

CHAPTER 203. EXEMPT TRANSACTIONS

- Sec.
203.011. Nonissuer transactions.
203.020. [Reserved].
203.031. Fiduciary capacity.
203.041. Limited offerings.
203.050. [Reserved].
203.060. [Reserved].
203.070. [Reserved].
203.080. [Reserved].
203.091. Equity securities issued by reporting company.
203.101. Mortgages.
203.110. [Reserved].
203.120. [Reserved].
203.131. Bona fide pledges.
203.141. Sales to existing security holders.
203.151. Proxy materials.
203.161. Debt securities of nonprofit organizations.
203.171. Liquidations, dividends and distributions.
203.180. [Reserved].
203.181. [Reserved].
203.182. [Reserved].
203.183. Agricultural cooperative associations.
203.184. Offers and sales to principals.
203.185. Offers prior to effectiveness of registration by qualification exempt.
203.186. Employee takeovers.
203.187. Small issuer exemption.
203.188. Cooperative Business Associations Exemption.
203.189. Isolated transaction exemption.
203.190. Certain Internet offers exempt.
203.191. SEC Rule 505 offerings.
203.192. SEC Rule 801 and 802 offerings exempt.
203.201. Accredited investor exemption.
203.202. Certain transactions with persons from Canada exempt.
203.203. Certain Rule 144A exchange transactions exempt.

§ 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 non-issuer transaction for purposes of section 203(a) of the act (70 P. S. § 1-203(a)).

Source

The provisions of this § 203.011 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916.

§ 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).

Source

The provisions of this § 203.031 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174.

§ 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.

Authority

The provisions of this § 203.041 amended under sections 202(a), (c), (e) and (i), 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i), 1-203(d), (o) and (p), 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); and the Takeover Disclosure Law (70 P. S. § 74).

Source

The provisions of this § 203.041 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2117; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456. Immediately preceding text appears at serial pages (310482), (262379) to (262380), (297475) to (297476) and (317571) to (317575).

Cross References

This section cited in 64 Pa. Code § 203.191 (relating to SEC Rule 505 offerings); 64 Pa. Code § 203.201 (relating to accredited investor exemption); and 64 Pa. Code § 204.011 (relating to waivers of the 12-month holding period).

§ 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.

Authority

The provisions of this § 203.091 amended under sections 203(d), (i.1), (j) and (n)—(t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(d), (i.1), (j) and (n)—(t) and 1-609(a)).

Source

The provisions of this § 203.091 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3614; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; corrected January 5, 1996, effective November 4, 1995, 26 Pa.B. 30; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (262387) to (262392).

§ 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).

Authority

The provisions of this § 203.101 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 § 203.101 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; 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 (262392) to (262393).

§ 203.110. [Reserved].**§ 203.120. [Reserved].****Source**

The provisions of this § 203.120 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended December 2, 1988, effective December 3, 1988, 18 Pa.B. 5360; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994. Immediately preceding text appears at serial page (185517).

§ 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.

Source

The provisions of this § 203.131 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227.

§ 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 security holders 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 a 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 when 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.

Authority

The provisions of this § 203.141 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 § 203.141 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 653; corrected May 29, 1998, effective May 7, 1994, 28 Pa.B. 2509; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (209003) to (209004), (200031) to (200034) and (246689) to (246690).

§ 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 offers 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.

Authority

The provisions of this § 203.151 amended sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205, 206, 207(g), (j.1) and (n), 209(b), 211(a) and (b), 301, 303, 504, 513, 603(a), 606(d) and 609 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, 1-206, 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-301, 1-303, 1-504, 1-513, 1-603(a), 1-606(d) and 1-609); and the Takeover Disclosure Law (70 P. S. § 74).

Source

The provisions of this § 203.151 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended August 1, 1986, effective August 2, 1986, 16 Pa.B. 2847; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456. Immediately preceding text appears at serial pages (317578) to (317583).

§ 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.

Authority

The provisions of this § 203.161 amended under sections 203(d), (i.1), (j) and (n)—(t) 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(d), (i.1), (j) and (n)—(t) 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); and the Takeover Disclosure Law (70 P. S. § 74).

Source

The provisions of this § 203.161 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456. Immediately preceding text appears at serial pages (317583) to (317588) and (297483).

§ 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).

Authority

The provisions of this § 203.171 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 § 203.171 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4777; 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 page (262409).

§ 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 such 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 orga-

nized 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.

Authority

The provisions of this § 203.183 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 § 203.183 adopted October 1, 1976, effective October 2, 1976, 6 Pa.B. 2447; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (200054) to (200055).

§ 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 neces-

sary 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 an 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.

Authority

The provisions of this § 203.184 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 § 203.184 adopted June 8, 1979, effective June 9, 1979, 9 Pa.B. 1807; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4778; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (200055) to (200057).

Cross References

This section cited in 64 Pa. Code § 203.151 (relating to proxy statements).

§ 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 all 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 offers 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 such 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).

Authority

The provisions of this § 203.185 issued under the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-704); 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 § 203.185 adopted January 21, 1983, effective January 22, 1983, 13 Pa.B. 526; 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 (262413) to (262415).

§ 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 nonassessable 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.

Authority

The provisions of this § 203.186 issued under the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-704); 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 § 203.186 adopted January 21, 1983, effective January 22, 1983, 13 Pa.B. 523; 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 (262415) to (262416).

§ 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 the 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 offer-ees, purchasers and clients) applies to offers and sales of securities made under this section.

Authority

The provisions of this § 203.187 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-203(r)); 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 § 203.187 adopted January 30, 1987, effective January 31, 1987, 17 Pa.B. 562; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4780; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (200063) to (200064).

Cross References

This section cited in 64 Pa. Code § 203.189 (relating to isolated transaction exemption); and 64 Pa. Code § 606.031 (relating to advertising literature).

§ 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 busi-

ness 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.

Authority

The provisions of this § 203.188 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-203(r)).

Source

The provisions of this § 203.188 adopted January 30, 1987, effective January 31, 1987, 17 Pa.B. 561.

§ 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 the 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) do 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.

Authority

The provisions of this § 203.189 amended under sections 203(d), (i1), (j) and (n)—(t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(d), (i.1), (j) and (n)—(t) and 1-609(a)).

Source

The provisions of this § 203.189 adopted September 25, 1992, effective September 26, 1992, 22 Pa.B. 4775; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial pages (286684) to (286686).

Cross References

This section cited in 64 Pa. Code § 606.031 (relating to advertising literature).

§ 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 this 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.

Authority

The provisions of this § 203.190 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(a), 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 § 203.190 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255.

Cross References

This section cited in 64 Pa. Code § 606.031 (relating to advertising literature).

§ 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.

Authority

The provisions of this § 203.191 adopted 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 § 203.191 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18.

§ 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).

Authority

The provisions of this § 203.192 issued under section 203(j), (q) and (r) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(j), (q) and (r)).

Source

The provisions of this § 203.192 adopted September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551.

§ 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.

Authority

The provisions of this § 203.201 adopted 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 § 203.201 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18.

§ 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).

Authority

The provisions of this § 203.202 issued under sections 203(r) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(r) and 1-609(a)).

Source

The provisions of this § 203.202 adopted December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032.

§ 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.

Authority

The provisions of this § 203.203 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-203(r)).

Source

The provisions of this § 203.203 adopted April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307.

[Next page is 204-1.]

203-24

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