction involving the issuance of securities pursuant to a reorganization and merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration; neither is the bank required to register as a broker-dealer or investment adviser nor are its officers and directors required to register as agents.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
81-18	12/1/81	Alston, Miller & Gaines Atlanta, GA	Rapidata, Inc.	<p>Section 102</p> <p>102(c) 102(e)</p> <p>Section 203</p> <p>203(o)</p>	A transaction where securities are issued pursuant to an agreement and plan of merger which is incident to a vote of security holders is exempt from registration; neither the issuer is required to register as a broker-dealer nor are the employees, officers or directors of the issuer required to register as agents.
81-19	12/1/81	Alston, Miller & Gaines Atlanta, GA	Genuine Parts Company	<p>Section 102</p> <p>102(c) 102(e)</p> <p>Section 203</p> <p>203(o)</p>	A transaction where securities are issued pursuant to an agreement and plan of reorganization which is incident to a vote of security holders is exempt from registration; neither the issuer is required to register as a broker-dealer nor are the employees, officers or directors of the issuer required to register as agents.
81-20	12/7/81	Fenwick, Stone, Davis & West Palo Alto, CA	Information Management International	<p>Section 102</p> <p>102(c) 102(e)</p> <p>Section 203</p> <p>203(l) 203(o)</p>	A transaction of securities which is exempt from Section 5 of the Securities Act of 1933 by virtue of Section 3(a)(10) thereof where the Commission has been given notice of any hearing referred to in Section 3(a)(10) is exempt from registration; a transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration; neither the issuer is required to register as a broker-dealer nor are the employees, officers or directors of the issuer required to register as agents.
81-21	11/6/81	Milbank, Tweed, Hadley & McCloy New York, NY	Student Loan Marketing Association	<p>Section 202</p> <p>202(a)</p>	Securities issued by an agency or corporate instrumentality of the U.S. government are exempt from registration.
81-22	11/17/81	Patterson, Belknap, Webb & Tyler New York, NY	United States Conference for the World Council of Churches, Inc.	202(e)	The issuance of subvention certificates by a non-profit issuer pursuant to the laws of the state of New York which does not entitle the purchaser to any specific return of principal or interest at any specific time is exempt.
81-23	11/30/81	Giordano, Halleran & Crahay Middletown, NJ	Syntrex Incorporated	202(g)	Securities issued pursuant to an incentive stock option plan which has been qualified under Section 422a of the Internal Revenue Code of 1954 are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 203					
81-24	11/2/81	Donald E. Schierer, Esq. Denver, CO	Petro-Lewis Oil Income Program Petro-Lewis Producing Company II	203(o)	A transaction in which limited partnership interests are issued pursuant to a transaction consolidating several individual limited partnerships, such transaction being incident to a vote of security holders, is exempt from registration.
	12/7/81			203(l) 203(o)	See Letter #81-20.
	11/16/81			203(o)	See Letter #81-14.
	11/2/81			203(o)	See Letter #81-15.
	11/23/81			203(o)	See Letter #81-16.
	11/23/81			203(o)	See Letter #81-17.
	12/1/81			203(o)	See Letter #81-18.
	12/1/81			203(o)	See Letter #81-19.
Section 102					
81-25	1/9/82	Stroock & Stroock & Lavan New York, NY	International Savings and Loan Association, Limited	102(c) 102(e) Section 202 202(b)	Common stock issued by a savings and loan association pursuant to a conversion from a mutual to a stock form is exempt from registration; the savings and loan does not need to register as a broker-dealer nor do the employees, officers and directors of the savings and loan association need to register as agents.
Section 102					
81-26	2/22/82	White & Case New York, NY	Merger of Marathon Oil Company with United States Steel Corporation	102(c) 102(e)(ii) Section 202 202(f)	Guaranteed debt securities of an insurer whose common stock is listed on the New York Stock Exchange is exempt from registration; the issuer is exempt from registration as a broker-dealer and the officers and employees of the issuer and its wholly-owned subsidiaries are exempt from registration as agents.
Section 102					
81-27	1/27/82	Tillinghast, Collins & Graham Providence, RI	Wachovia Realty Investments	102(e)(ii) Section 203 203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer.

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Section 201					
81-28	2/2/82	Krekstein, Shapiro, Bressler & Wolfson Philadelphia, PA	Powell Electronic, Inc.	201 Takeover Disclosure Law 3(v) & 4	An offer by the issuer to purchase all of the outstanding shares of one class of stock of the issuer is exempt from registration under the 1972 Act and the Takeover Disclosure Law.
Section 202					
81-29	1/19/82	William P. Costantini, Esq. Stamford, CT	GEO International Corporation	202(f)	Common stock of a corporation which is listed on the New York Stock Exchange is exempt from registration.
81-30	2/4/82	Choate, Hall & Stewart Boston, MA	Morton Shoe Companies, Inc.	202(f)	The offer and sale of rights to exchange debt securities of the issuer for cash and warrants to purchase common stock of the issuer which is listed on the American Stock Exchange is exempt from registration.
81-31	2/24/82	Borge and Pitt Chicago, IL	The Industrial Development Board of The County of Hamilton, Tennessee	202(a)	Securities issued by an instrumentality of a political subdivision of a state are exempt from registration.
81-32	2/24/82	Borge and Pitt Chicago, IL	College Park Business and Industrial Development Authority	202(a)	Securities issued by a political instrumentality are exempt from registration.
	1/19/82			202(b)	See Letter #81-25.
	2/22/82			202(f)	See Letter #81-26.
Section 203					
81-33	2/16/82	Barrett, Barrett & McNagny Fort Wayne, IN	Fort Wayne National Bank	203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
	1/27/82			203(o)	See Letter #81-27.
Section 207					
81-34	1/29/82	Hall & Evans Denver, CO	Overthurst Resources, Ltd.	207(g)	Securities of an issuer held by a promoter of the issuer which are subject to an escrow agreement may be purchased by other employees of the issuer as part of an employee stock bonus plan where the purchasers of such securities have undertaken to comply with the terms of the escrow agreement.

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81-35	2/22/82	Tredway, Brandmeyer, Torribio & Brazelton Downey, CA	Seahawk Oil International, Inc.	207(g)	Securities of an issuer subject to an escrow agreement may be transferred to the ex-spouse of the owner of the securities subject to the escrow agreement as part of a marriage settlement where the ex-spouse has undertaken to comply with the terms of the escrow agreement.
Section 606					
81-36	2/5/82	Ballard, Spahr, Andrews & Ingersoll Philadelphia, PA		606(c)	A statement relating to an exemption from federal income taxes for municipal bonds offered and sold pursuant to Section 202(a) of the 1972 Act may be used in any advertising published or distributed in connection with their offer and sale.
Takeover Disclosure Law					
	2/2/82			3(v) & 4	See Letter #81-28.
Section 102					
81-37	3/2/82	Arnold & Porter Washington, DC	League of Women Voters Education Fund	102(c)	Employees, officers, directors and volunteers of a pooled income fund which conforms to the definition of a pooled income fund contained in Section 642(c)(5) of the Internal Revenue Code are not required to register as agents.
81-38	3/24/82	Wyman, Bautzer, Rothman, Kuchel & Silbert Los Angeles, CA	MGM Grand Hotels, Inc.	102(c) 102(e)(ii)	A transaction involving an exchange offer which is exempt from registration under the Securities Act of 1933 by virtue of Section 3(a)(9) thereof is exempt from registration; the issuer is not required to register as a broker-dealer nor are the employees of the issuer required to register as agents.
Section 203 203(l)					
Section 102					
81-39	3/15/82	Tillinghast, Collins & Graham Providence, IL	Acquisition of Pacific Southern Mortgage Trust by Old Stone Corporation	102(e)(ii)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer.
Section 203 203(o)					
Section 102					
81-40	4/7/82	DeWolf, Ward & Morris Orlando, FL	Orange Lake Country Club Villas	102(t)	A unit week in an existing interval ownership condominium resort which is an interest in a condominium covered by Section 3405 of the Pennsylvania Uniform Condominium Act is not a security under the Pennsylvania Securities Act of 1972.

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81-41	4/26/82	Garvey, Schubert, Adams & Barer Seattle, WA	American Campgrounds, Inc.	102(t)	A non-exclusive membership for the use of existing recreational campgrounds which are sold solely for personal and family enjoyment and not for resale or profit and which do not entitle the buyer to participate in any income or distribution of the issuer is not a security.
Section 202					
81-42	4/12/82	Mulcahy & Wherry, S.C. Milwaukee, WI	Wisconsin Health Facilities Authority	202(a)	Debt securities issued by a political subdivision of a state are exempt from registration.
Section 203					
81-43	3/26/82	Venable, Baetjer and Howard Baltimore, MD	Ellicott Machine Corporation	203(l)	A transaction involving an exchange offer which is exempt from registration under the Securities Act of 1933 by virtue of Section 3(a)(9) thereof is exempt from registration.
	3/24/82			203(l)	See letter #81-38.
81-44	3/1/82	Cravath, Swaine & Moore New York, NY	Avon Products, Inc.	203(o)	A transaction where securities are issued pursuant to an agreement and plan of merger which is incident to the vote of security holders is exempt from registration.
81-45	4/12/82	Blackwell Walker Gray Powers Flick & Hoehl Miami, FL	Merger of Citizens National Bank of Naples into Flagship Banks, Inc.	203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
	3/15/82			203(o)	See Letter #81-39.
81-46	3/17/82	Pepper, Hamilton & Scheetz Philadelphia, PA	Llanfair Associates-IV	203(r) Regulation 203.184	A transaction where securities are issued to Aprincipals,@ as that term is defined in Commission Regulation 203.184(b), of a corporate co-general partner of the issuer is exempt from registration.
Section 102					
81-47	6/21/82	Department of Treasury Washington, DC	Central Jersey Industries, Inc.	102(e) Section 202 202(f)	Transactions in securities listed on the Philadelphia Stock exchange are exempt from registration; the U.S. Treasury Department, in disposing of securities held by the U.S. Government in accordance with federal statutes, need not register as a broker-dealer.
Section 202					
81-48	5/27/82	Campbell and Radloff St. Louis, MO	The Industrial Development Authority of the County of St. Louis, MO	202(a)	Securities issued by a political subdivision of a state are exempt from registration.

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81-49	5/17/82	Chadbourne, Parke, Whiteside & Wolff New York, NY	American Brands, Inc.	202(f)	Interests offered in connection with an employee stock purchase plan where the stock to be purchased pursuant to the employee stock purchase plan is listed on the New York Stock Exchange are exempt from registration.
	6/21/82			202(f)	See Letter #81-47.
81-50	6/30/82	Testa, Hurwitz & Thibeault Boston, MA	Autoclave Engineers, Inc.	202(g)	Securities issued pursuant to an incentive stock option plan which has been qualified under Section 422a of the Internal Revenue Code of 1954 are exempt from registration.
Section 203					
81-51	5/24/82	Ruder, Ware, Michler & Forester, S.C. Wausau, WI	Tri-County State Bank of Marshfield	203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
81-52	5/24/82	Step toe & Johnson Clarksburg, WV	Union Bancorp of West Virginia, Inc.	203(o)	A transaction involving the issuance of securities pursuant to a reorganization and merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
Section 202					
82-1	7/21/82	LeBoeuf, Lamb, Lieby & MacRae New York, NY	The New Mexico Educational Assistance Foundation	202(a)	Securities issued by an instrumentality of a State are exempt from registration.
82-2	7/14/82	Wolf, Block, Schorr and Solis-Cohen Philadelphia, PA	Pocono Northeast Railway, Inc.	202(b)	Common stock which is issued pursuant to the Interstate Commerce Commission=s granting an exemption from the approval process under the Interstate Commerce Act is exempt from registration.
82-3	7/9/82	White & Case New York, NY	Crum and Forster Fourth Employee Stock Purchase Plan	202(f)	Common stock listed on the New York Stock Exchange which is issued pursuant to an employee stock purchase plan is exempt from registration.
Section 102					
82-4	9/24/82	Bourne, Noll & Kenyon Summit, NJ	Acquisition of the Ocean County National Bank by the Summit Bancorporation	102(e)(ii) Section 203 203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer.

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Section 102					
82-5	10/20/82	Drinker Biddle & Reath Philadelphia, PA	The Denver and Ephrata Telephone and Telegraph Company	102(r)	A transaction involving the solicitation of common stockholders of a company to participate in the initial creation of a voting trust to be created pursuant to an agreement between and among the trustees of the voting trust and certain common stockholders of the company and the issuance by such trustees of voting trust certificates does not constitute a sale of securities requiring registration.
Section 202					
82-6	10/5/82	Mahoney Hadlow & Adams Jacksonville, FL	Jacksonville Health Facilities Authority	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
Section 203					
82-7	10/20/82	Preston, Thorgrimson, Ellis & Holman Seattle, WA	SEATTLETRUST Corporation	203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
82-8	9/24/82	Sewell & Riggs Houston, TX	Cambridge Royalty Company	203(o)	A transaction where securities are issued pursuant to an agreement and plan of reorganization which is incident to the vote of shareholders is exempt from registration.
82-9	9/8/82	Herzog and Burroughs St. Louis, MO	Southside Bancshares Corporation	203(o)	A transaction involving the issuance of securities pursuant to the merger of a bank into a bank holding company which is incident to a vote of security holders is exempt from registration.
	9/24/82			203(o)	See Letter #82-4.
Section 102					
82-10	1/31/83	Rosen, Hacker & Nierenberg, New Rochelle, NY	Bremer Hof Owners, Inc.	102(t)	Shares of a cooperative corporation the purchase of which is completely tied to the execution of a long term renewable lease for a townhouse for a specified interval of time, are not securities within the definition of Section 102(t).

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82-11	2/2/83	Aylward, Kintz, Stiska, Wassenaar & Shannahan San Diego, CA	California Resources, Inc.	102(t)	Services offered by a firm to individual clients with respect to bidding on federal oil and gas leases where there is no pooling of efforts by the clients in a common enterprise from which any sharing of losses or profits is expected or provision of essential managerial efforts which bear upon the success of the bid of the individual client, are not securities within the definition of Section 102(t).
82-12	2/2/83	Rubin Baum Levin Constant & Friedman New York, NY	Exchange Offers by Rapid American Corporation and McCrory Corporation	102(c) 102(e) Section 203 203(l) Section 202	A transaction involving an exchange offer which is exempt from registration under the Securities Act of 1933 by virtue of Section 3(a)(9) thereof is exempt from registration; the issuer is not required to register as a broker-dealer nor are the officers, directors or employees required to register as agents.
82-13	2/2/83	Isham, Lincoln & Beale Chicago, IL	Illinois Independent Higher Education Loan Authority	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
82-14	1/28/83	Stroock & Stroock & Lavan New York, NY	Mid State Federal Savings and Loan Association	202(b)	Common stock issued by a savings and loan association pursuant to a plan of conversion from a federal mutual to a federal stock form is exempt from registration.
82-15	1/3/83	Killian & Gephart Harrisburg, PA	Ecumenical Development Cooperative Society	202(e)	Equity securities of a non-profit issuer which does not entitle any individual to benefit in any net earnings of the issuer are exempt.
	2/2/83			Section 203 203(l)	See Letter #82-12
82-16	1/28/83	Ropes & Gray Boston, MA	Acquisition of Consolidated Investment Trust by The George Putnam Fund of Boston	203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration.
				Section 102	
82-17	3/23/83	Rhoads, Simon & Hendershot Harrisburg, PA	Merger and Reorganization of: Miners National Bancorp. Inc., The Miners National Bank of Pottsville, and The Miners Interim National Bank	102(c) 102(e) Section 202 202(b) Section 203 203(o)	A transaction where securities are issued pursuant to a merger and reorganization which is incident to a vote of security holders is exempt from registration, the banks and bank holding company do not need to register as a broker-dealer nor do the employees, officers and directors of the banks and bank holding company need to register as agents.

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Section 202					
82-18	3/23/83	Borge and Pitt Chicago, IL	California Health Facilities Authority	202(b)	Standby irrevocable transferable letters of credit issued by a bank are exempt from registration.
	3/23/82			202(b)	See Letter #82-17.
Section 203					
82-19	3/8/83	Step toe & Johnson Clarksburg, WV	Acquisition of City National Bank of Charleston by City Holding Company	203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration.
	3/23/83			203(o)	See Letter #82-17.
Section 102					
82-20	6/28/83	Pepper, Hamilton & Sheetz Philadelphia, PA	Keystone Venture Fund, L.P.	102(k)	Limited partnership interests may be offered and sold to institutional investors both prior and subsequent to the effectiveness of a registration statement filed under Section 206 for the offer and sale of the same limited partnership interests to non-institutional investors and without filing a delaying amendment with respect to the effectiveness of such registration.
Section 203					
				203(c)	
Section 202					
82-21	5/5/83	Hoffman & Davis Chicago, IL	Industrial Development Authority of the County of Accomack Industrial Revenue Bonds, Series of 1983	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
82-22	5/5/83	McKenna, Conner & Cuneo Los Angeles, CA	Home Federal Savings and Loan Association	202(b)	Common stock issued by a savings and loan association pursuant to a plan of conversion from a federal mutual to federal stock form is exempt from registration.
Section 203					
	6/28/83			203(c)	See Letter #82-20.
Section 102					
83-1	8/31/83	Ms. Janice B. Liva Bank of Boston Corporation Boston, MA	Acquisition of Casco-Northern Corporation by Bank of Boston Corporation	102(c) 102(e)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer nor are the officers, directors or employees required to register as agents.
Section 203					
				203(o)	

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Section 102					
83-2	8/31/83	Ms. Janice B. Liva Bank of Boston Corporation Boston, MA	Acquisition of Fall River Trust Company by Bank of Boston Corporation	102(c) 102(e) Section 203 203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer nor are the officers, directors or employees required to register as agents.
83-3	7/29/83	Lindsay, Hart, Neil & Weigler Portland, OR	Pensa, Inc.	203(r) Regulation 203.184	A transaction where securities are issued to trusts for the benefit of living relatives of the Chief Executive Officer of the issuer, who are Aprincipal,@, as that term is defined in Commission Regulation 203.184(b), is exempt from registration.
	8/31/83			203(o)	See Letter #83-1.
	8/31/83			203(o)	See letter #83-2.
Section 102					
83-4	10/12/83	Choate, Hall & Stewart Boston, MA	Merger of Bank of New England Corporation and CBT Corporation	102(e)(ii) Section 203 203(o)	A transaction where securities are issued pursuant to a merger which is incident to a vote of security holders is exempt from registration. CBT Corporation does not need to register as a broker-dealer.
Section 202					
83-5	10/12/83	Gibson, Dunn & Crutcher Los Angeles, CA	First Federal Savings Bank of California	202(b)	Securities issued by a savings and loan association pursuant to a plan of conversion from a mutual to a stock form is exempt from registration.
Section 203					
83-6	9/15/83	Bufalino and Bufalino West Pittston, PA	Acquisition of West Side Bank by West Side Bancorp, Inc.	203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration.
	10/12/83			203(o)	See Letter #83-4.
Takeover Disclosure Law					
83-7	9/2/83	Nogi, O=Malley & Harris Scranton, PA	Scranton Corporation	3(iv)	A tender offer whereby the offeror will not have acquired more than 2% of the same class of common stock of the target company within the preceding 12-month period is excluded from the definition of takeover offer.

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Section 102					
83-8	11/30/83	Housley, Goldberg & Kantarian, P.C. Washington, D.C.	Columbia Federal Savings Bank	102(c) 102(e)	Securities issued by a savings and loan association pursuant to a plan of conversion from a mutual to a stock form is exempt from registration; registration of the savings and loan association as a broker-dealer is not required nor is registration of the savings and loan association=s employees, officers or directors as agents required.
	11/30/83			202(b)	See Letter #83-8.
Section 102					
83-9	1/19/84	Gambrell & Russell Atlanta, GA	Eastern Air Lines, Inc.	102(c) 102(e)(ii)	Securities listed on the New York Stock Exchange are exempt from registration; Eastern Air Lines does not need to register as a broker-dealer nor do the employees, officers and directors of the company need to register as agents.
Section 202					
				202(f)	
83-10	2/1/84	Bayh, Tabbert & Capehart Indianapolis, IN	Holy Cross Health System Corporation	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
	1/19/84			202(f)	See Letter #83-9.
Section 203					
83-11	1/19/84	English, McCaughan & O=Bryan Fort Lauderdale, FL	Merger of Southwest Florida Banks, Inc. with Landmark Banking Corporation of Florida	203(o)	A transaction where securities are issued pursuant to an agreement and plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
83-12	3/9/84	Hamel & Park Washington, DC	Suffield Savings Bank	202(b)	Securities issued by a bank are exempt from registration.
Section 203					
83-13	3/2/84	Housley, Goldberg & Kantarian, P.C. Washington, DC	Dallas Federal Savings and Loan Association	203(o)	A transaction where securities are issued pursuant to a plan or reorganization which is incident to a vote of security holders is exempt from registration.

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				Section 102	
83-14	6/21/84	Hogan & Hartson Washington, DC	Merger of Fidelity Federal Savings and Loan Association into Heritage Savings and Loan Association, Incorporated	102(c) 102(e)	Securities issued by a savings and loan association pursuant to a plan of conversion from a mutual to a stock form is exempt from registration; registration of the savings and loan association as a broker-dealer is not required nor is registration of the savings and loan association=s employees, officers or directors as agents required.
				Section 202 202(b)	
				Section 203	
83-15	6/21/84	Rubin Baum Levin Constant & Friedman New York, NY	Reorganization of McGregor Corporation and Faberge, Incorporated	203(o)	A transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of securities holders is exempt from registration; the issuer is not required to register as a broker-dealer nor are the officers, directors or employees required to register as agents.
				Section 102 102(c) 102(e)	
				Section 102	
84-1	7/19/84	Hogan & Hartson Washington, DC	Conversion of Coastal Savings Bank from mutual savings bank to state-chartered stock savings bank	102(c) 102(e)	Securities issued by a savings and loan association pursuant to a plan of conversion from a mutual to a stock form is exempt from registration; registration of the savings and loan association as a broker-dealer is not required nor is registration of the savings and loan association=s employees, officers or directors as agents required.
				Section 202 202(b)	
				Section 203	
84-2	7/19/84	Bank of Boston Corporation Boston, MA	Acquisition of RIHT Financial Corporation by Bank of Boston Corporation	203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of securities holders is exempt from registration; the issuer is not required to register as a broker-dealer nor are the officers, directors or employees required to register as agents.
				Section 102 102(c) 102(e)	
				Section 202	
84-3	7/19/84	Mulcahy & Wherry, S.C. Milwaukee, WI	Issuance of Wisconsin Health Facilities Authority Revenue Bonds (Milwaukee Psychiatric Hospital Project)	202(a)	Securities issued by a political subdivision of a state are exempt from registration.

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Section 201					
84-4	8/30/84	Labrum & Doak Philadelphia, PA	Promissory Note by Browning-Ferris, Inc. to Rural Sanitation Services, Inc.	201	A debt security purchased under Section 203(d) may be distributed in the course of the liquidation of the purchaser to the sole shareholder of the purchaser who agrees not to sell the debt security until 12 months from the date of the initial purchase without compliance with the registration provisions of Section 201.
Section 202					
84-5	9/25/84	Levy & Craig Kansas City, MO	Murphy Industries, Inc.	202(f)	Common stock listed on the American Stock Exchange is exempt from registration.
Section 203					
84-6	9/25/84	Preston, Thorgrimson, Ellis & Holman Seattle, WA	Seattle Bancorporation/Alaska Pacific Bancorporation	203(o)	A transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
84-7	9/25/84	Schenck, Price, Smith & King Morristown, NJ	Horizon Bancorp	202(f) Section 102 102(e)(ii)	Common stock listed on the New York Stock Exchange is exempt from registration; an issuer who issues stock pursuant to a Dividend Reinvestment and Stock Purchase Plan without remuneration of any kind is not required to register as a broker-dealer.
Section 202					
84-8	9/25/84	Office of General Counsel - Department of the Treasury Washington, DC	Erie Lackawanna, Inc.	202(f)	Securities which satisfy the margin requirements of the Board of Governors of the Federal Reserve System under Regulation T are exempt from registration.
84-9	9/25/84	Hogan & Hartson Washington, DC	Home Federal Bank of Florida, F.S.B.	202(b) Section 102 102(c) 102(e)	Securities issued by a savings and loan association pursuant to a plan of conversion from a federal mutual to a federal stock form of organization are exempt from registration; registration of a savings and loan association as a broker-dealer is not required nor is registration of the savings and loan association=s employees, officers or directors as agents required.
Section 202					
84-10	9/27/84	Mulcahy & Wherry Milwaukee, WI	Wisconsin Health Facilities Authority (Hartford Memorial Hospital, Inc.)	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
84-11	9/27/84	Hoffman & David Chicago, IL	County of Washington, Ohio (Marie Antionette Care Center)	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
84-12	9/27/84	Kutak Rock & Huie Omaha, NE	Victoria Savings Association	202(b)	Certificates of Deposit issued by a state savings and loan association which are insured by the FSLIC up to \$100,000 for each depositor are exempt from registration.
84-13	9/27/84	Kutak Rock & Huie Omaha, NE	Sun Savings and Loan Association	202(b)	Certificates of Deposit issued by a state savings and loan association which are insured by FSLIC up to \$100,000 for each depositor are exempt from registration.
84-14	9/27/84	Morrison & Foerster Los Angeles, CA	City of San Diego	202(a)	Certificates evidencing and representing direct and proportionate interests in lease payments to be made by the City of San Diego, the principal of and interest on, which are insured by the Municipal Bond Insurance Association, are exempt from registration.
Section 203					
84-15	10/24/84	Moya, Bailey, Bowers & Jones, P.C. Phoenix, AZ	Bank of Paradise Valley	203(o)	A transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
84-16	10/26/84	Shearer, Mette & Woodside Harrisburg, PA	Tri-State Health Care Corporation	202(a)	Bonds issued by a corporation which is an instrumentality of a political subdivision of a state are exempt from registration.
Section 102					
84-17	10/27/84	Land, Kitchens, Gaynes, McKnight & Hurprick Atlanta, GA	*Etiw Syndication Agreement	102(t)	An undivided fractional interest in a stallion for the use and benefit of each co-owner=s breeding program is not a security.
Section 606					
84-18	11/13/84	Patterson, Balknap, Webb & Tyler New York, NY	United States Conference for the World Council of Churches, Inc. offer of \$10,000,000 Series A Subvention Certificates	606(c)	Distribution may be made of an advertisement regarding the offering of subvention certificates in certain publications of a nationwide, regular and paid circulation which are sponsored by or affiliated with religious denominations or are religious in their orientation and which are published in Pennsylvania.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
84-19	12/11/84	Butz, Hudders & Tallman Allentown, PA	NEPA Management Corporation NEPA Venture Fund, L.P.	102(j)(vii)	Where a General Partner of a Limited Partnership formed to make venture capital investments renders investment advice for compensation solely to that Limited Partnership and does not hold itself generally out to the public as an investment adviser is excluded from the definition of investment adviser and is not required to be registered under Section 301 of the Act.
Section 203					
84-20	1/9/85	United TeleSpectrum, Inc., Kansas City, MO	United TeleSpectrum, Inc. Sale of Interests in Limited Partnership	203(f)	Offer and sale of interests in a limited partnership to no more than five (5) persons anywhere as part of the initial capitalization of the limited partnership are exempt from registration.
Section 202					
84-21	1/17/85	Kutak, Rock & Campbell Omaha, NE	\$19,300,000 Special Fund of The Industrial Commission of Arizona, Floating Rate Monthly Demand Certificates	202(a) 202(b)	Securities issued by an instrumentality of a state are exempt from registration and securities issued by a bank are exempt from registration.
84-22	2/4/85	Borge and Pitt Chicago, IL	Adventist Health System - West Hospital Revenue Certificates of Participation	202(a)	Certificates evidencing and representing proportionate interests in lease payments to be made by the City of Los Angeles are exempt from registration.
84-23	2/8/85	Kutak, Rock & Campbell Omaha, NE	Otero Savings and Loan Association Certificates of Deposit	202(b)	Certificates of Deposit issued by a state savings and loan association which are insured by the FSLIC up to \$100,000 for each depositor are exempt from registration.
Section 203					
84-24	2/4/85	Adler Pollock & Sheehan, Incorporated Providence, RI	Narragansett Capital Partners Sales of Interests in Limited Partnership	203(c)	A transaction involving the offer and sale of securities to an institutional investor is exempt from registration.
84-25	2/13/85	Hazel, Beckhorn and Hanes Fairfax, VA	George Mason Bankshares, Inc. Reorganization and Merger	203(o)	A transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
84-26	3/4/85	Stolar, Heitzmann, Eder, Seigel & Harris St. Louis, MO	City of Fairview Heights, Illinois Industrial Project Revenue Bonds (Drury=s Inns, Inc. Project)	202(a) 202(b)	Securities issued by a political instrumentality of state are exempt from registration; securities issued by a bank are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 203					
84-27	3/26/85	Housley, Goldberg & Kantarian, P.C. Washington, DC	Reorganization of Magnet Bank - Charleston, WV	203(o)	A transaction where securities are issued pursuant to a plan or reorganization which is incident to a vote of security holders is exempt from registration.
84-28	3/26/85	Sheehan, Phinney, Bass & Green Manchester, NH	First NH Banks, Inc. Plan of Reorganization and Merger	203(o)	See Letter #84-27.
84-29	3/27/85	Blankinger, Grove & Chillas, P.C. Lancaster, PA	Lancaster Title Abstracting Company	203(l)	A transaction where securities are issued under Section 3(a)(10) of the Federal Securities Act of 1933 is exempt from registration.
Section 202					
84-30	4/15/85	Stolar, Heitzmann, Eder, Seigel & Harris St. Louis, MO	Anheuser-Busch Companies, Inc. The Anheuser-Busch Employee Stock Purchase and Savings Plan (Plan 1) The Anheuser-Busch Deferred Income Stock Purchase and Savings Plan (Plan 2)	202(g)	Investment contracts issued in connection with an employee=s stock purchase and savings plan are exempt from registration.
84-31	4/23/85	Memel Jacobs Pierno Gersh & Ellsworth Los Angeles, CA	City of Los Angeles Certificates of Participation Series 1985 San Pedro Peninsula Hospital Project The Dai-Ichi Kangyo Bank, Ltd.	202(b)	Securities issued by a bank are exempt from registration.
Section 203					
84-32	5/3/85	Hogan & Hartson Washington, DC	Acquisition of First Savings Association of Wisconsin by First Financial Corporation	203(o)	A transaction where securities are issued pursuant to a plan of acquisition which is incident to a vote of security holders is exempt from registration.
Section 102					
84-33	6/21/85	Orrick, Herrington & Sutcliffe San Francisco, CA	Crown Zellerbach Corporation Exchange Offer	102(c) 102(e)	A company which is restructuring its corporate assets by means of making and consummating an exchange offer of 50% of its outstanding common stock for securities of other issuers formed by the company for the purpose of the exchange offer is not required to register as a broker-dealer nor are its officers and employees required to register as agents.
Section 202					
84-34	6/18/85	Sherman & Howard Denver, CO	General Obligation Electric Bonds, City of Idaho Falls, ID	202(b)	Securities issued by a bank are exempt from registration.
84-35	6/18/85	Gardner, Carton & Douglas Chicago, IL	Floating/Fixed Rate Revenue Bonds Illinois Health Facilities Authority (Pekin Memorial Hospital)	202(b)	Securities issued by a bank are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
84-36	6/18/85	Gardner, Carton & Douglas Chicago, IL	Dept. Of Budget and Finance of the State of Hawaii (St. Francis Hospital Project)	202(b)	Securities issued by a bank are exempt from registration.
84-37	6/18/85	Houston Harbaugh Pittsburgh, PA	Keystone Physicians Association	202(e)	Securities issued by an issuer organized as a professional association are exempt from registration.
Section 203					
84-38	6/18/85	Andrews & Kurth Houston, TX	Adobe Oil & Gas Corp. and Madison Resources, Inc.	203(o)	A transaction where securities are issued pursuant to a plan of consolidation which is incident to a vote of security holders is exempt from registration.
Section 102					
85-1	7/19/85	Housley, Goldberg & Kantarian, P.C. Washington, D.C.	Central Pennsylvania Financial Corporation	102(c) 102(e)(ii)	A transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of security holders is exempt from registration; the issuer need not register as a broker-dealer, and the employees, officers and directors of the issuer need not register as agents.
				Section 203 203(o)	
Section 102					
85-2	8/20/85	Schenck, Price, Smith & King Morristown, NJ	Horizon Bancorp	102(e)(ii)	Common stock listed on the New York Stock Exchange is exempt from registration; an issuer who issues stock pursuant to a Dividend Reinvestment and Stock Purchase Plan without remuneration of any kind is not required to register as a broker-dealer.
				Section 202 202(f)	
Section 301					
85-3	9/9/85	Lock Haven Savings & Loan Association Lock Haven, PA	Lock Haven Savings & Loan Association Participation in ISFA Corporation "INVEST" Program	301	Where a bank enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d offers brokerage and investment advisory services at the bank=s office, employing, training, qualifying and supervising employees of the bank as agents of the b/d and reimbursing the bank for use of the office and for employees= salaries by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
85-4	9/9/85	First Keystone Federal Savings Bank Media, PA	First Keystone Federal Savings Bank Participation in ISFA Corporation "INVEST" Program	301	" "

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
85-5	9/9/85	Steitz Savings & Loan Association Lebanon, PA	Steitz Savings & Loan Association Participation in ISFA Corporation "INVEST" Program	301	" "
85-6	9/9/85	Homestead Savings Association Middletown, PA	Homestead Savings Association Participation in ISFA Corporation "INVEST" Program	301	" "
85-7	9/10/85	Fidelity Savings Association Pittsburgh, PA	Fidelity Savings Association Participation in ISFA Corporation "INVEST" Program	301	" "
Section 102					
85-8	10/10/85	Housley, Goldberg & Kantarian, P.C. Washington, DC	York Federal Savings and Loan Association Reorganization	102(c) 102(e)(ii)	A transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of security holders is exempt from registration; the issuer need not register as a broker-dealer; and the employees, officers and directors of the issuer need not register as agents.
Section 203 203(o)					
Section 102					
85-9	10/28/85	Chadbourne, Parke, Whiteside & Wolff New York, NY	American Brands, Inc. American Brands Holding Company The American Tobacco Company	102(e)(ii)	A transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of security holders is exempt from registration; the issuer need not register as a broker-dealer; and the employees, officers and directors of the issuer need not register as agents.
Section 203 203(o)					
Section 202					
85-10	10/15/85	Beck and Anders Law Associates Bala Cynwyd, PA	Northwest Practitioners Associates, Inc.	202(e) 202(i) Regulation 202.091	Membership interests issued by a person organized as a professional corporation under 15 P.S. ' 2901 et. seq. are exempt from registration.
Section 203					
85-11	10/10/85	Lindsay, Hart Neil & Weigler Portland, OR	Pensa, Inc.	203(r) Regulation 203.184	A transaction where securities are issued to trusts whose sole beneficiaries are relatives of a director of the issuer as that term is utilized in Reg. 203.184 is exempt from registration.
Section 202					
85-12	11/12/85	Kutak Rock & Campbell Omaha, NE	School District No. 1 in the City and County of Denver, Colorado Denver School Facilities Leasing Corporation	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.

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85-13	11/27/85	Mayor, Day & Caldwell Houston, TX	Tarrant County Housing Finance Corporation Fossil Creek Project	202(a) 202(i)	Bonds issued by a political subdivision of a state are exempt from registration; a guaranty of the payment of interest, principal or premium, if any, on the Bonds meeting the requirements of 64 Pa. Code ' 202.092 is exempt from registration.
85-14	12/23/85	Mulcahy & Wherry, S.C. Milwaukee, Wisconsin	City of Fort Lauderdale, Florida Water and Sewer Revenue Bonds	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
85-15	12/24/85	Mulcahy & Wherry, S.C. Milwaukee, Wisconsin	Illinois Development Finance Authority Webster-Wayne Shopping Center Ltd. Project	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
Section 203					
85-16	1/15/86	Baskin and Steingut, P.C. Pittsburgh, PA	Civic Finance, Inc.	203(l)	A securities transaction which is exempt from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(9) thereof is exempt from registration.
Section 202					
85-17	1/30/86	Regional Housing Legal Services Willow Grove, PA	Stock of La Casa Produce, Inc.	202(e)	Stock and subscription rights issued by a company which was set up by a not for profit corporation as a vehicle for the furtherance of the charitable activities of the not for profit corporation in the economic development area and which stock and subscription rights all will be held or transferred to the not for profit corporation are exempt securities.
Section 102					
85-18	2/5/86	Regional Housing Legal Services Willow Grove, PA	Warminster Heights Home Ownership Association, Inc.	102(t)	A Membership in a housing cooperative which entitles the holder to occupy a housing unit is not a security.
85-19	2/5/86	Orrick, Herrington & Sutcliffe San Francisco, CA	Crown Zellerbach Corporation	102(c) 102(e)	A company which is restructuring its corporate assets by means of making and consummating an exchange offer of almost 50% of its outstanding common stock for securities of other issuers formed by the company for the purpose of the exchange offer is not required to register as a broker-dealer nor are its officers and employees required to register as agents.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 202					
85-20	2/20/86	Young, Scanlon & Sessums, P.A. Jackson, MI	Eastover Bank for Savings	202(b) Section 203 203(o)	Securities issued by banks are exempt from registration; a transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
85-21	2/5/86	Davidson & Calhoun P.C. Columbus, GA	CB & T Bancshares, Inc.	203(o)	A transaction where securities issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
85-22	3/26/86	O=Melveny & Meyers Los Angeles, CA	City of Los Angeles (Cedar-Sinai Medical Center)	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
Section 102					
85-23	4/23/86	Housley, Goldberg & Kantarian Washington, DC	The Co-operative Bank of Concord Concord, MA	102(c) 102(e) Section 203 203(o)	A transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of security holders is exempt from registration; the issuer need not register as a broker-dealer; and the employees, officers and directors of the issuer need not register as agents.
Section 202					
85-24	4/23/86	Ragen, Roberts, Tremaine, Kreiger, Schmeer, O=Scannlain & Neill Portland, OR	Hospital Facilities Authority of the City of Medford, Oregon Retirement and Community Revenue Bonds	202(a) 202(b)	Bonds issued by a political subdivision of a state are exempt from registration; securities issued by banks are exempt from registration.
Section 203					
85-25	4/23/86	Nexsen Pruet Jacobs & Pollard Columbia, SC	The Investment Life and Trust Company and ILT Financial Corporation	203(l) 203(o)	A transaction where securities are issued under Section 3(a)(10) of the Federal Securities Act of 1933 and where the Commission has been given notice of a hearing referred to in Section 3(a)(10) is exempt from registration; a transaction where securities are issued pursuant to a plan of reorganization which is incident to a vote of security holders is exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 301					
85-26	4/14/86	Atlantic Financial Federal Bala Cynwyd, PA	Atlantic Financial Federal Participation in TFS, Inc. AShareamerica@ Program	301	Where a bank enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d offers brokerage and investment advisory services at the bank=s office, employing, training, qualifying and supervising employees of the bank as agents of the b/d and reimbursing the bank for use of the office and for employees= salaries by sharing brokerage commissions, the bank is not required to register as a b/d where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
Section 102					
85-27	5/19/86	Schnader, Harrison, Segal & Lewis Philadelphia, PA	Offering of Units composed of United Parcel Service of America, Inc. and Overseas Partners, Ltd. Capital Stock	102(c) 102(e) Section 202 202(g)	Investment contracts issued in connection with an employee=s profit sharing plan qualified under the Internal Revenue Code of 1954, as amended, are exempt from registration; the issuer does not have to register as a broker-dealer and its employees do not have to register as agents.
85-28	5/15/86	Kutak Rock & Campbell Omaha, NE	South Georgia Hospital Authority Floating Rate Weekly Demand Hospital Depreciable Assets Revenue Bonds, 1986	202(a)	Securities issued by a political instrumentality of a state are exempt from registration.
85-29	6/17/86	Lashly, Baer & Hamel St. Louis, MO	Industrial Development Authority of St. Charles County, MO	202(a)	Bonds issued by a corporate instrumentality of a state are exempt from registration.
Section 302					
85-30	6/20/86	Fried, Frank, Harris, Shriver and Jacobson New York, NY	IFB Managing Partnership, L.P.	302(a)	Where a limited partnership that has no place of business in this state succeeds to part of a broker-dealer business which, as a result, will become a member of the Philadelphia Stock Exchange but will not have a floor presence and the seat nominee will be a New York-based resident which will not be transacting business in Pennsylvania, the limited partnership is exempt from broker-dealer registration requirements.
Section 202					
86-1	7/28/86	O=Melveny & Myers Los Angeles, CA	Certificates of Participation San Bernadino County, CA (County/ Justice Center Refunding and Capital Improvements Projects)	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.

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86-2	7/29/86	General Counsel Pioneer Railroad Company, Inc. Peoria, IL	Pioneer Railroad Company, Inc.	202(b)	Securities, the offer, sale, issuance or guarantee of which is subject to regulation by the Interstate Commerce Commission, are exempt from registration.
Section 203					
86-3	8/26/86	Baskin Flaherty Elliott and Mannino, P.C. Pittsburgh, PA	Complete Home Care Services, Inc.	203(a) 203(b)	A non-issuer transaction not for the benefit of an affiliate of the issuer is exempt from registration; a non-issuer transaction which is directly or indirectly for the benefit of an affiliate of the issuer which is exempt from Section 5 of the Securities Act of 1933 (except for Sections 3(a)(11) or 3(b) thereof and rules adopted thereunder) is exempt from registration.
Section 202					
86-4	12/8/86	Kutak Rock & Campbell Omaha, NE	Industrial Development Authority of York County, VA Securitized Economic Development Revenue Bonds, Series 1986A	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
86-5	12/17/86	Kutak Rock & Campbell Omaha, NE	The Heath, Educational and Housing Facility Board of the City of Jackson, TN Securitized Health Care Facilities Revenue Bonds, Series 1986A	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
86-6	12/17/86	Kutak Rock & Campbell Omaha, NE	Virginia Small Business Financing Authority, Business and Economic Development Revenue Bonds, 1986 Series A through D	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
Section 102					
86-7	12/17/86	Baskin Flaherty Elliott & Mannino, P.C. Pittsburgh, PA	Mobile M. R. Associates (Santa Maria I, L.P.)	102(t)	An agreement between a limited partnership and the General Partner of another limited partnership in which there is a lease of equipment, an assignment of service contracts and an assumption by the limited partners of the second limited partnership of secondary liability on a promissory note financing the leased equipment thereby replacing the limited partners of the first limited partnership as personal guarantors on the note is not a security.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
86-8	1/28/87	Fulbright & Jaworski Dallas, TX	Interests in USAA Residential Towers	102(t)	An interest in a cooperative residential unit, the purchase of which is achieved through the purchase for cash of shares of common stock of a cooperative having an aggregate par value equal to the original purchase price of the residential unit and the simultaneous signing of a proprietary lease with the cooperative entitling the purchaser to occupy the residential unit, is not a security.
Section 201					
86-9	1/26/87	McNees, Wallace & Nurick Harrisburg, PA	Quaker Alloy, Inc.	201	The distribution of common stock to employees of the issuer by management as an expression of gratitude for employee loyalty and dedication which requires no payment or other consideration on the part of the employees does not constitute a sale requiring registration under the 1972 Act.
Section 203					
86-10	1/5/87	Norris McLaughlin & Marcus Livingston, NJ	Deltec Systems, Inc.	203(o)	A transaction where securities are issued pursuant to a plan of merger which is incident to a vote of security holders is exempt from registration.
Section 202					
86-11	2/20/87	O=Melveny & Myers Los Angeles, CA	City of Redlands Insured Refunding Certificates of Participation (Redlands Community Hospital Project)	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
Section 102					
86-12	3/24/87	Bryan, Cave, McPheeters & McRoberts St. Louis, MO	Wetterau Incorporated, distribution of stock of wholly-owned subsidiary Wetterau Properties, Inc.	102(e)	In a distribution to shareholders of a corporation of stock of a wholly-owned subsidiary, the distributor need not register as a broker-dealer.
86-13	4/22/87	LeBoeuf, Lamb, Lieby & MacRae New York, NY	Niagara Mohawk Power Corporation	102(l)	Bonds senior to issuer=s common stock listed on the New York Stock Exchange are exempt from registration.
Section 202 202(f)					
Section 302					
86-14	4/27/87	Hale & Dorr Boston, MA	Clearwater Investment Trust	302(e)	Employees, officers and trustees of an investment company registered under the Federal Investment Company Act of 1940, who, without receiving direct or indirect compensation, offer and sell shares of beneficial interest in its first portfolio are exempt from broker-dealer and agent registration.

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Section 301					
86-15	4/16/87	Buchanan Ingersoll Pittsburgh, PA	The Union National Bank of Pittsburgh and PAMCO Securities and Insurance Services	301	Where a bank enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d offers brokerage and investment advisory services at the bank=s office, employing, training, qualifying and supervising employees of the bank as agents of the b/d and reimbursing the banks for use of the office and for employees= salaries by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
86-16	4/24/87	Jenner & Block Chicago, IL	Healthcare Financial Management Association	301(c)	A not-for-profit association which enters into an agreement with a Pennsylvania registered investment adviser and pursuant to that agreement makes the association members aware of the existence of the adviser and availability of its services and the adviser and the association comply with Rule 206(4)-3 under the Investment Advisor Act of 1940, does not have to register as an investment adviser.
Section 202					
86-17	5/12/87	O=Melveny & Myers Los Angeles, CA	County of San Diego Certificates of Participation (Vista Detention Facility Expansion Project)	202(a)	Securities issued by a political subdivision are exempt from registration.
86-18	5/14/87	Blutrich, Falcone & Miller New York, NY	Mifflin County Hospital Authority (Pennsylvania) (Lewistown Hospital)	202(a)	Securities issued by a public instrumentality are exempt from registration.
Section 301					
86-19	5/22/87	Friedman & Friedman Jenkintown, PA	George Steinberg	301	Where an individual directs clients and patients of persons performing professional services to a state-chartered bank for loans (which the bank originates) in order to pay for these services and receives a commission for directing persons to the bank which will be held in an account with the bank pending satisfactory completion of payments of the loan by the patient or client, the individual need not register as a broker-dealer.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 202					
86-20	6/10/87	Brobeck, Phleger & Harrison San Francisco, CA	City of Los Angeles Certificates of Participation (Jewish Federation Council of Greater Los Angeles)	202(a)	Securities issued by a political subdivision are exempt from registration.
86-21	6/15/87	McNair Law Firm, P.A. Columbia, SC	Certificates of Participation (Spartansburg County Administrative Building Project)	202(a)	Securities issued by a political subdivision are exempt from registration.
Section 203					
86-22	6/10/87	Rhoads & Sinon Harrisburg, PA	Dauphin Deposit Corporation - merger with Colonial Bancorp, Inc.	203(o)(i)	A transaction where securities are issued pursuant to a plan of merger even though the plan will be voted upon only by the security holders of the entity being merged, as provided by relevant state corporation law, is exempt from registration.
Section 202					
87-1	8/3/87	Reed Smith Shaw & McClay Washington, DC	Convertible Subordinated Debentures, United Savings Bank Vienna, VA	202(b)	Securities issued by banks are exempt from registration.
87-2	8/25/87	Ballard, Spahr, Andrews & Ingersoll Washington, DC	Certificates of Participation Tax Exempt Governmental Lease Program	202(a)	Certifications of Participation issued by a political subdivision of a state are exempt from registration.
Section 102					
87-3	8/14/87	Mudge Rose Guthrie Alexander & Ferdon New York, NY	Collateralized Lease Bonds, Ohio Edison Company	102(l) Section 202 202(f)	Bonds senior to issuer=s common stock listed on the New York Stock Exchange are exempt from registration.
87-4	9/11/87	Orrick, Herrington & Sutcliffe San Francisco, CA	Certificates of Participation Capital Improvement Projects, 1987 Series A & B	202(a)	Certificates of Participation issues by a political subdivision of a state are exempt from registration.
87-5	9/30/87	Mintz, Levin, Cohen, Ferris, Glovsky and Popeo, P.C. Boston, MA	Massachusetts Housing Finance Agency Residential Housing Revenue Bonds, 1987 Series A	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
87-6	9/28/87	Smith Helms Mulliss & Moore Charlotte, NC	First Savings Bank, FSB Conversion to Federal Stock Charter and issuance of common stock	202(b)	Securities issued by banks are exempt from registration.
Section 204					
87-7	9/21/87	Barley Snyder Cooper & Barber Lancaster, PA	High Investors Informational Brochure	204(a) Regulation 204.010	A brochure may be distributed in an offering under Regulation 204.010 to persons reasonably likely to satisfy the investor criteria in Regulation 204.010(a)(i)(iii)(A) thereof where the offering complies at all times with the requirements of Rules 505 and 506 of SEC Regulation D.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 203					
87-8	9/16/87	Thompson & Knight Dallas, TX	Centrex Development Company	203(o) Section 102 102(c) 102(e)	A transaction where securities are issued pursuant to a reorganization plan which is incident to a vote of security holders is exempt from registration; the issuer is not required to register as a broker-dealer nor are its officers and employees required to register as agents.
Section 203					
87-9	10/9/87	Baskin Flaherty Elliott & Mannino, PC.	Babo & Pepper Co., Inc.	203(r) Regulation 203.184	A transaction where securities are issued to Aprincipals@ as that term is defined in Commission Regulation 203.184(b) is exempt from registration.
Section 202					
87-10	11/3/87	Kirkpatrick & Lockhart Pittsburgh, PA	Dusquesne Light Company	202(f)	Any security of senior or substantially equal rank of an issuer whose common stock is listed on the New York Exchange is exempt from registration.
Section 102					
87-11	12/1/87	Drinker Biddle & Reath Philadelnpia, PA	University of Pennsylvania Balanced Pooled Life Income Fund	102(c) 102(e)	Employees, officers, directors of a pooled income fund, who do not receive any compensation for solicitation of contributions to the fund, which has received an exemption from registration and conforms to the definition of a pooled income fund contained in ' 642(c)(5) of the Internal Revenue Code, need not register as agents; the issuer need not register as a broker-dealer.
87-12	12/1/87	Drinker Biddle & Reath Philadelphia, PA	Lehigh University High Yield Pooled Income Fund II	102(c) 102(e)	Employees, officers, directors of a pooled income fund, who do not receive any compensation for solicitation of contributions to the fund, which has received an exemption from registration and conforms to the definition of a pooled income fund contained in ' 642(c)(5) of the Internal Revenue Code, need not register as agents; the issuer need not register as a broker-dealer.
87-13	12/1/87	Drinker Biddle & Reath Philadelphia, PA	Lehigh University Balanced Pooled Life Income Fund	102(c) 102(e)	Employees, officers, directors of a pooled income fund, who do not receive any compensation for solicitation of contributions to the fund, which has received an exemption from registration and conforms to the definition of a pooled income fund contained in ' 642(c)(5) of the Internal Revenue Code, need not register as agents; the issuer need not register as a broker-dealer.

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87-14	12/1/87	Drinker Biddle & Reath Philadelphia, PA	The General Church of New Jerusalem Pooled Life Income Fund	102(c) 102(e)	Employees, officers, directors of a pooled income fund, who do not receive any compensation for solicitation of contributions to the fund, which has received an exemption from registration and conforms to the definition of a pooled income fund contained in ' 642(c)(5) of the Internal Revenue Code, need not register as agents; the issuer need not register as a broker-dealer.
87-15	12/1/87	Drinker Biddle & Reath Philadelphia, PA	The Academy of the New Church Pooled Life Income Fund	102(c) 102(e)	Employees, officers, directors of a pooled income fund, who do not receive any compensation for solicitation of contributions to the fund, which has received an exemption from registration and conforms to the definition of a pooled income fund contained in ' 642(c)(5) of the Internal Revenue Code, need not register as agents; the issuer need not register as a broker-dealer.
87-16	12/1/87	Rhoads & Sinon Harrisburg, PA	Dauphin Deposit Corporation/The Farmers Bank & Trust Company	102(c) 102(e) 102(j) Section 202 202(f)	Where the common stock of a bank holding company is marginable under Regulation T of the Board of Governors of the Federal Reserve, a transaction involving the issuance of such securities pursuant to the merger of a bank into the bank holding company is exempt from registration; the bank holding company is not required to be registered as a broker-dealer or investment adviser nor are its officers, directors or representatives required to be registered as agents.
87-17	12/1/87	Baker & Hostetler Cleveland, OH	Cleveland Electric Illuminating Company & The Toledo Edison Company	202(f) Section 301	Bonds senior to issuer=s common stock listed on the New York Stock Exchange are exempt from registration.
87-18	12/3/87	Rodden Baesman & Miller Denver, CO	Consolidated Oil & Gas, Inc.	301 Section 203	Where a company primarily engaged in the oil and gas producing business gives its shareholders a dividend of rights to purchase shares in a majority-owned subsidiary, the company issuing the rights need not register as a broker-dealer.
87-19	1/19/88	Culbertson, Weiss, Schetroma and Schug Meadville, PA	Liberty Electronics, Inc.	203(k)	A judicial sale carried out by a trustee in bankruptcy is exempt from registration.

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Section 301					
87-20	2/19/88	Home Unity Savings Bank, PaSA Layfayette Hill, PA	Home Unity Savings Bank, PaSA and PAMCO Securities and Insurance Services	301	Where a bank enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d offers brokerage and investment advisory services at the bank=s office, employing, training, qualifying and supervising employees of the bank as agents of the b/d and reimbursing the banks for the use of the office and for employees= salaries by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
87-21	2/23/88	Firstrust Savings Bank Philadelphia, PA	Firstrust Savings Bank and PAMCO Securities and Insurance Services	301	Where a bank enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d offers brokerage and investment advisory services at the bank=s office, employing, training, qualifying and supervising employees of the bank as agents of the b/d and reimbursing the banks for use of the office and for employees= salaries by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
Section 203					
87-23	3/3/88	Howard, Butler & Melfa, P.A. Towson, MD	Federal Hill Limited Partnership	203(r) Regulation 203.184	A transaction in which securities are offered and sold by an issuer to its principals, as that term is defined in Regulation 203.184, is exempt from registration.
Section 202					
87-24	4/5/88	Saul, Ewing, Remick & Saul Philadelphia, PA	Issuance of Shares in Professional Corporations organized under Pennsylvania Corporation Law	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Professional Corporation Law are exempt from registration.
Section 203					
87-25	4/15/88	Wharton, Aldizer & Weaver Harrisonburg, VA	Wampler-Longacre-Rockingham, Inc. Purchases and Sales of Stock by Affiliates	203(b)	Non-issuer transactions which directly or indirectly benefit an affiliate of the issuer that are exempt from Section 5 of the Securities Act of 1933 by sections other than Section 3(a)(11) or 3(b) thereof are exempt from registration.

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Section 202					
87-26	5/3/88	Pepper Hamilton & Sheetz Philadelphia, PA	Security First Bank	202(b)	Where a bank in organization has received a letter from the Pennsylvania Department of Banking stating that the Banking Department considers the issuer to be, under the Statutes which it administers, a bank on the date the articles of incorporation were filed with the Corporation Bureau and where such articles were filed prior to the offer and sale of its securities, such securities are exempt from registration.
Section 102					
87-27	6/13/88	Winthrop, Stimson, Putnam & Roberts New York, NY	Texas Utilities Electric Company	102(l)	Where debt obligations nominally issued by a non-recourse obligor in an offering for leveraged lease financing constitute Alike securities@ having the essential attributes of equipment trust certificates because the debt service on the obligations is provided from rental and other payments made by the user-lessee of the equipment, the ultimate user of the equipment is deemed to be the issuer.
Section 202					
87-28	6/13/88	Hawkins, Delafield & Wood New York, NY	School Alternative Financing for Education Trust	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
Section 302					
87-29	6/2/88	Mesirov, Gelman, Jaffe, Cramer & Jamieson Philadelphia, PA	Premium Federal Savings Bank	302(e)	Organizers and proposed directors of a federal savings bank (in organization) who will be involved in effecting securities transactions of units consisting of one share of common stock and one redeemable common stock purchase warrant in connection with a public offering of such securities of the savings bank need not register as broker-dealers provided no compensation will be received directly or indirectly for such activities.
Section 202					
88-1	7/13/88	Dewey, Ballantine, Bushby, Palmer & Wood New York, NY	California Pollution Control Financing Authority Variable Rate Refunding Bonds	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.

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Section 203					
88-2	7/13/88	LeBoeuf, Lamb, Leiby & MacRae New York, NY	Membership Interests in Consortium of Licensed Beverage Retailers Association (COLBRA)	203(r) Regulation 203.188	Transactions involving the offer and sale of membership interests only to licensed beverage retailers in a not-for-profit corporation formed solely for the purpose of holding all of the stock of a subsidiary which would be organized as a risk retention group under the Federal Liability Risk Retention Act are exempt from registration.
Section 202					
88-3	8/29/88	Wolf Block Schorr & Solis-Cohen Philadelphia, PA	Proposed national bank in organization	202(b)(iii)	Securities offered and sold by a proposed national bank in formation as part of its initial capital raising activities, the offering of which is regulated by the U.S. Comptroller of the Currency under 12 U.S.C. ' 21 et. seq. and 12 C.F.R. Parts 5 and 16, are exempt from registration.
Section 102					
88-4	9/19/88	Blank, Rome, Cominsky & McCauley Philadelphia, PA	Issuance of Shares of Stock in the Wilkes-Barre Counsel of Newspaper Unions	102(r)	A transaction where stock will be issued in connection with the statutory conversion of a company from a non-profit corporation to a business corporation for no consideration and would be subject to numerous stock transfer restrictions contained in a shareholders= agreement which must be signed as a prerequisite to receipt of the stock is not subject to the requirements of Section 201 in that such transaction does not constitute a sale as that term is defined in Section 102(r) of the Act.
Section 201					
88-5	9/15/88	Bolger, Picker & Weiner Philadelphia, PA	Northeastern Pennsylvania Synod of the Evangelical Lutheran Church of America (Synod)	201 Section 301 301	Registration of a security or as a broker-dealer or investment adviser not required in an arrangement which permits member congregations and affiliated institutions of the Synod individually to invest endowment funds in investments recommended by registered investment advisers obtained and evaluated by or through the Synod or its investment committee without compensation.
Section 301					
88-6	9/7/88	Davis Polk & Wardwell New York, NY	Distribution of Common Stock of Sun Exploration and Production Company	301(a)	Registration as a broker-dealer not required where parent company distributes securities of its wholly-owned subsidiary to parent=s shareholders in connection with a proxy solicitation and distribution.

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88-7	10/31/88	Sovereign Advisors, Inc. Wayne, PA	Sovereign Advisors, Inc.	301(b)	Where individuals required dual registration as agents for one broker-dealer which will engage exclusively in the wholesale underwritings of affiliated sponsored mutual funds and for another broker-dealer engaging in retail securities activities, no enforcement action will be recommended for failure to comply with dual registration of agents prohibition in Section 301(b).
Section 202					
88-8	1/30/89	Hawkins, Delafield & Wood New York, NY	Los Angeles Convention and Exhibition Center Authority Refunding Certificates of Participation	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
Section 301					
88-9	3/9/89	Shumaker Williams PC. Harrisburg, PA	GDM Securities, Inc./Hills Department Stores	301	Where a department store enters into a contractual relationship with a registered broker-dealer (b/d) whereby the b/d uses space to establish its offices in the department store locations, the department store is not required to register as a broker-dealer.
Section 202					
88-10	4/3/89	Dilworth, Paxon, Kalish & Kaufmann Philadelphia, PA	First Commercial Bank of Philadelphia	202(b)	Securities issued by banks are exempt from registration.
88-11	5/5/89	Miller, Canfield, Paddock and Stone Detroit, MI	Michigan Education Trust Contracts issued by Michigan Education Trust	202(a)	A security issued by a political subdivision of a state is exempt from registration.
88-12	6/21/89	Hawkins, Delafield & Wood New York, NY	Oklahoma School District Cash Management Trust, 1989 Series Certificates of Participation	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
88-13	6/27/89	Devine, Millimet, Stahl & Branch Manchester, NH	Centerpoint Bank	202(b)	Securities issued by banks are exempt from registration.
Section 102					
89-1	7/10/89	Lesser & Kaplin Blue Bell, PA	Commonwealth National Country Club	102(t)	A membership entitling persons to use facilities of a country club, which is being renovated and expanded independent from proceeds of membership sales, and where the members will not receive any payment of income, dividends or other distributions of profit from the operation of the Club or be able to transfer the memberships to any other person, except the Club, is not a security.

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89-2	8/9/89	Lesser & Kaplin Blue Bell, PA	Ballenrose Country Club, Inc.	102(t)	A membership entitling persons to use the facilities of a country club, which is being developed independently from proceeds of membership sales, and where the members will not receive any payment of income, dividends or other distributions of profit from the operations of the Club or be able to transfer the memberships to any other person, except the Club, is not a security.
Section 301					
89-3	11/1/89	Duane, Morris & Heckscher Philadelphia, PA	Reuters Information Services, Inc. Dealing 2,000	301(a) 301(b)	The operation of Reuter Information Service, Inc. of a computerized system for trading foreign currencies and the U.S. dollar will not require broker-dealer and/or agent registration of its employees, agents or customers.
89-4	11/21/89	Ballard, Spahr, Andrews & Ingersoll Philadelphia, PA	Ogden Corporation	301(a)	Registration as a broker-dealer is not required where a corporation distributes to its shareholders common stock of its subsidiary.
Section 203					
89-5	11/24/89	Gross, McGinley, Labarre & Eaton Allentown, PA	Queen City Electrical Supply Co., Inc.	203(b)	A transaction involving the sale of shares in a corporation by a control person to the trustee of an employee stock ownership plan to be qualified under Section 401(a) of the Internal Revenue Code of 1986 which transaction is exempt from the Section 5 registration provisions of the Securities Act of 1933 by virtue of Section 4(1) thereof is exempt from registration.
Section 102					
89-6	2/14/90	Dilworth, Paxson, Kalish & Kauffman Philadelphia, PA	White Manor Country Club	102(t)	A membership entitling persons to use the facilities of a country club which is being renovated and expanded independent from the proceeds of membership sales, and where the members will not receive any payment of income, dividends or other distributions of profit from the operation of the Club or be able to transfer the memberships to any other person, except the Club, is not security.

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Section 203					
89-7	2/20/90	The Stuart-James Company, Incorporated Denver, CO	Preferred Homecare of America, Inc.	203(a)	Where there is an underwriting agreement between the underwriter and security holders of the issuer whereby the security holders agree not to sell their shares for three years without the underwriter=s consent, and in connection with registration in Pennsylvania, the underwriter agrees not to give its consent during the period without the prior approval of the Commission, shareholders who are not officers, directors or post-offering five percent shareholders of the issuer are not subject to the underwriter=s agreement with Pennsylvania.
89-8	4/5/90	Nash & Company Pittsburgh, PA	Uniontown/Harmarville Rehabilitation Center, Ltd.	203(d)	Units of limited partnership interests purchased by the general partners of the general partner of the limited partnership to close an offering may be re-offered in reliance upon this section provided such persons comply with the Staff Position set forth in the Nov./ Dec. 1982 Pennsylvania Securities Commission Bulletin.
Section 102					
89-9	5/9/90	BP America Cleveland, OH	BP America; BP Capital p.l.c.; BP Finance Australia, Limited	102(c) 102(e) Section 202 202(c)	Where prime quality commercial paper of an issuer and its affiliates are placed by salaried employees of the issuer with institutional investors and others which normally purchase commercial paper, but not individuals, who do not receive special compensation for the sale of the securities, the issuer need not register as a broker-dealer, such employees need not register as agents and the securities need not be registered.
Section 102					
89-10	5/4/90	Davis, Polk & Wardwell New York, NY	GMAC issuance of variable demand notes	102(c) 102(e)	Where variable rate demand notes of an issuer which are equal in rank to other senior debt listed on the New York Stock Exchange, are offered to its employees, and the employees of its parent and its subsidiaries and affiliates, retirees of the parent company and their immediate family, and persons holding franchises of the parent and their employees and affiliates, the personnel of the issuer and its parent responsible for the distribution of these notes, who do not receive any special compensation in connection therewith, need not register as agents and the issuer need not register as a broker-dealer.

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Section 202					
89-11	5/4/90	Laxalt, Washington, Perito & Debuc Washington, DC	City of Baltimore, Series 1990 A, B and C Proportionate Interests in Certificates of Participation Trust Agreement	202(a)	Securities issued by a political subdivision of a state are exempt from registration.
Section 102					
90-1	7/20/90	Blakinger, Byler & Thomas Lancaster, PA	Hayden=s Crossing Country Club	102(t)	A membership entitling persons to use the facilities of a country club which is being built independently from the proceeds of membership sales, and where members will not receive any payment of income, dividends or other distributions of profit from the operation of the Club or be able to transfer the memberships to any other person, except the Clu,b is not a security.
Section 202					
90-2	7/3/90	Flickinger & Welty Ligonier, PA	Ligonier Country Club Offering of Subvention Certificates	202(e)	Non-transferable subvention certificates issued by a non-profit country club under Pennsylvania law which do not entitle the purchaser to any specific return of principal at any specific time and where no person shall directly or indirectly profit from any business activity of the club in connection with the issuance of the subvention certificates are exempt from registration.
Section 203					
90-3	7/20/90	Smith, Somerville & Case Baltimore, MD	The National Bank of Rising Sun	203(o)	A transaction where securities are issued pursuant to a reorganization plan which is incident to a vote of security holders is exempt from registration.
90-4	11/23/90	Stradley, Ronon, Stevens & Young Philadelphia, PA	Militran, Inc.	203(r) Regulation 203.184	A transaction in which an option to purchase common stock is issued to a company, wholly-owned by two individuals, both of whom are principals of the issuer as defined in Regulation 203.184, is exempt from the registration requirements of Section 201.
Section 202					
90-5	1/2/91	Kutak Rock & Campbell Omaha, NE	Regents of the University of Colorado Project Fixed Rate Certificates of Participation, Series 1990D	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
Section 203					
90-6	2/20/91	Huggins & Associates Memphis, TN	Commercial State Bank of Orlando, FL Reorganization into, and Issuance of Shares in, Commercial Bancorporation, Inc.	203(o)	A transaction where securities are issued pursuant to a reorganization plan which is incident to a vote of security holders is exempt from registration.

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90-7	4/25/91	Schnader, Harrison, Segal & Lewis Philadelphia, PA	Glenmaura National Golf Club Offer and Sale of Memberships	202(e)	Where there is no promoters' profit in the transaction, the offer and sale of memberships in a non-profit corporation formed to construct a golf club are exempt. In analyzing promoters' profit, staff will consider any incidental benefit as being a profit for these purposes. Calculation of promoters' profits, however, is a fact intensive exercise as to which staff, as a matter of public policy, will not make an independent determination. Solely for this reason, staff declined to express an opinion as to the availability of the exemption for this transaction.
90-8	6/25/91	Coffield Ungaretti Harris & Slavin Chicago, IL	Certificates of Participation in General Obligation Rental Payments County of Sangamon, Illinois	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
91-1	9/13/91	Kabala & Geeseman Pittsburgh, PA	Metro Health Management, Inc.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Professional Corporation Law are exempt from registration.
91-2	12/6/91	Leboeuf, Lamb, Leiby & MacRae New York, NY	1991 Sampson County, NC Schools Project	202(a)	Certificates of Participation issued by a political subdivision of a state are exempt from registration.
91-3	1/2/92	Haggerty, Koenig & Hill, Chtd. Chicago, IL	General Obligation Lease Certificates, 1992 Series A Community College District No. 56 General Obligation Lease Certificates, 1992 Series B Board of Education of the City of Chicago General Obligation Lease Certificates, 1992 Series C Board of Education of the City of Chicago	202(a)	Certificates issued by a political subdivision of a state are exempt from registration.
91-4	1/24/92	Schiff Hardin & Waite Chicago, IL	Certificates of Participation Evidencing Proportionate Interests in Base Installment Payments to be made by the State of Illinois	202(a)	Certificates of participation issued by a state are exempt from registration.

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Section 102					
91-5	1/24/92	Manatt, Phelps, Phillips & Kantor Los Angeles, CA	Occidental Chemical Corporation Savings and Investment Plan	102(c) 102(e)	The issuer of an employee benefit plan which effects transactions in securities solely to the extent that it distributes securities of the parent corporation to participants in the benefit plan upon termination of their participation in the plan need not register as a broker-dealer and its employees need not be registered as agents.
Section 202					
92-1	8/18/92	Elias, Matz, Tiernan & Herrick Washington, DC	Subordinated Notes of Parkvale Financial Corporation	202(f)	Notes senior to or of substantially equal rank as the issuer's NASDAQ National Market System quoted common stock are exempt from registration.
Section 203					
92-2	8/24/92	Sullivan & Cromwell New York, NY	Auction Preferred American Depository Shares of Elf Petroleum plc	203(a)	A non-issuer transaction not for the benefit of an affiliate of the issuer is exempt from registration.
Section 102					
92-3	10/19/92	Shumaker Williams, P.C. Harrisburg, PA	Pennsylvania Credit Union League PACUL Services, Inc. Pennsylvania Credit Union Service Centers, Inc.	102(c) 102(e)	Neither a non-profit trade organization nor its wholly-owned subsidiary that cause formation of, and sell shares in, a for-profit credit union service organization need to register as a broker-dealer and their officers, directors and employees who, for no compensation, are selling these shares only to state or federally chartered credit unions need not register as agents.
Section 202					
92-4	11/4/92	Mesirov Gelman Jaffe Cramer & Jamieson Philadelphia, PA	Christiana Bank & Trust Company (In Organization)	202(b)	Securities issued or guaranteed by a bank are exempt from registration.
Section 203					
92-5	12/22/92	Weil, Gotshal & Manges New York, NY	Pre-Packaged Plan of Bankruptcy Petrolane Incorporated Petrolane Gas Service Limited Partnership UGI Corporation AmeriGas, Inc.	203(k)	Transactions pursuant to a pre-packaged plan of bankruptcy are exempt from registration.

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Section 102					
92-6	2/19/93	Farmers Trust Bank Lebanon, PA	Brokerage Network Agreement between Farmers Trust Bank and the T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and employs, trains, qualifies and supervises employees of the bank as agents of the broker-dealer and reimburses the bank for use of its office space and for employees' salaries by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
92-7	3/31/93	Financial Network Investment Corp. Torrance, CA	Financial Network Investment Corp.	102(e)	Where certain state and federally chartered banks and savings and loans ("Financial Institutions") enter into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage services at the Financial Institutions' offices employing, training, qualifying and supervising employees of the Financial Institutions as agents of the broker-dealer and reimbursing the Financial Institutions for use of the office and for employees' salaries by sharing brokerage commissions, the Financial Institutions are not required to register as broker-dealers where the Financial Institutions have filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 203					
92-8	4/13/93	Ivestor, Skinner & Camp, P.A. Little Rock, AR	Worthen Banking Corporation	203(c)	An offer or sale to an institutional investor is exempt from registration.
Section 202					
92-9	4/9/93	Blank, Rome, Comisky & McCauley Philadelphia, PA	Independent Physicians Association of Lancaster, Inc.	202(i) Regulation 202.091	Shares issued by a professional corporation are exempt from registration.

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Section 102					
92-10	4/21/93	Green, Stewart & Farber, P.C. Washington, DC	The Chester County Physician-Hospital Organization, Inc.	102(t)	A membership interest in a Pennsylvania non-profit physician-hospital organization which serves as an administrative conduit for negotiations with medical plans, HMOs, etc. for the provision of services of the member physicians and hospital, which membership may be terminated at any time, cannot be transferred or assigned, is not entitled to receive dividends or distribution of profits and does not share in any title to the property or assets of the organization, is not a security.
Section 202					
93-1	7/1/93	Stevens & Lee Reading, PA	Berks County Municipal Authority - Community General Hospital 1993 Taxable Bonds	202(a)	Bonds issued by a political subdivision of a state are exempt from registration.
Section 102					
93-2	7/14/93	Meyer, Unkovic & Scott Pittsburgh, PA	Treesdale Golf & Country Club	102(t)	Common stock issued pursuant to a disclosure document by a PA for-profit corporation that proposes to construct and operate a golf course and related facilities, whose preferred stockholders control the corporation and will receive all profits therefrom, which common stock only entitles the holder to golfing privileges and has no right to payment of income, dividends or other distributions of profit; has no voting rights (except as required by statute); cannot be pledged, hypothecated or transferred (except back to the golf club) and cannot appreciate in value, is not a security.
Section 202					
93-3	8/31/93	Wolf, Block, Schorr & Solis-Cohen Philadelphia, PA	First Independence Corporation	202(b)	Stock issued by a savings and loan holding corporation being formed to be the sole shareholder of a federal stock savings and loan that will be created as a result of a conversion from a federal mutual savings and loan where both the conversion and the issuance of the stock is subject to substantive regulation by the U.S. Office of Thrift Supervision is exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Takeover Law					
93-4	9/1/93	Cohen, Shapiro, Polisher, Shiekman & Cohen Philadelphia, PA	Short Form Merger under PA Associations Code of 1988	Section 4	The acquisition of securities in conjunction with a transaction involving a Short Form Merger that will not require shareholder approval under Section 1924(b)(1)(ii) of the Pennsylvania Associations Code of 1988 does not constitute a "takeover offer" as that term is defined in Section 3 of the Pennsylvania Takeover Disclosure Law of 1976 on the basis that the Short Form Merger is not being made "pursuant to a tender offer".
Section 202					
93-5	10/27/93	Houston Harbaugh Pittsburgh, PA	Issuance of Shares by Greater Pittsburgh Orthopedic Alliance, Ltd.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Professional Corporation Law are exempt from registration.
93-6	10/15/93	Pepper, Hamilton & Sheetz Berwyn, PA	Issuance of Shares in Bethlehem Independent Physicians Association	202(e)	Shares in a non-profit corporation that will act as a professional association are exempt from registration.
Section 301					
93-7	11/18/93	Cohen & Grigsby Pittsburgh, PA	Regency Consumer Discount Company	301(a) 301(b)	Where a bank holding company issues Thrift Notes to be sold to the public without direct or indirect compensation by its wholly-owned subsidiary, a consumer discount company licensed by the Pennsylvania Department of Banking, the consumer discount company and its employees are not required to register as a broker-dealer or agents.
Section 203					
93-8	11/15/93	Foulston & Siefkin Whichita, KS	Acquisition of Great Southern Bancorp, Inc. and Great Southern Savings Bank by Fourth Financial Corporation	203(o)(i) Section 102 102(c) 102(e)	A transaction involving the issuance of securities by a bank holding company pursuant to a plan of acquisition of a bank which is incident to a vote of security holders is exempt from registration. The bank holding company need not register as a broker-dealer and the officers, directors and employees of the bank holding company need not register as agents.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
93-9	12/23/93	Smith Barney Shearson, Inc. New York, NY	Smith Barney Shearson Registered Representative Retirement Program	102(c) Section 301 301(a) 301(b)	Where a broker-dealer enters into agreements with certain of its retiring agents whereby the broker-dealer for up to five years will share any sales commission generated by certain accounts of the retiring agent between the retiring agent and continuing agents, provided the retiring agent does not contact his former clients to solicit or discuss securities transactions, does not maintain licensing as a principal, registered representative, investment adviser or associated person, and is not associated in any capacity with any other broker-dealer or investment adviser (nor hold himself out as being so associated) during the term of the agreement, the retiring agent is not required to continue to be registered as an agent.
93-10	3/11/94	Shumaker Williams, P.C. Harrisburg, PA	Brokerage Network Agreement between Union National Mount Joy Bank and T.H.E. Financial Group, Ltd.	102(e) Section 102	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November 1984 PSC Bulletin.
93-11	4/12/94	Mannino Griffith, P.C. Philadelphia, PA	Issuance of Shares by Franklin County Primary Care, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Professional Corporation Law are exempt from registration.
93-12	4/12/94	Kalogredis, Tsoules & Sweeney, Ltd. Wayne, PA	Issuance of Shares by Cumberland Valley Specialty Physicians, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Professional Corporation Law are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
93-13	4/43/94	Rosenn, Jenkins & Greenwald Wilkes-Barre, PA	Brokerage Network Agreement between Franklin First Savings Bank and Liberty Securities Corporation	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC BULLETIN.
Section 203					
93-14	4/26/94	Goldman, Marshall & Muszynski, PC. Philadelphia, PA	Issuance of Shares of Stock in Cumberland Valley Network	203(r) Regulation 203.187	Sales of securities by a Pennsylvania Issuer to no more than 10 persons in or out of state are exempt where (i) the offers have not been made to more than 90 persons in this State in a period of 12 consecutive months; (ii) neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in Regulation 204.010(b); (iii) no public media advertisement was used or mass mailing made in connection with the offers and sales of the securities and (iv) no cash or securities were given or paid to any person in connection with the sale of the securities, except to a broker-dealer registered under Section 301 or exempt from registration under Section 302(a).
Section 102					
93-15	5/20/94	Rhoads & Sinon Harrisburg, PA	Brokerage Network Agreement between Dauphin Deposit Bank and Trust Company and Hopper Soliday & Col., Inc.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer, offers brokerage and investment advisory services at the bank's office, and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
93-16	6/16/94	Jefferson Bank Philadelphia, PA	Brokerage Network Agreement between Jefferson Bank and CoreLink, Inc.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer, offers brokerage and investment advisory services at the bank's office, and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
93-17	6/20/94	Kirkpatrick & Lockhart Pittsburgh, PA	The Western Pennsylvania Physician - Hospital Organization	102(t)	A membership interest in a Pennsylvania non-profit physician-hospital organization which serves as an administrative conduit for negotiations with medical plans, HMO's, etc., for the provision of services of the member physicians and hospitals, and such membership interest may be terminated at any time, cannot be transferred or assigned, is not entitled to receive dividends or distribution of profits and does not share in any title to the property or assets of the organization, is not a security.
Section 202					
93-18	6/28/94	William J. Madden, Esquire Sharon, PA	Issuance of Shares by Mercer County Primary Care Physicians Association, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Corporation Law are exempt from registration.
93-19	6/28/94	Kabala & Geeseman Pittsburgh, PA	Issuance of Shares by Mercer County Specialty Physicians Association, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under the Pennsylvania Corporation Law are exempt from registration.
Section 102					
93-20	5/20/94	First Maryland Bancorp Baltimore, MD	Brokerage Network Agreement between York Bank and Trust Company of York, PA and First Maryland Brokerage Corporation	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 203					
94-1	7/5/94	Goldman, Marshall & Muszynski, PC. Philadelphia, PA	Issuance of Shares of Stock in Mercer County Physician Hospital Organization	203(r) Regulation 203.187	Sales of securities by a PA Issuer to nor more than 10 persons in or out of state are exempt where (i) the offers have not been made to more than 90 persons in this State in a period of 12 consecutive months; (ii) neither the issuer, nor a promoter, officer or director of the issuer is subject to the disqualifications in Regulation 204.010(b); (iii) no public media advertisement was used or mass mailing made in connection with the offers and sales of the securities and (iv) no cash or securities were given or paid to any person in connection with the sale of the securities, except to a broker-dealer registered under Section 301 or exempt from registration under Section 302(a).
Section 102					
94-2	7/6/94	Ballard, Spahr, Andrews & Ingersoll Philadelphia, PA	General Partnership Interests in Good Samaritan Medical Office Building Partnership	102(t)	An investment where physicians purchase interests in a general partnership which requires them to lease an amount of space in a proposed medical office building in direct proportion to their investment and share ratably in capital assessments and capital distributions and participate in the management and governance of the general partnership through an elected executive committee is not a security, however, a similar conclusion might not have been reached if the request had been based either solely upon the fact that the form of the investment was a general partnership interest or solely upon the investment requirement that the general partners lease all of the space in the proposed office building for business purposes.
94-3	8/25/94	Orrstown Bank Shippensburg, PA	Brokerage Network Agreement between Orrstown Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
94-4	8/31/94	Green, Stewart & Farber, P.C. Washington, DC	St. Luke's Physician-Hospital Organization, Inc.	102(t)	A membership interest in a Pennsylvania non-profit physician-hospital organization which serves as an administrative conduit for negotiations with medical plans, HMOs, etc. for the provision of services of the member physicians and hospital, which membership may be terminated at any time, cannot be transferred or assigned, is not entitled to receive dividends or distribution of profits and does not share in any title to the property or assets of the organization, is not a security.
94-5	11/8/94	Duane, Morris & Heckscher Harrisburg, PA	Summit Eye Care Alliance, Inc.	102(t)	A membership interest in a Pennsylvania non-profit membership corporation which serves as an administrative conduit for negotiations with medical plans, HMOs, etc. for the provision of services of the member ophthalmologists and optometrists, which membership must be renewed annually, cannot be transferred, pledged or hypothecated, is not entitled to receive dividends or distribution of profits and does not share in any title to the property or assets of the organization, is not a security.
94-6	11/9/94	Philadelphia Stock Exchange Philadelphia, PA	Options on Foreign Currency Traded on the Philadelphia Stock Exchange	102(t)	An option on foreign currency, which represents an underlying interest in the currency itself, and which is traded on the Philadelphia Stock Exchange, is not a security under Section 102(t) of the 1972 Act.
Section 203					
94-7	11/28/94	Goldman, Marshall & Muszynski, P.C. Philadelphia, PA	Issuance of Shares of Stock in Pennsylvania Highlands Healthcare, Inc.	203(r) Regulation 203.187	Sales of securities by a PA Issuer to not more than 10 persons in or out of state are exempt where (i) the offers have not been made to more than 90 persons in this State in a period of 12 consecutive months; (ii) neither the issuer nor a promoter, officer or director of the issuer is subject to the disqualifications in Regulation 204.010(b); (iii) no public media advertisement was used or mass mailing made in connection with the offers and sales of the securities and (iv) no cash or securities were given or paid to any person in connection with the sale of the securities, except to a broker-dealer registered under Section 301 or exempt from registration under Section 302(a).

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 202					
94-8	1/18/95	Hursh & Hursh Harrisburg, PA	Issuance of Shares by York County Physicians' Organization, P.C.	202(i) Reg. 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.
Section 102					
94-9	1/24/95	Blank, Rome, Comisky & McCauley Philadelphia, PA	Mainline Medical Association	102(t)	A membership interest in a Pennsylvania not-for-profit taxable corporation which serves as an administrative conduit for the acquisition of physician practices for the provision of services of member physicians and hospitals, and such membership interest may be terminated at any time, cannot be transferred or assigned, is not entitled to receive dividends or regular distributions of profits and does not share in any title to the property or assets of the organization, is not a security.
94-10	5/9/95	Rosenman & Colin New York, NY	Prudential Securities, Inc.'s Retirement Program for Financial Advisors	102(c) Section 301 301(a) 301(b)	Where a broker-dealer enters into agreements with certain of its retiring agents whereby the broker-dealer for up to three years will share any sales commissions generated by certain accounts of the retiring agent between the retiring agent and receiving agents, provided the retiring agent does not contact his former clients to solicit or discuss securities transactions, does not maintain licensing as a principal, registered representative, investment adviser or associated person, and is not associated in any capacity with any other broker- dealer or investment adviser (nor holds himself out as being so associated) during the term of the agreement, the retiring agent is not required to continue to be registered as an agent.
94-11	5/10/95	Winston & Stawn Chicago, IL	Motorola, Inc. & its cellular phone distributors	301	A promotional program that would offer purchasers of cellular phones a rebate in the form of Series EE U.S. Savings Bonds does not require registration of the manufacturer or phone distributors as a broker- dealer.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
94-12	5/15/95	Shumaker Williams, P.C. Harrisburg, PA	Brokerage Network Agreement between Pennsylvania State Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 202					
94-13	6/1/95	Hursh & Hursh Harrisburg, PA	Issuance of Shares by Lancaster Physician Practice Corporation, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.
94-14	6/1/95	Hursh & Hursh Harrisburg, PA	Issuance of Shares by Pocono Regional Physician Organization, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.
Section 102					
94-15	6/5/95	Douglas G. Dye, Esq. Philadelphia, PA	Planned Lifetime Assistance Network of Pennsylvania Trust for the Mentally Disabled	102(t)	A beneficial interest in a voluntary inter vivos trust which is not created for the purpose of carrying on any business is excluded from the definition of a security.
94-16	6/21/95	Integra Financial Corporation Pittsburgh, PA	Brokerage Network Agreement between Integra Financial Corp. and LNC Equity Sales Corp.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 202					
95-1	7/5/95	Hursh & Hursh Harrisburg, PA	Issuance of Shares by Behavioral Health Systems, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
95-2	8/21/95	National Penn Bank Boyertown, PA	Brokerage Network Agreement between National Penn Bank and Compulife Investor Services	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
95-3	10/30/95	The First National Bank of Greencastle Greencastle, PA	Brokerage Network Agreement between The First National Bank of Greencastle and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
95-4	01/02/96	Theodore M. Trbovich, Esquire Pittsburgh, PA	Seven Oaks Country Club	102(t)	A membership requiring a 30-year membership deposit which entitles the members to use the facilities of an already completed country club, does not entitle the members to receive any payment of income, dividends or other distributions of profit from the operations of the club, does not provide members with an equity or ownership interest, voting rights, participation in management of the club, or membership transfer right (except back to the club) is not a security.
Section 202					
95-5	05/14/96	Houston Harbaugh Pittsburgh, PA	AllSight, Inc.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
95-6	05/23/96	The First National Bank of Newport Newport, PA	Brokerage Network Agreement between The First National Bank of Newport and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank's office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 203					
95-7	06/24/96	Ballard, Spahr, Andrews, & Ingersoll Philadelphia, PA	Frankford Health Care Alliance Cooperative Association	203(r) Regulation 203.188	Offers and sales of membership units in a cooperative business association organized for the provision of health care services to prospective members of the cooperative business association are exempt.
Section 301					
96-1	08/21/96	Michael Best & Frederick Milwaukee, WI	Firststar Trust Company	301	Where employees of a bank will be acting solely within the scope of their employment with the bank in administering a proposed dividend reinvestment and common stock purchase plan and will not receive any commission or remuneration, the employees of the bank are not required to register as agents.
Section 201					
96-2	10/31/96	Mays & Valentine Richmond, VA	Virginia Higher Education Tuition Trust Fund Contracts issued by Virginia Higher Education Trust Fund (Contracts)	201 Section 301 301	A security issued by a political subdivision of a state is exempt from registration and activities undertaken in an official capacity with respect to such securities by members, officers or employees of the political subdivision would not require registration as a broker-dealer, agent, investment adviser or associated person.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
96-3	12/17/96	Dorsey & Whitney LLP Great Falls, MT	NetProphet Electronic Internet Publications	301 Regulation 302.062	A Corporation offering electronic publications to be made on its Home Page on the World Wide Web of the Internet that permits users to access certain financial information published daily through electronic postings to the Home Page, provide users a daily listing of ATop 5 Buy and Sell@ candidates, provide price prediction services for all stock in the securities marketplace at a subscription charge to users, is a Apublisher@ within the meaning of Reg. 302.062 and exempt from investment adviser registration.
96-4	12/17/96	John Critchlow St. Petersburg, FL	Investment Management & Research, Inc.	301	Where non-Pennsylvania registered agents of a registered broker-dealer advertise on the World Wide Web of the Internet through individual home pages that incorporate a blocking mechanism that would not permit a visitor to the home page to view the advertisement if the agent or the securities being advertised are not registered in the State where the visitor resides, such agents are not required to register as agents under Section 301.
Section 102					
96-5	1/3/97	Blakey, Yost, Bupp & Schaumann York, PA	The Clubs of Regents= Glen, Inc.	102(t)	A membership which entitles the members to use the facilities of an already completed country club, does not entitle the members to receive any payment of income, dividends or other distributions of profit from the operations of the club, does not provide members with an equity or ownership interest, voting rights, participation in management of the club, or membership transfer right (except back to the club) is not a security.
96-6	3/5/97	The Juniata Valley Bank	Brokerage Network Agreement between The Juniata Valley Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
96-7	5/13/97	Farmers and Merchants Trust Company of Chambersburg Chambersburg, PA	Brokerage Network Agreement between Farmers and Merchant Trust Company of Chambersburg and BHCM, Inc.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 202					
96-8	5/21/97	Somers & Associates, PC. Exton, PA	Issuance of Membership Shares in American Mental Health Alliance - Pennsylvania Cooperative, A Pennsylvania Nonprofit Workers= Cooperative Corporation	202(e)	Membership shares issued by a nonprofit workers= cooperative corporation are exempt from registration.
Section 102					
96-9	5/29/97	Baker & Botts L.L.P. Austin, TX	The World of ResidenSea	Section 102(t)	A contractual agreement to purchase an exclusive right to occupy and use an apartment aboard a passenger vessel to be constructed, owned and operated by the seller is not a security where the purchase price will be placed into an escrow account in a US bank with a right of return to the purchaser if the vessel is not delivered, the agreement does not require participation in a rental or time-sharing pool or the availability of the apartment to the seller for any part of a year and the seller does not offer rental agency services or unsolicited referrals.
97-1	7/11/97	The Fulton County National Bank & Trust Company McConnellsburg, PA	Brokerage Network Agreement between The Fulton County National Bank & Trust Company and T.H.E. Financial Group, Ltd.	102(e)	Where bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
97-2	7/11/97	The First National Bank of Fredericksburg Fredericksburg, PA	Brokerage Network Agreement between The First National Bank of Fredericksburg and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
97-3	7/17/97	Fulton Bank Lancaster, PA Fredericksburg, PA	Master Investment among Corelink Financial, Inc. Concord Brokerage Services, Inc. and Fulton Bank	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
97-4	7/30/97	Swineford National Bank Hummels Wharf, PA	Brokerage Network Agreement between Swineford National Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
97-5	9/4/97	Baker & Botts L.L.P. Austin, TX	The World of ResidenSea Club Memberships	102(t)	A membership in a non-equity club aboard a passenger vessel to be constructed, owned and operated by the seller is not a security where the membership deposits and dues will be placed into an escrow account in a US bank with a right of return to the member if the vessel is not delivered, the membership is not transferable except through the club, and there is no right to receive dividends.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
97-6	1/21/98	Shumaker Williams, P.C. Harrisburg, PA	Brokerage Network Agreement between The Honesdale National Bank of Honesdale and UVEST Financial Services Group of North Carolina	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 202					
97-7	3/23/98	Hursh & Hursh, P.C. Harrisburg, PA	Riddle PO, P.C.	202(i) Regulation 202.091	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.
Section 102					
97-8	4/1/98	First Federal Savings and Loan Association Hazleton, PA	Brokerage Network Agreement between First Federal Savings and Loan Association and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
97-9	5/14/98	First National Bank of Mercersburg Mercersburg, PA	Brokerage Network Agreement between The First National Bank of Mercersburg and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
97-10	5/26/98	Reed, Smith, Shaw & McClay, LLP	Brokerage Network Agreement among The Glen Rock State Bank, Legg Mason Financial Services, Inc., and LM Financial Partners, Inc.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
97-11	6/3/98	Portage National Bank Ebensburg, PA	Brokerage Network Agreement between Portage National Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
Section 302					
97-12	6/4/98	Pranscke & Holderle, L.C. St. Louis, MO	Lutheran Church Extension Fund-Missouri Synod Lutheran Church-Missouri Synod Foundation	302(e)	Representatives of a non-profit foundation affiliated with the non-profit issuer of debt securities which are registered under Section 206 of the 1972 Act who do not receive compensation beyond their normal foundation salaries and whose discussions concerning the registered debt securities with prospective donors to the foundation are confined solely to the information contained in the prospectus or offering circular for the registered debt securities are exempt from registration as a broker-dealer or agent.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
98-1	7/14/98	Gruntal & Co., L.L.C. New York, NY	Gruntal & Co., L.L.C. Continuing Compensation Plan	102(c)	Where a broker-dealer enters into agreements with certain of its retiring agents whereby the broker-dealer for up to three years will share any sales commissions generated by certain accounts of the retiring agent between the retiring agent and receiving agents, provided the retiring agent does not contact his former clients to solicit or discuss securities transactions, does not maintain licensing as a principal, registered representative, investment adviser or associated person, and is not associated in any capacity with any other broker-dealer or investment adviser (nor holds himself out as being so associated) during the term of the agreement, the retiring agent is not required to continue to be registered as an agent.
				Section 301	
				301(a) 301(b)	
Section 102					
98-2	7/21/98	Reliance Savings Bank Altoona, PA	Brokerage Network Agreement between Reliance Savings Bank and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.
98-3	8/4/98	Shumaker Williams, P.C. Harrisburg, PA	Brokerage Network Agreement between Community State Savings Bank of Orbisonie and T.H.E. Financial Group, Ltd.	102(e)	Where a bank enters into a contractual relationship with a registered broker-dealer whereby the broker-dealer offers brokerage and investment advisory services at the bank=s office and reimburses the bank for use of its office space by sharing brokerage commissions, the bank is not required to register as a broker-dealer where the bank has filed all the undertakings and representations set forth in the PSC staff position published in the November, 1984 PSC Bulletin.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 302					
98-4	1/13/99	Sidley & Austin New York, NY	Tiburon Fund Trading L.L.C. and Belvedere Funding Trading L.L.C.	302(a)	A person registered as a broker-dealer under the Securities Exchange Act of 1934 that has no place of business in Pennsylvania and, during any period of 12 consecutive months, does not direct offers to sell or buy into this State to persons other than broker-dealers, institutional investors or to more than five other customers in this State, is exempt from registration as a broker-dealer under Section 301.
Section 301					
98-5	6/1/99	Kirkpatrick & Lockhart LLP Pittsburgh, PA	PC Exploration, Inc.	301	Where a company forms approximately one limited partnership per year in which it acts as a managing general partner and offers interests in each limited partnership formed to a defined number of offerees which are limited to the shareholders of the company=s privately-held parent and the officers, directors and several key employees of the company and its affiliates and where no compensation is paid to any officers, directors or employees of the company in connection with the offer or sale of the limited partnership interests and where the offer and sale of the limited partnership interests are effected in compliance with section 201, the company is not required to register as a broker-dealer.
Section 203					
99-1	9/23/99	Jenkins & Gilchrist Dallas, TX	American Rivers Oil Company reincorporation from Wyoming to Delaware and offer by Delaware company to acquire all of the shares of a U.K. company.	203(o)	A transaction where securities are issued pursuant to a reorganization and merger plan which is incident to a vote of security holders is exempt from registration.
Section 202					
99-2	11/24/99	Buchanan Ingersoll Harrisburg, PA	Sarona Loan Fund, Inc.	202(e)	The issuance of subvention certificates by a non-profit issuer pursuant to the laws of the state of Pennsylvania which does not entitle the purchaser to any specific return of principal or interest at any specific time is exempt.

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Section 102					
99-3	9/27/00	Cockey Edwards & Roehn Tampa, FL	River Crest Golf Club and Preserve	102(t)	A membership bestowing a revocable non-exclusive license to use the facilities of a golf and social club which is being built by a developer who will not receive any escrowed proceeds from the sale of memberships until the golf course is open for play and the facilities have received a certificate of occupancy and where the members will not receive any payment of income, dividends or other distribution of profits from operation of the club, will not be entitled to any amount exceeding the original membership deposit from the club upon registration, and will not be able to transfer memberships to any other person but the club, is not a security.
Section 202					
99-4	11/30/00	Moore & Van Allen Charlotte, NC	Alcatel 2000 Share Purchase and Option Plan for Employees of U.S. Subsidiaries	202(g) Section 302 302(e)(1)	Securities issued to employees in connection with a share purchase and option plan for employees of a U.S. subsidiary of a foreign company are exempt from registration and employees of the issuer which facilitate participation in the plan of eligible employees in the U.S. are exempt from registration as agents.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
01-1	7/12/01	Baker & Botts L.L.P. Austin, TX	The World of Residensea, Limited	102(t)	A contractual agreement to purchase an exclusive right to occupy and use an apartment aboard a passenger vessel under construction, owned and operated by the seller and a rental option for such apartment are not securities where the purchase price will be placed into an escrow account in a US bank with a right of return to the purchaser if the vessel is not delivered, the agreement does not require participation in a rental or time-sharing pool or the availability of the apartment to the seller for any part of a year, but the seller may offer rental services, provided by itself or an affiliate on a non-exclusive and unsolicited basis.
Section 301					
01-2	10/16/01	Morgan, Lewis & Bockius, LLP Washington, DC	Aetna Investment Services, LLC	301	Where an accountant or lawyer, licensed and in good standing with appropriate licensing authority, enters into a referral arrangement with a federally registered investment adviser whereby the accountant or lawyer receives cash compensation for referring clients to the investment adviser, the accountant or lawyer will not be required to register as an investment adviser or investment adviser representative under Section 301 if the activity is solely incidental to the practice of the profession, the accountant or lawyer does not provide investment advice, the arrangement complies with all requirements of Rule 206(4)-3 of the Investment Advisers Act of 1940 and the accountant or lawyer has no disciplinary history that requires an affirmative response to Items 23A-E or Item 23H on Form U-4.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 102					
01-3	11/15/01	Allstate Bank Northbrook, IL	FDIC-Insured Certificate of Deposit of Allstate Bank	102(t)	Where a federally-chartered savings bank markets FDIC-insured certificates of deposit through a network of independent agents of its parent corporation who are prohibited from selling insurance and financial products issued by non-affiliated organizations unless specifically authorized by the parent corporation (Exclusive Agents), the FDIC-insured certificates of deposit are not securities and the Exclusive Agents are not required to register as agents of the issuer, provided that the formula under which the Exclusive Agents will receive compensation for referring customers to the savings bank who purchase certificates of deposit is disclosed.
Section 203					
01-4	12/27/01	Choate, Hall & Stewart Boston, MA	CBM Holdings, Inc.	203(b)	Non-issuer transactions which directly or indirectly benefit an affiliate of the issuer that are exempt from Section 5 of the Securities Act of 1933 by sections other than Section 3(a)(11) or 3(b) thereof are exempt from registration.
Section 202					
01-05	6/28/02	Hursh & Hursh Harrisburg, PA	Independent Physicians Association of Lancaster, Inc.	202(i)	Shares in a professional corporation validly formed under Pennsylvania Professional Corporation Law are exempt from registration.

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Section 202					
02-01	7/26/02	State Farm Insurance Companies Bloomington, IL	Variable Rate CDs	202(b)	Variable rate certificates of deposit issued by an FDIC-insured federal savings bank are exempt securities. Exclusive agents providing information and brochures describing the product are not required to be registered as agents.
Section 102					
02-02	07/26/02	Douglas B. Pollitt New York, NY	MIIX Advantage Insurance Company of New Jersey and MIIX Advantage Holdings, Inc.	102(t)	Where an insurance company and holding company are formed for the purpose of providing medical professional liability insurance to qualified physicians who are licensed to practice in New Jersey and who conduct at least 51% of their medical practice in New Jersey, common stock issued by the holding company and promissory notes issued by the holding company or the insurer are not securities where the purpose behind the purchase of the common stock and promissory notes is to obtain insurance not to experience an economic profit and where the common stock and promissory notes do not have significant characteristics of securities.
02-03	8/6/02	Foley & Lardner Tampa, FL	RiverCrest Golf Club & Preserve	102(t)	A membership bestowing a revocable non-exclusive license to use the facilities of a golf and social club which is being built by a developer who will not receive any escrowed proceeds from the sale of memberships until the golf course is open for play and the facilities have received a certificate of occupancy and where the members will not receive any payment of income, dividends or other distribution of profits from operation of the club, will not be entitled to any amount exceeding the original membership deposit from the club upon registration, and will not be able to transfer memberships to any other person but the club, is not a security.

Letter Number	Date of Staff Letter	Person Requesting A No-Action Position	Issuer or Other Subject of Request	Section of the 1972 Act in Question	Position Concurred in or Taken By The Staff
Section 203					
02-04	12/3/02	Lanier Ford Shaver & Payne P.C. Huntsville, AL	Associated Pharmacies, Inc.	203(r) Regulation 203.188	Offers and sales of membership interests in a cooperative business association whose members are individual retail pharmacists and whose purpose is to improve the members= purchasing power when negotiating contracts with manufacturers and wholesale distributors of pharmaceuticals and medical supplies are exempt under Section 203(r) and Regulation 203.188.
Section 102					
02-05	2/3/03	Fitzpatrick Lentz & Bubba, P.C. Center Valley, PA	Alpine Rose Resorts, Inc. d/b/a Alpine Motorsports Club	102(t)	A membership bestowing a revocable non-exclusive license to use the facilities of a motorsports club which is being built by a developer who will not receive any escrowed proceeds from the sale of memberships until the driving course is open for use and the facilities have received a certificate of occupancy and where the members will not receive any payment of income, dividends or other distribution of profits from operation of the club, will not be entitled to any amount exceeding the original membership deposit from the club upon registration and will not be able to transfer memberships to any person but the member=s spouse and the club, is not a security.
Section 203					
03-01	1/22/04	Hazelrigg & Cox, LLP Frankfort, KY	America Pharmacy Services Corporation	203(r) Regulation 203.188	Offers and sales of membership interests in a cooperative business association whose members are individual retail pharmacists and whose purpose is to improve the members= purchasing power when negotiating contracts with manufacturers of pharmaceuticals are exempt under Section 203(r) and Regulation 203.188.
Section 102					
07-1	6/24/08	Bradley Arant Rose & White, LLP Birmingham, AL	BE&K, Inc.	102(r)	A transaction in which the shareholders of parent corporation receive, pro rata, units of a subsidiary limited liability corporation, which is formed to hold the assets of parent corporation, does not constitute a sale of securities for purposes of Section 102(r) of the Pennsylvania Securities Act of 1972, where no consideration is paid by shareholders in exchange for the limited liability interests.

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09-01	11/18/09	Bybel Rutledge LLP Lemoyne, PA	Sisters of Mercy of the Americas	Section 201	A transaction wherein a non-profit corporation pools investment vehicles of affiliated entities consisting of program funds established as part of an asset management program need not register the interests in the program and the program funds under Section 201.
				Section 301 301(a) 301(c)	An affiliated non-profit corporation acting as Program Manager which is not in the business of effecting transactions in securities and is not a person who for compensation engages in the business of advising others need not register under Section 301(a) as a broker-dealer or an investment adviser pursuant to Section 301(c).

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**FORMS ADOPTED BY THE COMMISSION
UNDER THE SECURITIES ACT OF 1972
AND THE
TAKEOVER DISCLOSURE LAW**

FORMS ADOPTED BY THE COMMISSION UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972

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Form ADV	Registration as an investment adviser
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Form U-1	Registration of securities
Form NF	Uniform investment company notice filing
Form USB	Surety bond
Form BDW	Withdrawal from broker-dealer registration
Form ADV-W	Withdrawal from investment adviser registration
Form U-5	Withdrawal from registration as an agent or investment adviser representative
Form U-10	Examination request for non-NASD candidates

The Pennsylvania Securities Commission accepts for filing legible photocopies of its forms contained herein. Commission forms and Uniform forms also are available through the Commission's web site at www.psc.state.pa.us.

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

NOTICE FILING UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972
TO CLAIM AN EXEMPTION UNDER:
SECTION 203(d) – “LIMITED OFFERING EXEMPTION”
SECTION 203(s) – “SEC RULE 505 EXEMPTION”
SECTION 203(t) – “ACCREDITED INVESTOR EXEMPTION”

Under Regulation 603.011, a document is not deemed filed with the Pennsylvania Securities Commission (“Commission”) unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers making sales of securities in Pennsylvania in reliance upon Section 203(d) (including Regulation 204.010) of the Pennsylvania Securities Act of 1972 (“Act”) and issuers making offers and sales of securities under Section 203(s) or (t) of the Act.

WHEN AND WHERE TO FILE: Form E must be filed at the Commission’s Harrisburg Office at the address above not later than the day on which the issuer received from any person in Pennsylvania (i) an executed subscription agreement or other contract to purchase the securities being offered or (ii) consideration for such securities, whichever is earlier.

NOTE: Under 64 Pa. Code § 604.011, a facsimile transmission of any material to the Commission does not constitute a filing with the Commission.

General Instructions

1. One manually signed copy, and one photocopy of this Form, each with all attachments, shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of “not applicable” is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. **INCORPORATION BY REFERENCE TO FORM D OF THE U.S. SECURITIES & EXCHANGE COMMISSION (“SEC FORM D”). IF THE ISSUER FILES A COMPLETE AND EXECUTED COPY OF SEC FORM D WITH THIS FORM, THE ISSUER MAY RESPOND TO ITEMS 3, 7, 8, AND 9 ON THIS FORM BY CROSS-REFERENCING TO ITEMS 1, C.1-4, C.5 AND B.1-4 OF SEC FORM D.**
4. This Form must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.

PSC FORM E
General Instructions
Page 2

5. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days of the occurrence of the event which required the filing of such amendment.

6. In addition to Instructions 3, an issuer may incorporate by reference information contained in any document attached hereto or previously filed with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.

7. Attach a copy of any offering circular, prospectus, memorandum, brochure, subscription agreement or other document which has been or is proposed to be used in connection with the sale of the securities which are the subject of this filing. IF THE ISSUER DOES NOT PROPOSE TO USE ANY SUCH DOCUMENT, SUBMIT A WRITTEN EXPLANATION DETAILING THE MANNER IN WHICH THE ISSUER PROPOSES TO DISCLOSE ALL MATERIAL FACTS TO PROSPECTIV INVESTORS IN PENNSYLVANIA.

8. The appropriate filing fee required in Section 602(b.1)(viii) or (ix) shall accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P.S. § 1-203(d)(iv), 203(s) (ii) and 203(t)(iii)). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P.S. § 1-602(b.2)).

FILING FEE FOR SECTION 203(d) AND 203(s):

Offering in Pennsylvania is less than \$1 million:	\$150
Offering in Pennsylvania is \$1 million or more:	\$400

FILING FEE FOR SECTION 203(t): \$500

9. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PANALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

NOTICE FILING UNDER THE PENNSYLVANIA SECURTIES ACT OF 1972 ("ACT")
TO CLAIM AN EXEMPTION UNDER
(CHECK ONLY ONE)

- SECTION 203(d) - "LIMITED OFFERING EXEMPTION" q (Complete Parts I, II & V)
SECTION 203(s) - "SEC RULE 505 EXEMPTION" q (Complete Parts I, III & V)
SECTION 203(t) - "ACCREDITED INVESTOR EXEMPTION" q (Complete Parts I, IV & V)

PART I. Information about the Issuer ("Issuer")

1. Legal Status of the Issuer

- (A) Exact Name of Issuer: _____
(B) State and Date of incorporation or formation: _____
State Date

2. Addresses

- (A) Address of principal office of Issuer: _____
Number and Street
City State Zip Code Telephone No.

- (B) Address of Issuer's primary place of business in Pennsylvania (if other than listed in (A)):
Number and Street
City State Zip Code Telephone No.

- (C) Name and address of person to whom correspondence regarding this filing should be sent:
Name Title Number and Street
City State Zip Code Telephone No.

- (D) Name and address of counsel to Issuer if other than listed in (C):
Name Number and Street
City State Zip Code Telephone No.

3. Briefly describe the business of the Issuer. _____ **Check here if responding to this item by incorporating Item 1 of completed SEC Form D attached hereto.**

4. State the names and addresses of persons holding any of the following positions with the Issuer:

A. General partner

B. Promoter (as defined in Section 102(o) of the Act)

C. Manager (if a limited liability company)

D. President

E. Chief executive officer

F. Chief operating officer

G. Chief financial officer

H. Director who owns 5% or more of any class of voting equity securities of the Issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111).

5. Indicate if any person described in Item 4 currently is registered as an agent under Section 301 of the Act or as a principal of a broker-dealer registered under Section 301 of the Act.

NO _____ YES _____

If YES, provide the individual's name, employer and Central Registration Depository number.

6. Indicate if any person described in Item 4 has been subject of a Commission order issued under Section 512 (Statutory Bars) or Section 513 (Rescission Orders) of the Act or an order of a court of competent jurisdiction under Section 509(c) of the Act (Civil Contempt).

NO _____ YES _____

If YES, describe fully.

7. Description of securities to be sold

Describe type of securities proposed to be sold, price per unit and expected net proceeds to the issuer. Indicate the aggregate offering amount and the amount to be offered in Pennsylvania. _____ **Check here if responding to this item by incorporating items C.1-4 of SEC Form D attached hereto (the amount to be offered in Pennsylvania either must be shown here or on SEC Form D).**

8. Use of Proceeds

Describe in detail the intended use of proceeds from the offering, stating the amounts to be used for each purpose and in order of priority of uses. **Check here if responding to this item by incorporating Item C.5 of completed SEC Form D attached hereto.**

9. Sales Commissions

(A) List amounts proposed to be paid for any underwriting fee or sales commission. Identify all persons who will receive any such fee and the basis on which it will be paid. **Check here if responding to this item by incorporating Items B.1-4 of completed SEC Form D attached hereto.**

(B) With respect to any person receiving compensation who is not a broker-dealer registered under Section 301 of the Act, explain why the person is not a promoter as that term is defined in Section 102(o) of the Act.

10. Previous Sales of Securities in Pennsylvania

(A) By the Issuer

Describe all sales of securities made in Pennsylvania during the past two years that directly or indirectly benefitted the Issuer. Include securities issued in exchange for property, services, or other securities and new securities resulting from modification of outstanding securities. In each case, state:

- (i) The date of sale and description of the securities sold;
- (ii) Underwriting or selling fees or commissions paid and to whom paid;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities.

(B) By a person related to the Issuer

Within the period of two years prior to the date of this Notice, did any person described in Item 4(A) – (H) hold, with respect to another person (who is not the Issuer), a position as a general partner, promoter (as defined in Section 102(o) of the Act), manager (if a limited liability company), president, chief executive officer, chief operating officer, chief financial officer or a director with a 5% or more ownership of any class of voting equity securities (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111) at the time when that person sold securities in Pennsylvania for which a filing with the Commission was required?

NO YES

If YES, provide the following information:

- (i) Name of that other person which sold the securities;
- (ii) The position held with that other person;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities;
- (iv) If the proceeds from the sale were paid directly or indirectly to, or used directly or indirectly for, the benefit of the Issuer, please describe in detail.

PART II. Section 203(d) – “LIMITED OFFERING EXEMPTION”

- Check this box if the Issuer is relying on Section 203(d) of the Act (including Regulation 204.010) for sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

11. The Issuer, by executing this Notice, agrees, as a condition of the availability of the exemption in Section 203(d), to:

- (A) Provide **WRITTEN NOTICE** to all purchasers of the two-business day right of withdrawal contained in Section 207(m)(2) of the Act. The notice should appear prominently by underlining or capitalization in materials to be given to investors, which materials much be **FILED** with this Form. Section 207(m)(2) is reproduced below:

Section 207(m)(2). “If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance pursuant to Section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating you intention to withdraw.”

- (B) Obtain the written agreement of each purchaser not to sell, except in accordance with Regulation 204.011, the security within 12 months after the date of purchase and **FILE** with this Form a copy of the proposed agreement that investors will be asked to sign.

12. As a condition of the availability of the exemption in Section 203(d), the Issuer, by executing this Notice, represents to the Commission that:

- (A) No public media advertisement will be used or mass mailing made in connection with soliciting sales of securities.

(B) No cash or securities will be given or paid, directly or indirectly, to any promoter as compensation in connection with a sale of securities unless such compensation is given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act and any person receiving such compensation is either that broker-dealer or an agent of that broker-dealer who is registered under Section 301 of the Act.

13. Has any person described in Items 4 and 9 been convicted of any crime or made the subject of any sanction described in Section 305(a)(ii)-(ix) of the Act.

NO ____ YES ____

If YES, describe fully. Be advised that an affirmative answer may disqualify the issuer from relying upon Regulation 204.010(a)(1)(i) and (ii).

PART III. Section 203(s) – “SEC RULE 505 EXEMPTION”

Check this box if the Issuer is relying on Section 203(s) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

14. As a condition of the availability of the exemption in Section 203(s), the Issuer, by executing this Notice, represents to the Commission that:

(A) the offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the Securities Act of 1933 (“1933 Act”) pursuant to Rule 505 of SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R § 230.505).

(B) No mass mailing will be used, public media advertising made, or other form of general solicitation utilized in connection with offers and sales of securities in Pennsylvania which are the subject of this Notice.

(C) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.

(D) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(s) (v) of the Act.

Part IV. Section 203(t) – “ACCREDITED INVESTOR EXEMPTION”

- Check this box if the Issuer is relying on Section 203(t) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

15. As a condition of the availability of the exemption in Section 203(t), the Issuer, by executing this Notice, represents to the Commission that:

- (A) The offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the 1933 Act pursuant to Section 3(a)(11) of the 1933 Act, SEC Regulation A adopted under Section 3(b) of the 1933 Act (17 C.F.R. §§ 230.251 – 230.263), or Rule 504 of SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R. § 230.540).
- (B) It will specify in any advertisement, communication, sales literature, or other information being publicly disseminated in connection with the offering of securities which is the subject of this Notice (including by means of electronic transmission) that the securities will be sold only to Accredited Investors as that term is defined in Rule 501 of SEC Regulation D (17 C.F.R. § 230.501).
- (C) It will not engage in any solicitation of prospective purchasers by telephone until the Issuer has reasonable grounds to believe that the person being solicited is an Accredited Investor.
- (D) It will place a legend on the cover page of any disclosure document proposed to be used in connection with the offering or on the cover page of the subscription agreement stating that the securities described in the disclosure document or subscription agreement will be sold only to Accredited Investors.
- (E) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.
- (F) It is not an investment company as defined in the Federal Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).
- (G) It is not a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

- (H) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of 10% or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(t)(v) of the Act.

PART V. Affirmations (to be completed by all Issuers)

16. By executing this Form on behalf of the Issuer, the signatory affirms that:

- (A) The undersigned is familiar with the provisions of Section 203(d), (s), or (t) of the Act and all regulations adopted thereunder, including Regulation 204.010.
- (B) The statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Notice has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

Notice under Section 203(O) of the
Pennsylvania Securities Act of 1972

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers of securities meeting the following requirements must file Form 203-O:

1. The proposed transaction is incident to a vote by securityholders or written consent of some or all securityholders in lieu of such vote;
2. No proxy materials are required or permitted to be filed with the Securities and Exchange Commission by either party to the transaction;
3. More than twenty-five percent of the securityholders of either party to the transaction are residents of this Commonwealth; and
4. The number of persons to whom securities are offered and sold in this Commonwealth exceeds 25, exclusive of principals (as that term is defined in § 203.184 (relating to offers and sales to principals)) of the entities whose securityholders are voting or providing written consent.

WHERE AND WHEN TO FILE: At the Commission's Harrisburg office **prior** to the vote or solicitation of written consent. **Materials prepared in connection with a proposed transaction under Section 203(o) must be filed AND reviewed by the Commission prior to distribution to the securityholders of each party to the proposed transaction.**

General Instructions

1. One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "no applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.

3. All questions should be answered fully.

The Form filed with the Commission must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.

4. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendment filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.
5. In lieu of answering any specific question in the Form the issuer may incorporate by reference information contained in any documents attached thereto or previously filed with the Commission. Any reference should be to the page and paragraph number or other specified portion of the document where the information is located.
6. Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.
7. The appropriate filing fee required by Section 602(b.1)(v) of the Act must accompany the filing of this Form and is a condition of availability of the exemption (see 70 P.S. § 1-203(o)). Checks are to be payable to the "Commonwealth of Pennsylvania."
8. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

APPLICATION UNDER SECTION 203(O) OF THE
PENNSYLVANIA SECURITIES ACT OF 1972

1. Exact Name of Issuer: _____

2. (A) Address of Principal Office of Issuer: _____
Number and Street

City State Zip Code Telephone No.

(B) Address of Principal Office of Issuer in Pennsylvania (if other than listed in (A)):

Number and Street City State Zip Code Telephone No.

3. (A) Name and address of person to whom correspondence regarding this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

(B) Name and address of counsel to Issuer (if other than listed in (A)):

Name Number and Street

City State Zip Code Telephone No.

(C) Name and address of accountants of Issuer:

Name Number and Street

City State Zip Code Telephone No.

- C. The undersigned is familiar with the provisions of Section 203(o) and all regulations adopted thereunder.
- D. The statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Notice has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

NOTICE UNDER SECTION 203(p) OF THE
PENNSYLVANIA SECURITIES ACT OF 1972

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers offering or selling securities in this Commonwealth in reliance upon Section 203(p) of the Act.

WHERE TO FILE: At the Commission's Harrisburg office not later than five business days before the issuer received from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer received consideration from any person therefor, whichever is earlier.

General Instructions

1. One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities Commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. The Form filed with the Commission must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
4. In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendment filings with the Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.
5. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously filed with the Commission. Any reference should be to the page and paragraph number or other specified portion of the document where the information is located.

6. All purchasers must be informed of the two-business day right of withdrawal contained in Section 207(m)(2) of the Act and disclosure of such a notice should appear prominently by underlining or capitalization in materials to be given to investors. Section 207(m)(2) is reproduced below:

Section 207(m)(2). "If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance pursuant to section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase, or in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw."

7. Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.
8. The issuer will be required to maintain the books and records required by Section 209 and the regulations thereunder and, if applicable, will be required to make the reports required by Sections 209 and 606(s) and the regulations adopted thereunder.
9. The appropriate filing fee required in Section 602(b.1)(x) of the Act must accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P.S. § 1-203(p)). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P.S. § 1—602(b.2)).
10. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATION ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

APPLICATION UNDER SECTION 203(p) OF THE
PENNSYLVANIA SECURITIES ACT OF 1972

1. Exact Name of Issuer: _____

2. (A) Address of Principal Office of Issuer: _____

Number and Street

City State Zip Code Telephone No.

(B) Address of Principal Office of Issuer in Pennsylvania (if other than listed in (A)):

Number and Street City State Zip Code Telephone No.

3. (A) Name and address of person to whom correspondence regarding this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

(B) Name and address of counsel to Issuer (if other than listed in (A)):

Name Title Number and Street

City State Zip Code Telephone No.

(C) Name and address of accountants of Issuer:

Name Title Number and Street

City State Zip Code Telephone No.

4. (A) Legal Form of Issuer (corporation, partnership, association, etc.): _____

(B) State and Date of Incorporation

State	Date
-------	------

(C) Name of any predecessor of Issuer: _____

(D) Purpose for which Issuer was formed and nature of its activities:

5. (A) Describe type and amount of securities proposed to be sold, price per unit, and anticipated total net proceeds to the Issuer. List separately the amounts proposed to be paid for the costs of the offering and any underwriting fee or sales commissions. Identify all persons who will receive any such fee or commission and the basis on which it will be paid. Identify also any person who will receive any monies for assistance rendered in developing the offering plan and the amount of compensation paid, or to be paid, to each such person.

(B) Describe any subordination, sinking fund, call and all other material provisions of the securities being offered and any assets in which a mortgage or security interest is being created for the benefit of the securityholders.

(C) Attach a copy of the security being sold.

(D) Attach a copy of an appraisal or other document indicating the fair market value of the collateral.

(E) Describe the terms of any escrow being created to satisfy the requirements of Section 203(p) (5).

6. Describe in detail the intended use of proceeds from the offering, stating the amounts to be used for each purpose and order of priority of uses indicated.

7. State the Section of the Internal Revenue Code under which Issuer claims tax exempt status, if any.

Has any such tax exemption ever been challenged? YES NO

If yes, describe fully all surrounding facts and circumstances and state the result of such challenge.

8. Has the Issuer, within the previous two years, sold securities in Pennsylvania?

YES NO

If YES, describe the circumstances under which sales were made, including: (i) offering prices; (ii) the dates, classes and amounts of securities sold; (iii) the exemption or other provision of the Act or regulations of the commission relied upon in each instance.

9. Affirmation.

By executing this Form on behalf of the issuer, the signatory affirms that:

- A. The undersigned is familiar with the provisions of Section 203(p) and all regulations adopted thereunder.
- B. The statements made in this Notice, including all attachments hereto, taken individually or collectively, are not incomplete in any material respect or false or misleading with respect to any material face.

IN WITNESS WHEREOF, this Notice has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

APPLICATION UNDER THE
THE PENNSYLVANIA SECURITIES ACT OF 1972
TO REGISTER SECURITIES UNDER:
SECTION 205 – REGISTRATION BY COORDINATION OR
SECTION 206 – REGISTRATION BY QUALIFICATION

Under Regulation 603.011, a document is not deemed filed with the Pennsylvania Securities Commission (“Commission”) unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers making application to register securities in Pennsylvania under Section 205 or Section 206 of the Pennsylvania Securities Act of 1972 (“Act”).

WHEN AND WHERE TO FILE: Form R must be filed at the Commission’s Harrisburg Office at the above address. For Registration by Coordination, the Form should be filed with the Commission at the same time the Issuer makes a filing with the Securities and Exchange Commission (“SEC”). For Registration by Qualification, no offers or sales of securities may be made in Pennsylvania until the registration statement is declared effective by the Commission.

NOTE: Under 64 Pa. Code § 604.011, a facsimile transmission of any materials to the Commission does not constitute a filing with the Commission.

GENERAL INSTRUCTIONS

1. One manually signed copy, and one photocopy of this Form, each with all attachments, shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of “not applicable” is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. This Form must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
4. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material aspect, the issuer shall file an amendment with the Commission within 5 business days of the occurrence of the event which required the filing of such amendment.
5. An issuer may incorporate by reference information contained in any document attached hereto or previously filed with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
6. The appropriate filing fee required in Section 602(b.1)(ii) or (iii) must accompany the filing of

this Form. Check are to be payable to the “Commonwealth of Pennsylvania.”

FILING FEE FOR SECTION 205:

Under Section 602(b.1)(ii) of the Act, the filing fee for a registration by coordination is based upon the maximum aggregate offering price at which such securities are to be offered in Pennsylvania during the effective period of the registration statement:

(A)	Less than \$10,000,000	\$750
(B)	\$10,000,000 or more	\$1,000

FILING FEE FOR SECTION 206:

Under Section 602(b.1)(iii), the filing fee for a registration by qualification is \$500 plus 1/20 of 1% of the maximum aggregate offering price at which securities are to be offered in Pennsylvania, during the effective period of the registration up to a maximum filing fee of \$3,000.

7. Your attention is directed to the Commission’s Prospectus Guidelines for preparation of a prospectus; all items contained therein should be covered to the extent applicable.
8. Submit herewith as part of this Form the following documents in addition to documents requested in Number 8 of Form U-1 (documents on file may be incorporated by reference).
 - (a) Five copies of a prospectus prepared in accordance with the applicable prospectus guidelines. This includes the copy required by Form U-1.
 - (b) An opinion of counsel as to whether the securities which are the subject of this offering will be, when sold and paid for in accordance with this offering, validly issued and outstanding, fully-paid and non-assessable and, if debt securities, will constitute a binding obligation.
 - (c) Copies of any voting trust agreement among or affecting the management of Issuer or otherwise described in the prospectus, to the extent known by and available to Issuer.
 - (d) Copies of every material contract, whether or not made in the ordinary course of business, if:
 - (i) It is specifically referred to in the prospectus.
 - (ii) The issuer’s business is substantially dependent thereon (such as a license or requirements contract).
 - (iii) It involves acquisition or sale of assets for consideration exceeding 15% of all fixed assets of Issuer and its subsidiaries.
 - (iv) It is a lease for a significant part of the property owned and/or occupied by Issuer.
 - (v) It is with the underwriter.
 - (e) The consent of each person named in the prospectus as an expert, or on whose opinion or certification any information was included therein, to the use of such person’s name and opinion or certification.
 - (f) For an offering made pursuant to Section 504(d) of the Act and Regulation 504.060 promulgated thereunder, provide in columnar form the name and address of each Pennsylvania purchaser, the date of sale, and the dollar amount of securities purchased.
9. Your attention is further directed to the following applicable provisions of the Act:
 - (a) Advertisements (Section 606(c), Regulation 606.031);
 - (b) Financial reports to security holders (Section 606(a), regulation 606.011);

- (c) Investor withdrawal rights (Section 207(m)(1), Regulation 207.130);
- (d) Record keeping requirements (Section 209(a), Regulation 209.010(a));
- (e) Post-effective reporting requirements (Section 209(c), Regulation 209.010(b) & (c)).
- (f) Increases in offering amount (Section 207(l)).
- (g) Escrow of promotional shares and escrow of proceeds (Section 207(g), Regulations 207.071 and 207.072).

10. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION
APPLICATION TO REGISTER SECURITIES UNDER
THE PENNSYLVANIA SECURITIES ACT OF 1972

(CHECK ONLY ONE)

SECTION 205 – REGISTRATION BY COORDINATION []
SECTION 206 – REGISTRATION BY QUALIFICATION []

1. **Legal Status of the Issuer**

(A) Exact Name of Issuer: _____

(B) State and Date of incorporation or formation: _____
State Date

2. **Addresses**

(A) Address of Principal Office of Issuer: _____
Number and Street

City State Zip Code Telephone No.

(B) Address of Principal Office of Issuer in Pennsylvania (if other than listed in (A)):

Number and Street

City State Zip Code Telephone No.

(C) Name and address of person to whom correspondence regarding this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

(B) Name and address of counsel to Issuer (if other than listed in (C)):

Name Title Number and Street

City State Zip Code Telephone No.

3. **Information about the Executive Officers of the Issuer**

- (A) State the names and addresses of persons holding any of the following positions with the Issuer:
- (i) General partner
 - (ii) Promoter (as defined in Section 102(o) of the Act)
 - (iii) Manager (if a limited liability company)
 - (iv) President
 - (v) Chief executive officer
 - (vi) Chief operating officer
 - (vii) Chief financial officer
 - (viii) Director of the Issuer who owns 5% or more of any class of voting equity securities of the Issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111).
- (B) Indicate if any person described in (A) currently is registered as an agent under Section 301 of the Act or as a principal of a broker-dealer registered under Section 301 of the Act.
- NO ___ YES ___
- If YES, provide the individual's name, employer and Central Registration Depository number.

4. **Prior Disciplinary History**

- (A) Indicate if any person described in Item 3(A) has been convicted of any crime or made the subject of any sanction described in Section 305(a)(ii)-(ix) of the Act.
- NO ___ YES ___ If YES, describe fully.
- (B) Indicate if any person described in Item 3(A) has been in subject of a Commission order issued under Section 512 (Statutory Bars) or Section 513 (Rescission Offer) of the Act or an order of a court of competent jurisdiction under Section 509(c) of the Act (Civil Contempt).
- NO ___ YES ___ If YES, describe fully.

5. **Previous Sales of Securities in Pennsylvania**

- (A) By the Issuer

Describe all sales of securities made in Pennsylvania during the past two years that directly or indirectly benefitted the Issuer. Include securities issued in exchange for property, services, or other securities and new securities resulting from the modification of outstanding securities. In each case, state:

- (i) The date of sale and description of the securities sold;
 - (ii) Underwriting or selling fees or commissions paid and to whom paid;
 - (iii) Section of the Act or regulation relied upon for the offer and sale of securities.
- NO ___ YES ___

(B) By a person related to the Issuer

Within the period of two years prior to the date of this Form, did any person described in Item 3(A) hold a position as a general partner, promoter (as defined in Section 102(o) of the Act), manager (if a limited liability company), president, chief executive officer, chief operating officer, chief financial officer or a director with a 5% or more ownership of any class of voting equity securities of the issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111) with **another** person, not the Issuer, at the time when that person sold securities in Pennsylvania for which a filing with the Commission was required?

NO ___ YES ___

If YES, provide the following information:

- (i) Name of the person that sold the securities;
- (ii) The position held with the other person;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities;
- (iv) If the proceeds from the sale were paid directly or indirectly to, or used directly or indirectly for, the benefit of the Issuer, please describe in detail.

6. If an independent accountant has been engaged as the principal accountant to audit the most recent financial statement of Issuer or, where Issuer is a partnership, the general partner(s) of Issuer, and such accountant was not the principal accountant for the previous fiscal year's certified financial statements, state the date upon which the successor accountant was engaged and whether preceding such engagement there were any disagreements with the predecessor or auditing procedure, which disagreements, if not resolved to the satisfaction of the predecessor accountant would have caused him to make reference in connection with his opinion to the subject matter of the disagreement.

In response to Items 7-16, please provide the following information or refer to the page of the prospectus where complete information concerning each item may be found.

7. (A) If any non-cash consideration is to be paid for the securities offered, describe fully and indicate the method of valuation.
- (B) State whether any adverse order, judgment or decree has been entered, or any proceeding is pending, before the United States Securities and Exchange Commission or any court in connection with the securities included within this registration statement, or other securities of the same kind or class.
- (C) State the names of all underwriters and broker-dealers proposing to sell or offer these securities for sale in Pennsylvania. (If all such names are not known at the time of filing this Form, a supplemental list may be filed prior to or after effectiveness; provided that no person may participate in this offering as a underwriter or dealer in Pennsylvania until notice of such fact has been filed with the Commission.)
- (D) With respect to any person receiving compensation who is not a broker-dealer registered under Section 301 of the Act, explain why the person is not a promoter as that term is defined in Section 102(o) of the Act.
8. State the class of person to whom this offering will be restricted, if any. State also whether any promoter, officer, director or controlling persons or other person occupying a similar position or performing a similar function, including the spouse, minor children and relatives of such person living in the same household has committed himself or herself to purchase any securities in this offering. If so, describe the nature of such commitment.

9. Itemize below all expenses proposed to be incurred in this offering other than underwriting discounts, including without limitation, legal, accounting and engineering fees, printing and engraving costs, expert and transfer agent fees, state and Federal taxes, and other registration fees. Indicate the proportion of such expenses to be borne by each person selling shares other than the Issuer.
10. If any expert named in the prospectus as having prepared or certified any part thereof or any counsel named therein was employed for such purpose on a contingent fee basis, or at the time of such preparation or certification has ownership or beneficial interest in Issuer or any of its parents, affiliates or subsidiaries, or was affiliated with the Issuer as a promoter, voting trustee, director, officer, employe or underwriter, describe the nature of such contingent fee, interest or affiliation.
11. List all parents, subsidiaries and other entities affiliated with the Issuer, indicating as to each the state of incorporation or formation and the percentage of voting securities owned or other basis of control exercised by the Issuer's immediate parent or general partner(s). Furnish a diagram where necessary for a clear understanding of relationships between entities. Indicate, where applicable: (i) entities for which separate financial statements are being filed, (ii) entities included in group financial statements filed for unconsolidated subsidiaries, and (iii) entities for which no financial statements are filed, indicating and reason therefor.
12. If, within the last five years, the Issuer or, where the Issuer is a partnership, the general partner(s) of the Issuer or any of its/their majority-owned subsidiaries or affiliated entities which have a common general partner with the Issuer has acquired or disposed of a material amount of assets from or to a promoter, officer, director or other person who owns beneficially more than ten percent of any class of securities of the Issuer, furnish the following information: (i) Identity of such promoter, officer director or ten percent beneficial owner from whom the assets were acquired or to whom they were sold; (ii) Date and manner of the acquisition or disposition and a brief description of the assets; (iii) The nature and amount of the consideration given or received therefrom; and (iv) Method used in valuing the consideration.
13. If, within the past two years, there has been any material default in the payment of principal, interest, sinking or purchase fund installment, or any other material default (any of which were not cured within thirty days of occurrence), with respect to any indebtedness of the Issuer or, where the Issuer is a partnership, the general partner(s) of the Issuer, or any of its/their wholly-owned subsidiaries or affiliated entities which have a common general partner with the Issuer identify the indebtedness and state the nature of the default.
14. Provide the following information as to all securities of the Issuer sold within the past two (2) years by the Issuer or proposed to be issued to a promoter, officer, director or other person who owns beneficially ten percent of any class of securities of the Issuer whether they were reacquired by the Issuer or were new issues; securities issued in exchange for property, services or other securities; and new securities resulting from the modification of outstanding securities:
 - (A) Name of each such promoter, officer, director or ten percent beneficial owner;
 - (B) Date of sale, type, class and amount of securities sold;
 - (C) Aggregate and per share price of securities sold; as to any securities sold for other than cash, state the aggregate amount of consideration received by Issuer and the method for valuing such consideration;
 - (D) Nature of the transaction;
 - (E) State whether the securities were: (i) legended and stop-transfer instructions given in connection therewith, or (ii) escrowed, and if so, the terms of the applicable escrow agreement.
15. Furnish information as to all direct remuneration paid by the Issuer and its subsidiaries (on an annualized basis) to each executive officer of the Issuer during its last fiscal year or proposed to be paid under any plan or arrangement during its next fiscal year. The term "executive officer"

means the president, general partner, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration or finance) and any other person occupying a similar status or performing similar functions for the Issuer.

16. Furnish information as to all qualified and non-qualified options to purchase any securities from Issuer or any of its subsidiaries which were granted or proposed to be granted to or exercised by any executive officer, promoter, director or affiliate of Issuer during the preceding five years. The term "executive officer" shall be as defined in Item 15. The term "options" as used in this item includes all options, warrants or rights to acquire such securities.

17. Issuer undertakes:

(A) To send its financial statements, which are audited or reviewed in accordance with generally accepted accounting principles as provided by Section 606(a) of the Act and the regulations adopted thereunder, to each holder of the class of securities sold in this offering not less than annually within 120 days after the close of Issuer's fiscal year.

(B) To keep and maintain the books and records required by Section 209 and the regulations adopted thereunder and will authorize the person having custody of such books and records to make them available to the Commission.

18. **Affirmation**

By executing this Form on behalf of the Issuer, the signatory affirms that:

(A) The undersigned is familiar with the provisions of Section 205 or Section 206 of the Act and the regulations adopted thereunder.

(B) The statements made in this Form, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Form has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

NOTICE UNDER SECTION 207(J) OF THE PENNSYLVANIA SECURITIES ACT
OF 1972 ("ACT") FOR CONTINUATION OF AN OFFERING
REGISTERED UNDER SECTION 205

NOTE: Under Regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers that want to extend the effective period of a Section 205 registration statement for an additional period of one year provided, however, that filing Form 207-J shall not extend the offering for a period beyond the three years from the initial effective date of the registration statement in this Commonwealth. Form 207-J may not be used if the issuer was required to file a new registration statement with the United States Securities and Exchange Commission.

WHEN TO FILE: At the Commission's Harrisburg office prior to the expiration of the currently effective period of registration of an offering of securities under Section 205.

GENERAL INSTRUCTIONS

1. One copy of the Form and all attachments shall be filed with the Pennsylvania Securities commission. If mailed, it is advisable to send it by registered or certified mail, postage paid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference in the Form to each item include in the schedule.
3. This Form shall be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
4. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Notice under Section 207(j) of the Pennsylvania Securities Act of 1972
of Continuation of Section 205 Offering

1. Exact Name of Issuer: _____

2. Address of Principal Office of Issuer: _____
Number and Street

City State Zip Code Telephone No.

3. Name and address of person to whom correspondence regarding this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

4. (A) Initial effective date of registration statement in Pennsylvania:

(B) Description of securities registered:

5. The person executing this Form on behalf of the Issuer hereby affirms that:

(a) Such person is familiar with the provisions of Section 207(j) under the Act and all regulation adopted thereunder, including Regulation 207.101.

(b) The statements made in this Form, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Form has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

REPORT ON SALES OF SECURITIES
GENERAL INSTRUCTIONS

WHO MUST FILE: Issuers which have sold securities in Pennsylvania pursuant to registration by qualification under Section 206, **EXCEPT** where the offering is registered under Section 5 of the Securities Act of 1933 AND the maximum fee has been paid (see Section 02(b)(iii)).

WHEN TO FILE: File Form 209 within 420 days after the effective date of the registration statement in Pennsylvania.

1. For a further explanation of terms used in the Form, refer to Section 102 of the Pennsylvania Securities Act of 1972 ("1972 Act").
2. One manually signed copy of the Form with all attachments shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
3. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
4. The Form filed with the Commission must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
5. In the event that, at any time after the filing of the Form, the issuer becomes aware that any information provided on the Form becomes inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days from the date the issuer became aware that the information previously submitted was inaccurate at the time it was filed.
6. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously on file with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
7. Please remove instruction sheet before filing this Form.

FILE NO.: _____

FORM 209
EFFECTIVE: 10/11/97
REVISED: 12/23/04

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

PART I Issuer Information

1. Exact Name of Issuer: _____

2. Address of Principal Office of Issuer: _____

Number and Street

City State Zip Code Telephone No.

3. Name and address of person to whom correspondence regarding this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

PART II Report of Sales of Securities Registered under Section 206.

4. Date of effectiveness of registration statement under Section 206 _____

5. (A) Offering in Pennsylvania:

(i) Total number of shares or other units: _____

(ii) Per share or unit price: _____

(iii) Maximum aggregate offering price: _____

(B) Sales in Pennsylvania:

(i) Number of shares or other units: _____

(ii) Aggregate proceeds received: _____

Each of the persons executing this report on behalf of the Issuer hereby affirms that the statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact. Each of such persons further affirms that he is familiar with the penalties contained in the Pennsylvania Securities Act of 1972, and all regulations adopted thereunder for making any false or incomplete statement in connection with the sale of a security or in any filing with the Commission.

IN WITNESS WHEREOF, this report has been executed on _____

(Insert Date)

(NAME OF ISSUER)

By: _____

Title

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

APPLICATION UNDER SECTION 210 OF THE
PENNSYLVANIA SECURITIES ACT OF 1972 FOR
RETROACTIVE REGISTRATION OF INVESTMENT COMPANY SECURITIES

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

Who May File: Only issuers that are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts as those persons are classified in the Investment Company Act of 1940 ("Investment Companies") that had an effective registration under Section 205 or 206 of the Pennsylvania Securities Act ("1972 Act") at the time the securities which are the subject of this application were sold in Pennsylvania.

When To File: form 210 must be filed within 24 months from the date of the first sale of securities intended to be covered by this application occurred in Pennsylvania.

Other Conditions: the provisions of Section 210 are not available if, at the time Form 210 is filed with the Commission, the Investment Company:

1. Is the subject of a civil, criminal or administrative proceeding alleging violations of Section 201 of the 1972 Act; or
2. Fails to attach to this Form a check made payable to the "Commonwealth of Pennsylvania" in the amount prescribed by Section 602.1(d) of the 1972 Act (see also Item 10 of Form 210).

NOTE: Under 64 Pa. Code § 604.011, a facsimile transmission of any materials to the Commission does not constitute a filing with the Commission.

GENERAL INSTRUCTIONS

1. One manually signed copy, and one photocopy of the Form and two copies of all attachments shall be filed with the Pennsylvania Securities commission ("Commission") at its Harrisburg Office. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. The form filed with the Commission must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.

4. In the event, that at any time from the date of the filing of the Form with the Commission until the granting or denial of the application, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the commission on Form AM within 5 business days of the occurrence of the event which required the filing of such amendment.
5. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously on file with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
6. The appropriate oversale assessment required by Section 602.1(d) shall accompany the filing of this Form and must be received before an application for retroactive registration can be granted.
7. If retroactive registration is granted, the securities sold during the period describe in Item 6 of the Form will be deemed to be registered retroactive to the date of the initial registration.
8. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE 1972 ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

APPLICATION UNDER SECTION 210 OF THE
PENNSYLVANIA SECURITIES ACT OF 1972 FOR
RETROACTIVE REGISTRATION OF INVESTMENT COMPANY SECURITIES

Issuer Information

- 1. Exact name of Investment Company: _____
- 2. Address: _____
- 3. Contact Person: _____
- 4. Telephone: _____ 5. Fax: _____

Registration Information

- 6. State the time period during which the securities intended to be covered by this application for retroactive registration were sold in Pennsylvania _____
- 7. Describe the securities and the amount sold in Pennsylvania during the time period described in Item 6 above:

- 8. What was the Investment Company's Pennsylvania registration file number for the period described in Item 6 above:

Civil, Criminal or Administrative Proceedings

- 9. As of the date filing Form 210 with the Commission, is the Investment company identified in Item 1 the subject of any civil, criminal or administrative proceeding for violation of Section 201 of the 1972 Act for the securities described in Item 7:

YES _____ NO _____

If the response is **YES**, the retroactive registration provisions of Section 210 are not available to the applicant.

Calculation of Oversale Assessment Payable

- 10. Using the fee schedule in Section 602.1(b) of the 1972 Act, determine the amount of fees payable to the Commission based upon the total amount of securities sold (registered and over-sold securities) during the effective registration period in Pennsylvania that included the time period described in Item 6.

Enter Fee Payable Amount Here: \$ _____

- 11. Enter the aggregate amount of fees paid by the Investment company (including any fees paid in connection with amendment filings) during the effective registration period in Pennsylvania that included the time period described in Item 6.

Enter Total Amount of Fees Paid Here: \$ _____

12. The oversale assessment is three times the difference between Item 10 and 11. If the oversale assessment is less than \$350, the oversale assessment due is \$350. If the oversale assessment is greater than \$3,000, the oversale assessment is \$3,000.

Enter the Amount of the Oversale Assessment Due Here: \$ _____

Affirmation

13. Each person executing this Form on behalf of the Investment Company hereby affirms that:
- (a) he/she is familiar with the provisions of Sections 201, 210 and 602.1 of the 1972 Act and all regulations adopted thereunder, including Regulation 210.010; and
 - (b) the statements made herein, including all attachments thereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this application has been duly executed on _____
(Insert Date)

(Name of Investment Company)

By: _____

Title

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

Request for Waiver of Procedures under Regulation 504.060(b)
"RESCISSION OFFERS"

GENERAL INSTRUCTIONS

1. One completed manually signed Form and all attachments should be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. If the space is insufficient, attach a schedule to the Form and make reference in the Form to each item included.
3. Do not abbreviate names or use initials. All questions should be answered fully.
4. In answering any question in the Form, the Offeror may incorporate by reference information contained in any document attached thereto or previously on file with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
5. The Form filed with the Commission must be manually signed by the Offeror. If the Offeror is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, it should be signed in the name of such organization by a person responsible for the direction or management of its affairs. With respect to Item 8, the chief executive officer, chief operating officer or chief financial officer must sign on behalf of the corporate general partner, if applicable.
6. No filing fee is required with this Form.
7. Please remove this instruction sheet before filing this Form.

DISCLOSURE GUIDE

8. Attach a copy of disclosure prepared to satisfy the anti-fraud provisions of Section 401(b) of the Act which will be given to each rescission offeree, including the specific source of payment for the rescission offer.
9. Where the Offeror is the issuer and plans to continue offering its securities for sale in Pennsylvania, detailed disclosure should be given if the proceeds from the sale of additional securities will be used to effect the rescission offer.
10. Attach a copy of the proposed Notice of Rescission Offer which contains only the information set forth in Item 14. You are strongly advised to refrain from distributing the rescission offer materials until the completion of the staff review period set forth in Regulation 504.060(b)(1), in the event the Waiver Request is denied.

FORM RO (General Instructions)

11. The Notice of Rescission Offer and accompanying disclosure materials are to be delivered to the offeree personally or be sent by certified mail, return receipt requested, to each offeree's last known address.

ADVISORY

12. **EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.**
13. **A RESCISSION OFFER PERFORMED IN ACCORDANCE WITH THE TERMS OF SECTION 504 MAY IMPACT UPON THE CIVIL LIABILITY OF THE OFFEROR UNDER SECTIONS 501-503 OF THE ACT BUT IT DOES NOT NECESSARILY PRELUDE POSSIBLE ADMINISTRATIVE ACTION BY THE COMMISSION. SECURITIES SUBJECT TO A RESCISSION OFFER FOR A VIOLATION OF SECTION 201 OF THE ACT REMAIN UNREGISTERED.**

NOTICE OF RESCISSION OFFER

14. Where a rescission offer is made by the seller of the securities to the purchaser, the letter advising of the rescission offer must contain only the information set forth below. Where a rescission offer is being made by the purchaser to the seller, the letter advising of the rescission offer must contain only the information set forth below except that appropriate modifications should be made in paragraphs 1 and 2 to conform to the provisions of Section 504(e) of the Act.

In (insert time period), (insert full description and amount of securities) were offered and sold to residents of the Commonwealth of Pennsylvania. It appears as if the provisions of Section (insert 201, 301 or 401-406) of the Pennsylvania Securities Act of 1972 (1972 Act) relating to (insert "registration of securities" for a § 201 violation; "registration of persons selling securities" for a § 301 violation; and "compliance with anti-fraud provisions" for a § 401-406 violation) may not have been complied with in connection with the offer or sale of these securities. Accordingly, (insert name of person making this rescission offer) is offering to repurchase these securities from you for your purchase price for cash plus 6% interest from the date of purchase less any dividends, interest payments or cash distributions paid to date. The enclosed disclosure materials should be reviewed carefully before deciding whether to accept or reject the offer to repurchase your securities. This offer remains open for 30 days from the date you receive this Notice. During such time you may either accept or refuse the offer.

If you no longer own the securities which are the subject of this offer to repurchase, (insert Offeror's name) offers to pay you, upon acceptance of the offer, an amount in cash equal to the damages, if any, computed in accordance with Section 501(a) of the 1972 Act as more fully described in the accompanying disclosure materials.

If you affirmatively REJECT the offer or fail to affirmatively ACCEPT the offer within 30 days in the manner described in the accompanying disclosure materials, any rights you may have with respect to any failure to comply with Section (insert 201, 301 or 401) of the 1972 Act will be terminated.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Request for Waiver of Procedures under Regulation 504.060(b)
"RESCISSION OFFERS"

1. Exact Name of Offeror: _____

2. Address of Principal Office of Offeror: _____
Number and Street

City State Zip Code Telephone No.

3. Name and address of person to whom correspondence on this filing should be sent:

Name Title Number and Street

City State Zip Code Telephone No.

4. (A) Legal Form of Offeror (Corporation, Partnership, Individual, etc.): _____

(B) If Offeror not an individual, designate state of incorporation or formation: _____

(C) State the names and addresses of the general partner, promoter, and chief executive officer, chief operating officer and chief financial officer of the Offeror.

Complete (D) through (F) only if Offeror is the Issuer.

(D) If anyone in (C) has held a similar position with another person (not the Issuer) which made a rescission offer in Pennsylvania within the past 5 years, state the name of the person and date of the rescission offer. If none, so state.

(E) Has the Issuer made a rescission offer in Pennsylvania within the last 5 years? YES NO [] []

(F) Does the Issuer plan to continue offering securities for sale in Pennsylvania which are the subject of the rescission offer? If yes, upon which section of the Act will the Issuer rely? YES NO [] []

5. Has the general partner, promoter, chief executive officer, chief operating officer, chief financial officer or owner of 20% or more of any class of securities of the Issuer been convicted of any crime or made the subject of any sanction or otherwise found to have met any of the criteria described in Section 305(a)(ii)-(ix) of the Act? If yes, describe fully. YES NO [] []

6. (A) Describe the type and price per unit of securities subject to the rescission offer. (B) For each sale of securities covered by this rescission offer, provide in columnar form the name and address of each Pennsylvania purchaser, the date of sale, and the dollar amount of securities purchased.

7. (A) Provide the name and address of the person who effected the transactions which are now the subject of the rescission offer.
- (B) Were sales commissions or other remuneration paid directly or indirectly on the securities transactions? If yes, explain. YES NO
[] []
- If the response to (B) is yes, complete (C) and (D) as applicable:
- (C) Were the transactions subject to the rescission offer effected through a Broker-Dealer? YES NO
[] []
- If yes, complete (i) and (ii) below.
- (i) Is the Broker-Dealer registered in Pennsylvania? YES NO
If yes, state name, address and CRD Number. [] []
- (ii) If the Broker-Dealer is not registered in Pennsylvania, describe how the Broker-Dealer has complied with Section 301 of the Act.
- (D) Were the securities subject to the rescission offer sold directly by a person registered in Pennsylvania as an Agent or a Principal of a Broker-Dealer? YES NO
If yes, provide the following information: [] []

Agent's Name	Agent's CRD Number	Broker-Dealer	
Number and Street of Broker-Dealer Office Involved in the Sale			
City	State	Zip Code	Telephone No.

8. Each Offeror executing this Waiver Request hereby represents that:
- (A) The Offeror, by his signature below, and, if the Offeror is the Issuer, the general partner, promoter, chief executive officer, chief operating officer and chief financial officer of the Issuer, by their signatures below, is aware of the need to comply with the provisions of the Act in the future, particularly if such person serves in the same or similar position with another person (not the Offeror). The signature of a person identified in this paragraph is not required if that person was not affiliated with the Offeror when the sales of securities which are the subject of this rescission offer occurred.

SIGNATURE	TYPED NAME	TITLE	DATE

- (B) The Offeror is familiar with the provisions of section 504 of the Act and regulations adopted thereunder.
- (C) statements made herein, including attachments hereto, are not incomplete in any material respect or false or misleading with respect to a material fact.
- (D) The Offeror, will advise Commission staff of the results of the rescission offer within 15 calendar days after the expiration of the rescission offer period.

IN WITNESS WHEREOF, this Waiver Request has been duly executed on _____
(Insert Date)

(NAME OF OFFEROR)

By: _____

Title

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must therefore be complete. You may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections and forecasts). You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented. **The information in the Pennsylvania SIO Supplement is an integral part of the SOI Form and MUST accompany the SUI Form information at all times and under all circumstances.**

SOLICITATION OF INTEREST FORM

NAME OF COMPANY

Street Address of Principal Office: _____

Company Telephone Number: _____

Date of Organization: _____

Amount of the Proposed Offering: _____

Name of Chief Executive Officer: _____

THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR OR PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING IS QUALIFIED BY THE SEC AND IS REGISTERED IN THIS STATE¹

- This Company () Has never conducted business operations.
() Is in the development stage.
() Is currently conducting operations.
() Has shown a profit for the last fiscal year.
() Other (specify) _____

1 The language "IS QUALIFIED BY THE SEC AND" is not applicable if the offering is made under Section 3(a)(11) of the federal Securities Act of 1933.

BUSINESS:

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.
2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

OFFERING PROCEEDS:

3. Describe in general how the company intends to use the proceeds of the proposed offering.

KEY PERSONNEL OF THE COMPANY:

4. Provide the following information for all officers, directors or persons occupying similar positions:

Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting indications of interest under the Pennsylvania Securities Act of 1972 (1972) when used in conjunction with Form SOI. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the 1972 Act and must therefore be complete. You may not exaggerate the investment opportunity, minimize the risks of the enterprise or predict revenues, profits or payment of dividends (including financial projections and forecasts). **The information in the Pennsylvania SOI Supplement is an integral part of the SOI Form and MUST accompany the SOI Form information at all times and under all circumstances.**

PENNSYLVANIA SOI SUPPLEMENT

NAME OF COMPANY

Check the appropriate response(s)

1. The issuer's revenues during the last full fiscal year were:
 - a. Less than \$10,000___.
 - b. \$10,000 or more but less than \$50,000___.
 - c. \$50,000 or more but less than \$250,000___.
 - d. \$250,000 or more but less than \$1 million___.
 - e. \$1 million or more___.
 - f. Issuer has been in existence for less than a full fiscal year.

2. The issuer had a profit or loss during its last full fiscal year of:
 - a. PROFIT OF: Less than \$10,000___.
\$10,000 or more but less than \$50,000___.
\$50,000 or more but less than \$250,000___.
\$250,000 or more___.
 - b. LOSS OF: Less than \$10,000___.
\$10,000 or more but less than \$50,000___.
\$50,000 or more but less than \$250,000___.
\$250,000 or more___.
 - c. Issuer has been in existence for less than a full fiscal year___.

3. The average price per share of stock paid in cash by the issuer's current shareholders was:
 - a. Less than \$.01___.
 - b. \$.01 or more but less than \$.05___.
 - c. \$.05 or more but less than \$.10___.

- d. \$.10 or more but less than \$.25 ___.
 - e. \$.25 or more but less than \$1.00 ___.
 - f. \$1.00 or more ___.
4. The issuer has engaged in the following transactions with its officers, directors, 10% shareholders or their affiliates or relatives:
- a. Issued securities in exchange for property or services ___/
 - b. Loaned money ___.
 - c. Rented or purchased property ___.
 - d. Purchased or sold goods or services ___.
 - e. No such transactions have occurred ___.
5. During the last full fiscal year, the issuer's officers and directors received combined aggregate cash compensation of:
- a. Less than \$50,000 ___.
 - b. \$50,000 or more but less than \$100,000 ___.
 - c. \$100,000 or more but less than \$250,000 ___.
 - d. \$250,000 or more but less than \$500,000 ___.
 - e. \$500,000 or more ___.
6. Are there any outstanding options or warrants held by current shareholders?
- YES ___.
- NO ___.
7. Does the issuer's liabilities currently exceed the fair market value of its assets?
- YES ___.
- NO ___.
8. Is the issuer now, or in the past two years was it, unable to meet its obligations as and when they become due in the usual course of business?
- YES ___.
- NO ___.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor, 1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

Takeover Offeror Report Regarding Participating Broker-Dealer
and Affiliate Transactions with the Target Company

GENERAL INSTRUCTIONS

1. Two completed and manually signed Forms and all attachments should be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. If the space is insufficient, attach a schedule to the Form and make reference in the Form to each item included in the schedule.
3. Do not abbreviate names or use initials. All questions should be answered fully.
4. The Form filed with the Commission must be manually signed by the Offeror. If the Offeror is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
5. All terms used in the Form shall have the same meaning as set forth in Section 3 of the Takeover Disclosure Law, 70 P.S. §§ 70 et seq. (Act).
6. The Offeror may respond to Item 5 by attaching, as an exhibit to this Form, a copy of any written communication between the [O]fferor and the persons identified in Item 4 which describe the rendering to the Target Company of any services enumerated in Item 5(A) through (D), inclusive.
7. No filing fee is required with this Form.
8. Please remove this instruction sheet before filing this Form.

COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA SECURITIES COMMISSION

Takeover Offeror Report Regarding Participating Broker-Dealer
 and Affiliate Transactions with the Target Company

1. Exact Name of Offeror: _____

2. Address of Principal Office of Offeror: _____

Number and Street

 City State Zip Code Telephone No.

3. Name and address of person to whom correspondence regarding this filing should be sent:

 Name Title Number and Street

 City State Zip Code Telephone No.

4. State the name and address of each of the following:

- (A) Broker-dealer(s) participating as a Dealer Manager(s) on behalf of the Offeror in the Takeover Offer.
- (B) Broker-dealer(s), including any affiliate(s) thereof, providing financial advice to the Offeror in connection with the Takeover Offer.

5. If any person identified in Item 4 was engaged, within 3 years prior to the date of filing of this Form, in providing services in connection with underwriting or merger and acquisition activities for or on behalf of the Target Company, the Offeror shall obtain from such person and provide the following information with respect to such services. If no person identified in Item 4 provided such services to the Target Company, the Offeror should so state.

- (A) The name of the firm which provided the service(s).
- (B) The type of service(s) provided.
- (C) The time period during which the service(s) were provided.
- (D) The fee or other compensation received or providing the service(s).

6. The Offeror, by executing this Form, hereby represents with respect o Item 1-4 that:
- (A) It is familiar with the provisions of the Act and regulations adopted thereunder.
 - (B) The statements made herein, including attachments hereto, are not incomplete in any material respect or false or misleading with respect to a material fact.

IN WITNESS WHEREOF, this Form has been duly executed on _____
(Insert Date)

(NAME OF ISSUER)

By: _____

Title