

**CHAPTER 504. TIME LIMITATIONS ON RIGHTS
OF ACTION**

Sec.
504.060. Rescission offers.

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(a) A person proposing to make an offer under section 504(d) or (e) of the act (70 P. S. § 1-504(d) or (e)) shall follow the procedure for the registration of securities by qualification, as described in sections 206 and 207 of the act (70 P. S. §§ 1-206 and 1-207). The forms required to be filed and time periods for Commission action shall be those applicable to registration by qualification, except that it shall be noted at the top of Form R that the offer is a rescission offer. The Commission may, upon petition by the proposed offeror, waive or modify any requirement for the registration if it finds the requirement burdensome and not necessary for the protection of investors.

(b) Compliance with the procedures in subsection (a) is waived:

(1) For a person making a rescission offer for possible violations of the act if the securities which are the subject of the rescission offer were sold to and purchased by no more than 35 persons in this Commonwealth during 12 consecutive months. The person making the rescission offer shall file the form designated by the Commission as Form RO in accordance with the General Instructions requesting waiver of the procedures in subsection (a) accompanied by disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act (70 P. S. § 1-401(b)) which will be given to each rescission offeree, and the waiver request is not denied within one of the following time periods:

(i) Five business days from the date a filing is made with the Commission which contains the items required in this paragraph if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P. S. § 1-201) and neither the issuer nor a promoter, general partner, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b) (relating to increasing number of purchasers and offerees).

(ii) Ten business days from the date a filing is made with the Commission which contains the items required in this paragraph for all other rescission offers made under this subparagraph. If a rescission offer is being made under section 504(e) of the act (70 P. S. § 1-504(e)), the offeror shall comply with section 201 of the act as section 102(r)(vi) of the act (70 P. S. § 1-102(r)(vi)) states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

(2) For a person making a rescission offer for possible violations of section 301 or 401—409 of the act (70 P. S. §§ 1-301 and 1-401—1-409) if the following apply:

(i) The transactions subject to the rescission offer were effected in compliance with section 202 or 203 of the act (70 P. S. §§ 1-202 and 1-203) which did not require any filing to be made with the Commission.

(ii) The rescission offer is not being made to more than five investors in this Commonwealth, exclusive of investors which purchased under section 203(c) of the act (70 P. S. § 1-203(c)).

(iii) Neither the person making the rescission offer nor, if the person is the issuer, a general partner, promoter, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b).

(iv) The rescission offer is being made under section 504(d) of the act (70 P. S. § 1-504(d)) or if a rescission offer is being made under section 504(e) of the act, the offeror shall comply with section 201 of the act in that section 102(r)(vi) of the act states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

(v) No public media advertising or general solicitation was utilized in connection with the offer or sale of the securities subject to the rescission offer.

(vi) No mass mailings were utilized in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of SEC Regulation D.

(vii) The person making the rescission offer provides each offeree the disclosure required by the anti-fraud provisions of section 401(b) of the act (70 P. S. § 1-401(b)).

(viii) The person making the rescission offer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

(3) For an issuer which, after offering rescission for possible violations of section 201 of the act under this paragraph, will not have made rescission offers to more than five investors in this Commonwealth within the past 24 months, exclusive of investors which purchased under section 203(c) of the act and the following apply:

(i) No person directly or indirectly received commissions for the sale of the securities subject to the rescission offer.

(ii) Neither the issuer nor a promoter, general partner, executive officer or director of the issuer is subject to the disqualifications in § 204.010(b).

(iii) The issuer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

(iv) The issuer provides to each offeree the disclosure required by the anti-fraud provisions of section 401(b) of the act.

(v) No public media advertising or general solicitation was utilized in connection with the offer or sale of the securities subject to the rescission offer.

(vi) No mass mailings were utilized in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of SEC Regulation D.

(c) A person making a rescission offer under this section shall keep and maintain a complete set of books, records and accounts of the rescission offers made—including copies of the rescission offers given or mailed to rescission offerees in this Commonwealth, records of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer—for 3 years following the expiration of each rescission offer period. Records concerning a rescission offer made in this Commonwealth under this section shall be furnished promptly to the Commission upon request.

(d) For purposes of this section, the following terms have the following applications:

(1) The term “executive officer” applies to, and includes, each person who serves as chief executive officer, chief operating officer or chief financial officer of a person.

(2) The term “general partner” applies to one of the following:

(i) A person who, under the terms of the limited partnership agreement, is designated a general partner of a limited partnership.

(ii) A person who, under the terms of the limited partnership agreement, is designated as a managing general partner of a limited partnership.

(e) This section also applies if rescission offers are being made as follows:

(1) The purchaser of securities which are the subject of a rescission offer under this section no longer owns the securities prior to receipt of the rescission offer and, under section 504(d)(i) of the act, is being offered an amount in cash equal to damages, if any, as computed in accordance with section 501(a) of the act (70 P. S. § 1-501(a)).

(2) A person who purchased a security in violation of the act no longer owns the security and, under section 504(e)(ii) of the act, offers to pay the seller an amount in cash equal to damages, if any, computed in accordance with section 501(b) of the act.

Authority

The provisions of this § 504.060 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, 1-303, 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 § 504.060 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended July 6, 1990, effective July 7, 1990, 20 Pa.B. 3681; 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 (317641) to (317646), (262465) to (262466) and (317647) to (317648).

Cross References

This section cited in 64 Pa. Code § 513.010 (relating to rescission orders); 64 Pa. Code § 604.012 (relating to nonresponse or affirmative rejection of offers made under section 504(d) or (e) of the act and § 504.060 (relating to rescission offers—statement of policy); and 64 Pa. Code § 606.041 (relating to delegation and substitution).

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