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CHAPTER 202. EXEMPT SECURITIES

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§ 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)).

Authority

The provisions of this § 202.010 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)).

Source

The provisions of this § 202.010 amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 652; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (264081) to (264082).

§ 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 an 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.

Authority

The provisions of this § 202.030 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)).

Source

The provisions of this § 202.030 amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (264082) and (262365).

§ 202.031. [Reserved].

§ 202.032. [Reserved].

Source

The provisions of this § 202.032 adopted February 21, 1975, effective February 22, 1975, 5 Pa.B. 334; reserved July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial page (262365).

§ 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 the 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.

Source

The provisions of this § 202.041 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085.

§ 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.

Authority

The provisions of this § 202.051 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)).

Source

The provisions of this § 202.051 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (262366) and (268773).

§ 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)).

Source

The provisions of this § 202.052 adopted August 8, 1975, effective August 9, 1975, 5 Pa.B. 2034.

§ 202.060. [Reserved].**§ 202.070. Securities issued in connection with employe 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).

Authority

The provisions of this § 202.070 amended under sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-603(a), 1-606(d) and 1-609(a)).

Source

The provisions of this § 202.070 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3613; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551. Immediately preceding text appears at serial pages (262367) to (262368).

§ 202.080. [Reserved].

Source

The provisions of this § 202.080 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255. Immediately preceding text appears at serial pages (120879), (25152) to (25153) and (30399) to (30400).

§ 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 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of the 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 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).

Authority

The provisions of this § 202.091 amended under sections 202(g) and (i), 293(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-603(a), 1-606(d) and 1-609(a)).

Source

The provisions of this § 202.091 adopted October 22, 1976, effective October 23, 1976, 6 Pa.B. 2688; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (234882) and (252149).

§ 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 a 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*—A 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 consid-

ered insolvent if the auditor's report to the guarantor's audited balance sheet and statement of income did not contain a 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.

Authority

The provisions of this § 202.092 issued under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)).

Source

The provisions of this § 202.092 adopted April 10, 1981, effective April 11, 1981, 11 Pa. B. 1252; amended February 7, 1986, effective February 8, 1986, 16 Pa.B. 384; amended January 8, 1999, effective January 9, 1999, 29 Pa.B. 202; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (262369) to (262370) and (286675) to (286676).

§ 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).

Authority

The provisions of this § 202.093 amended under sections 202(i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(i) and 1-609(a)).

Source

The provisions of this § 202.093 adopted December 2, 1988, effective December 3, 1988, 18 Pa.B. 5359; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032. Immediately preceding text appears at serial pages (262372) to (262373).

§ 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 mean 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.

Authority

The provisions of this § 202.094 issued under sections 102(k), 202(h) and (i), 203(r), 204(a), 207(h), (i) and (k), 209(a), 606(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-102(k), 2-202(h) and (i), 2-203(r), 2-204(a), 2-207 (h), (i) and (k), 2-209(a), 6-606(a) and 6-609(a)).

Source

The provisions of this § 202.094 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255.

§ 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 the 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(a) (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).

Authority

The provisions of this § 202.095 issued under sections 202(i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(i) and 1-609(a)).

Source

The provisions of this § 202.095 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032. Immediately preceding text appears at serial pages (262374) to (262375).

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