

CHAPTER 102. DEFINITIONS

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§ 102.031. Agent registration.

A person may not be deemed an officer, director or partner or employee 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.

Source

The provisions of this § 102.031 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582.

§ 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.

Authority

The provisions of this § 102.041 amended under section 102(d), (k) and (t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(d), (k) and (t) and 1-609(a)).

Source

The provisions of this § 102.041 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; corrected September 7, 1990, effective August 4, 1990, 20 Pa.B. 4713; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (200001) to (200002).

Cross References

This section cited in 64 Pa. Code § 102.111 (relating to institutional investor).

§ 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.

Source

The provisions of this § 102.050 adopted February 8, 1974, effective February 9, 1974, 4 Pa.B. 235.

§ 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, secu-

rities 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.

Authority

The provisions of this § 102.111 amended under sections 102(d), (k) and (t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(d), (k) and (t) and 6-609(a)).

Source

The provisions of this § 102.111 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; amended September 20, 1985, effective September 21, 1985, 15 Pa.B. 3348; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255. Immediately preceding text appears at serial pages (200002) to (200004).

§ 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:

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

(2) 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.

Authority

The provisions of this § 102.112 issued under sections 102(d), (k) and (t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(d), (k) and (t) and 1-609(a)).

Source

The provisions of this § 102.112 adopted July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365.

§ 102.170. [Reserved].

Source

The provisions of this § 102.170 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; reserved September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994. Immediately preceding text appears at serial page (151927).

§ 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.

Source

The provisions of this § 102.201 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227.

§ 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 when one 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.

Authority

The provisions of this § 102.202 amended under sections 102(d), (k) and (t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(d), (k) and (t) and 6-609(a)).

Source

The provisions of this § 102.202 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; corrected September 21, 1990, effective August 4, 1990, 20 Pa.B. 4868; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (234869) to (234870).

§ 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.

Source

The provisions of this § 102.230 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174.

§ 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).

Authority

The provisions of this § 102.241 amended under sections 102(d), (k) and (t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(d), (k) and (t) and 1-609(a)).

Source

The provisions of this § 102.241 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial page (234871).

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