

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

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§ 207.010. [Reserved].

§ 207.020. [Reserved].

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§ 207.040. [Reserved].

§ 207.050. Reports by engineers, appraisers and others.

(a) The Commission may, under section 207(e) of the act (70 P. S. § 1-207(e)), by order, require as a condition of registration that the issuer or other person seeking to register securities for sale submit a technical report, prepared and certified by an engineer, appraiser, accountant or other professional person with respect to the value of an asset held by the issuer or other material matter deemed by it to be reasonably related to the conduct of the issuer's business. The cost of preparation of the report will be borne by the applicant for registration.

(b) The Commission may require that the report referred to in subsection (a) be prepared by an employee of the Commonwealth. In such event the Commission will notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses. Prior to commencement of preparation of the report, the applicant shall deposit with the Commission funds sufficient to cover costs with instructions authorizing disbursement of such funds as expenses are incurred. If it appears additional costs will be incurred in preparing the report, the applicant will be notified and required to deposit with the Commission the additional moneys necessary to permit completion of the work.

(c) A person who prepares for submission or submits a technical report to the Commission in response to the Commission's request, and a person who prepares for submission or submits a technical report intended to be included or referred to in any part of the registration statement, shall attach to the report a statement as to the person's qualifications and experience and a further statement as to a material relationship or other factor which would bear upon the person's independence with respect to the subject matter to which or the person to whom the report relates.

§ 207.060. [Reserved].

§ 207.071. Escrow of promotional securities.

(a) The Commission will, where it deems necessary for the protection of investors, or in the public interest, and subject to the limitation of section 207(g) of the act (70 P. S. § 1-207(g)), require as a condition to the registration of securities, whether to be sold by the issuer or another person, that promotional securities be placed in escrow. The escrow depository shall be a bank or trust company approved by the Commission, provided, that, if the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the Commission an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

(b) For the purposes of this section, the term "promotional securities" includes securities which are:

- (1) Issued within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.
- (2) Issued in consideration for services.
- (3) Issued in consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.
- (4) Issued within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.
- (5) The subject of an order by the Commission which includes findings that the securities are promotional securities.

(c) The escrow of promotional securities shall be covered by an agreement which shall be subject to the approval of the Commission. One manually signed copy of the agreement shall be filed with the Commission prior to the effectiveness of a registration of the issuer's securities.

Authority

The provisions of this § 207.071 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 § 207.071 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. Immediately preceding text appears at serial pages (234900), (200089) to (200092) and (234901) to (234902).

§ 207.072. Escrow of proceeds.

(a) The Commission, when it deems necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P. S. § 1-207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds from the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere; or that the proceeds from the sale of the registered security be escrowed for a specific use as set forth in the prospectus. The escrow depository shall be a bank or trust company acceptable to the Commission.

(b) The escrow of proceeds shall be covered by an agreement acceptable to the Commission which, at a minimum, meets the following conditions:

(1) The specified amount of proceeds shall be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph (7).

(2) The escrow depository may not be affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) The agreement shall provide that the escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer pursuant to the terms of the agreement.

(4) A manually signed copy of the agreement shall be filed with the Commission and shall become part of the registration statement.

(5) The agreement shall be signed by an authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository.

(6) A summary of the principal terms of the agreement shall be included in the prospectus.

(7) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed

proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

Authority

The provisions of this § 207.072 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 § 207.072 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18.

§ 207.081. [Reserved].

Source

The provisions of this § 207.081 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255. Immediately preceding text appears at serial pages (200094) to (200095).

§ 207.090. [Reserved].

§ 207.091. Subscription contracts.

(a) With respect to securities proposed to be sold under one of the following registration statements, a copy of a subscription or sale contract proposed to be used shall be filed with the Commission, as an exhibit, prior to its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P. S. § 1-205) when the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P. S. § 1-206) when the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under section 3(a)(4) or (11), Regulation A promulgated under section 3(b) of the Securities Act of 1933, or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act where the securities to be sold are interests in a direct public participation program.

Source

The provisions of this § 207.091 adopted February 21, 1975, effective February 22, 1975, 5 Pa.B. 334; amended June 20, 1975, effective June 21, 1975, 5 Pa.B. 1593; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255. Immediately preceding text appears at serial pages (200095) to (200100).

§ 207.101. Effective period of registration statement.

(a) A registration statement which has become effective under section 205(c) of the act (70 P. S. § 1-205(c)) shall continue in effect until the earliest of the following events:

- (1) Twelve months after the effective date of the registration statement under the act, except as provided in subsection (d).
- (2) Securities included in the registration statement have been sold or the distribution terminated in this Commonwealth, or both.
- (3) The Commission issues an order under section 208 of the act (70 P. S. § 1-208) denying, suspending or revoking effectiveness of the registration statement.

(b) A registration statement which has become effective by order of the Commission under section 206 of the act (70 P. S. § 1-206) shall continue in effect until the earliest of the following events:

- (1) Twelve months after the effective date of the registration statement under the act.
- (2) Securities included in the registration statement are sold or the distribution terminated in this Commonwealth, or both.
- (3) The Commission issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the Commission has required more than one filing for a registration statement, a separate Form 207-J is required for each filing.

(d) Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), the effective period of a section 205 registration statement may be extended beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the form designated as Form 207-J in accordance with the General Instructions thereto with the Commission prior to the expiration of the currently effective period of registration. The provisions of this section are not available if the issuer, during the 3 year period from the initial effectiveness date of the registration statement in this Commonwealth, is required to file a new registration statement with Securities and Exchange Commission.

Authority

The provisions of this § 207.101 amended under 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, 1-504, 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 § 207.101 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1644; amended February 12, 1988, effective February 13, 1988, 18 Pa.B. 684; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4782; 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 (317607) to (317608) and (297501) to (297502).

§ 207.110. [Reserved].**Source**

The provisions of this § 207.110 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 June 17, 1977, effective June 18, 1977, 7 Pa.B. 1644; amended February 12, 1988, effective February 13, 1988, 18 Pa.B. 685; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255. Immediately preceding text appears at serial pages (200104) to (200108).

§ 207.120. [Reserved].**Source**

The provisions of this § 207.120 reserved July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365. Immediately preceding text appears at serial page (262446).

§ 207.130. Notice to purchasers under section 207(m).

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P. S. § 1-206) and to securities transactions which are exempt from registration under sections 203(d) and (p) of the act (70 P. S. § 1-203(d) and (p)) and, if required by rule of the Commission, section 203(r) of the act.

(b) The notice to purchasers required by section 207(m)(1) of the act (70 P. S. § 1-207(m)(1)) shall be given in accordance with all of the following:

(1) It shall be in writing.

(2) Reference to the notice shall be made on the cover page of the prospectus used in connection with the offer and sale of the securities.

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to be followed in exercising the right, shall be given in the text of the prospectus.

(4) Reference to the right of withdrawal shall be made in any subscription agreement used.

(5) The reference to the right of withdrawal described in paragraph (2) shall be conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers required by section 207(m)(2) of the act shall be given in accordance with all of the following:

(1) It shall be in writing.

(2) An explanation of the right of withdrawal contained in section 207(m)(2), including the procedure to be followed in exercising the right, shall be given.

(3) The explanation of the right of withdrawal shall be conspicuous, by setting it apart from other text and by underlining or capitalization.

(d) Timely notice of withdrawal of the purchase shall be deemed to have been given by a purchaser within the 2-business day period set forth in section 207(m) of the act if, during the 2-business day period, a written notice to withdraw from the purchase:

(1) Is actually received by the issuer or its affiliate.

(2) Is sent electronically, including by E-mail or facsimile.

(3) Is deposited in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

(4) Is delivered to a messenger or courier service for delivery with applicable fees paid by the sender.

(e) The following language illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act.

“If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a written notice explaining your right to withdraw your acceptance pursuant to section 207(m) of the Pennsylvania Securities Act of 1972, you may elect, within two business days after the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a full refund of all moneys paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw.”

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

“If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance pursuant to section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance

and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.”

Authority

The provisions of this § 207.130 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 § 207.130 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; corrected April 9, 2004, effective March 4, 2000, 34 Pa.B. 1940. Immediately preceding text appears at serial pages (297502) to (297504).

§ 207.140. Signatures on electronic filings.

Under section 207(n) of the act (70 P. S. § 1-207(n)), the Commission authorizes the acceptance of a typed signature in lieu of any requirement for a manual signature on any notice required to be filed with the Commission under section 211 of the act (70 P. S. § 1-211) which is filed with the Commission electronically through its home page on the World Wide Web.

Authority

The provisions of this § 207.140 issued under sections 203(d), 205, 206, 207(n), 210, 603(c), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-203(d), 1-205, 1-206, 1-207(n), 1-210, 1-603(c), 1-606(d) and 1-609(a)); 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 § 207.140 adopted September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18. Immediately preceding text appears at serial page (234908).

[Next page is 208-1.]