

CHAPTER 204. EXEMPTION PROCEEDINGS

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§ 204.000. [Reserved].**§ 204.010. Increasing the number of purchasers and offerees.**

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P. S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P. S. §§ 1-203(d) and (e)) shall be increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during 12-consecutive months under section 203(e) shall be 90 persons, except that offers made to experienced private placement investors, as that term is defined in subsection (d), who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during 12-consecutive months under section 203(d) shall be 35 persons, except that sales made to experienced private placement investors, as that term is defined in subsection (d) are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305 (a)(ii)—(xiii) of the act (70 P. S. § 1-305(a)(ii)—(xiii)) unless the person subject to this disqualification is registered under section 301 of the act (70 P. S. § 1-301).

(2) *Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Commission the notice required by section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required by section 602(b.1)(viii) of the act (70 P. S. § 1-602(b.1)(viii)).

(3) *Broker-dealer requirement.* All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act, except that this condition does

not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and (e) of the act, respectively.

(c) *Exceptions.*

(1) Subsection (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this Commonwealth and in the Form BD filed with the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection (b)(1), to act in a capacity other than that for which the person is registered.

(2) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Definitions.* For purposes of this section, the following terms have the following meanings:

(1) *Experienced private placement investor.* An individual—and spouse when purchasing as joint tenants or as tenants by the entirety—who previously has purchased a minimum of \$450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

(2) *Private placement offering of securities.* An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77) under section 3(b) or 4(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(2)).

(3) *Purchase of securities by an experienced private placement investor.* The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

(e) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P. S. § 1-301) that sells a security to an experienced private placement investor in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) must receive a written representation that the purchaser meets the definition of experienced private placement investor in subsection (d)(1) and must have reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(f) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are deemed to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act are applicable to offers and sales to persons permitted by this section.

Authority

The provisions of this § 204.010 issued under sections 204(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-204(a) and 1-609(a)).

Source

The provisions of this § 204.010 adopted November 4, 1983, effective November 5, 1983, 13 Pa.B. 3387; amended April 19, 1985, effective February 16, 1985, 15 Pa.B. 1430; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2128; 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 (264085) to (264086) and (262427).

Cross References

This section cited in 64 Pa. Code § 203.041 (relating to limited offerings); 64 Pa. Code § 203.187 (relating to small issuer exemption); 64 Pa. Code § 203.189 (relating to isolated exemption); 64 Pa. Code § 203.191 (relating to SEC Rule 505 offerings); 64 Pa. Code § 504.060 (relating to rescission offers); 64 Pa. Code § 606.041 (relating to delegation and substitution); and 64 Pa. Code § 609.010 (relating to use of prospective financial statements).

§ 204.011. Waivers of the 12-month holding period.

(a) Under section 204(a) of the act (70 P. S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P. S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

- (1) The restricted securities are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) subsequent to a notice filed with the Commission under section 203(d) and § 203.041 (relating to limited offerings).
- (2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.
- (3) The purchaser undergoes liquidation or dissolution if the action is not undertaken for the purpose of avoiding registration.
- (4) The purchaser becomes insolvent.

(5) The issuer is merged into another entity and new securities are exchanged for the restricted securities, if the merger is not undertaken for the purpose of avoiding registration of the restricted security.

(6) The restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer's securities.

(7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

(8) The restricted securities are subject to repurchase under a buy-sell agreement that is conditioned with terms of employment or other commercial, as opposed to, mere investment relationship.

(9) The restricted securities are to be exchanged for other securities of the issuer in a transaction exempt from registration under sections 202 or 203 of the act (70 P. S. §§ 1-202 and 1-203), if the exchange is not undertaken for the purpose of avoiding registration.

(b) For purposes of this section, the following terms, have the following meanings:

(1) *Restricted securities*—Securities purchased under section 203(d) of the act where the purchaser is subject to the restriction not to resell the security for 12 months after the date of purchase.

(2) *Insolvent*—The inability of the purchaser to pay debts as they fall due in the usual course of business or having liabilities in excess of the fair market value of assets.

(c) For transactions undertaken in reliance on waivers provided in subsections (a)(3) and (4), the person acquiring the restricted securities shall agree with the issuer in writing at the time of sale not to resell the restricted securities prior to the expiration of the original 12-month holding period.

(d) In addition to the automatic waivers set forth in subsection (a), persons may make application to the Commission under section 204(a) of the act for a discretionary order to waive the 12-month holding period for a restricted security in a proposed specified transaction in which the applicant shall demonstrate that the sale of the restricted security is not being undertaken for the purpose of avoiding registration or otherwise would constitute a distribution in violation of the act.

Authority

The provisions of this § 204.011 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 § 204.011 adopted May 6, 1988, effective May 7, 1988, 18 Pa.B. 2129; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (239969) to (239970).

Cross References

This section cited in 64 Pa. Code § 203.041 (relating to limited offerings).

§ 204.012. Waivers for pre-effective offers under section 203(h).

Under section 204(a) of the act (70 P. S. § 1-204(a)), the Commission waives the requirement in section 203(h) of the act (70 P. S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the Commission to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) has filed a registration statement with the United States Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) prior to the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

Authority

The provisions of this § 204.012 amended under sections 102(k), 202(g)—(i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (i), (j.1), (k) 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. §§ 1-102(k), 1-202(g)—(i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (i), (j.1), (k) 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 § 204.012 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial pages (239971) to (239972).

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(297498) No. 346 Sep. 03

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