

# PROPOSED RULEMAKING

## DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 177]

### Close of Department Comment Period for Enhanced Emission Inspection

The Department of Transportation, Bureau of Motor Vehicles, by this notice, announces that it will entertain no further comment on the proposed, enhanced emission inspection and maintenance (I/M) regulations, published at 26 Pa.B. 1221 (March 16, 1996).

For the purpose of satisfying section 5 of the Regulatory Review Act, the comment period for Independent Regulatory Review Commission (IRRC) ended May 15, 1996; however, because of the interest in these regulations by the motoring public in affected I/M counties, the Department continued to entertain comment and discussion on its proposed regulations.

The Department sincerely thanks all of the persons and entities throughout this Commonwealth for their thoughtful comments and participation.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 97-876. Filed for public inspection May 30, 1997, 9:00 a.m.]

## SECURITIES COMMISSION

[64 PA. CODE CHS. 102, 202—204, 207, 209,  
302, 606 AND 609]

### Registration of Securities, Broker-Dealers, Agents, Investment Advisors and Administration

The Securities Commission (Commission), under the authority contained in 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 (act) (70 P.S. §§ 1-102(k), 1-202(h) and (i), 1-203(r), 1-204(a), 1-207(h), (i) and (k), 1-209(a), 1-606(a) and 1-609(a)), proposes to amend regulations concerning the subject matter of the act to read as set forth in Annex A.

#### *Summary and Purpose of Regulations*

##### *§ 102.111 (relating to institutional investor).*

Offers and sales of securities to institutional investors are exempt from the securities registration provisions of the act. Section 102.111 is proposed to be amended to expand the definition of institutional investor in section 102(k) of the act to include a qualified institutional buyer as that term is defined in Rule 144A of the United States Securities and Exchange Commission (SEC), 17 CFR 230.144A (relating to private resales of securities to institutions). The Commission proposes to amend § 102.111.

##### *§ 202.080 (relating to securities issued by broker-dealers).*

The proposed deletion of § 202.080 eliminates the requirement that a registered broker-dealer proposing to offer and sell its securities to its officers, partners or

employees who are residents of this Commonwealth in reliance upon section 202(h) of the act make a notice filing on Commission Form 202-H. Since this section originally was promulgated, the Commission has adopted several self-executing exemptions which may be available for the same transaction. The Commission proposes to delete § 202.080.

##### *§ 202.094 (relating to world class issuer exemption).*

Currently, many large, multinational corporations domiciled outside of the United States cannot take advantage of exemptions from registration under the act because their securities are not listed on a United States stock exchange or they are not reporting companies to the SEC. Section 202.094 will designate securities issued by large, multinational corporations that do not have securities listed on a United States securities exchange as exempt from the registration provisions of the act. This will provide parity with securities of large United States corporations whose securities are exempt under section 202(f) of the act. The Commission proposes to adopt § 202.094.

##### *§ 203.189 (relating to isolated transaction exemption).*

This proposed amendment to § 203.189 will increase the number of sales permitted under this exemption and would waive the general solicitation prohibition and Pennsylvania domicile requirement for certain sales. The proposed amendment provides an exemption from the securities registration requirements when there will be only isolated offers and sales made in this Commonwealth of a de minimis nature. The Commission proposes to amend § 203.189.

##### *§ 203.190 (relating to certain Internet offers exempt).*

Section 203.190 will codify the Commission's existing order granting an exemption for offers of securities made on the Internet that are not intended to be sold to residents of this Commonwealth. The Commission proposes to adopt § 203.190.

##### *§ 204.012 (relating to waivers for offerings where sales are made only to accredited investors).*

Section 204.012 will waive the offer and sale numerical limitations in sections 203(d) and (e) of the act and the general solicitation prohibitions for offerings of securities when sales only will be made to accredited investors. The Commission proposes to adopt § 204.012.

##### *§ 207.081 (relating to trust indenture requirements).*

The proposed deletion of § 207.081 will eliminate the requirement that debt securities, as a condition of registration by qualification under section 206 of the act, be issued under a trust indenture complying with the provisions of the Trust Indenture Act of 1939 (15 U.S.C.A. §§ 77aaa—77bbb) or similar State requirements. The Commission proposes to delete § 207.081.

##### *§ 207.091 (relating to subscription contracts).*

The proposed amendment to § 207.091 will reduce the types of offerings which must file a copy of the subscription contract with the Commission. This proposed amendment also eliminates the requirement that issuers of securities sold under the Federal exemption for intrastate offerings and registered under section 206 of the act use a subscription contract prepared in a specified format. Additionally, the proposed amendment would delete recordkeeping requirements for subscription contracts

that duplicate requirements in § 209.010(a)(6). The Commission proposes to amend § 207.091.

*§ 207.110 (relating to quarterly reports of the progress of a registered offering).*

The proposed amendment to § 207.110 will eliminate the requirement that issuers selling securities registered under section 206 of the act but not registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), file reports with the Commission on a quarterly basis. The Commission proposes to delete § 207.110.

*§ 209.010 (relating to required records; report on sales of securities).*

Section 209.010 is proposed to be amended to delete the requirement to file a report of sales and use of proceeds for sales of securities made in this Commonwealth under section 203(d) and (p) of the act. Section 209.010 is proposed to be amended to conform with the provisions of the National Securities Markets Improvement Act of 1996 (NSMIA) by deleting all references to registration or exemption of securities offerings by investment companies under sections 205, 206 or 203(i) of the act. (Note: Section 209 of the act was amended by Act 4 of 1993 to reflect that the section 203(i) exemption was no longer available for investment companies but this registration requirement now has been preempted by the NSMIA.) The Commission proposes to amend § 209.010 to conform with the requirements of the NSMIA and eliminate use of terms which may cause confusion within the regulated community.

On October 11, 1996, section 102 of the NSMIA became effective which amended section 18 of the Securities Act of 1933 (15 U.S.C.A. § 77r-1) to prohibit the application of any state law requiring the registration or qualification of securities of investment companies registered under the Federal Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21). The NSMIA, at section 18(c)(1) of the Securities Act of 1933, however, did preserve the ability of the states to require notice filings (as opposed to registration or exemption filings), fee payments and sales reports. Both section 209 of the act and § 209.010, however, describe the requirement to file sales reports by investment companies using the terms "registration or exemption" under sections 205, 206 or 203(i) of the act. This proposed amendment will eliminate the references to registration or exemption provisions of the act, adopt a new uniform sales report form to be used by all states which also eliminates references to registration or exemption and establish a uniform filing period for classes of investment companies consistent with Federal law.

*§ 302.065 (relating to Canadian broker-dealer exempt).*

This proposed new section will exempt Canadian broker-dealers and agents that are licensed and in good standing in Canada from the broker-dealer and agent registration provisions of the act if the Canadian broker-dealer or agent effects transactions only with persons from Canada who are preexisting clients and who temporarily are present in this Commonwealth when the transactions occur. The Commission proposes to adopt § 302.065.

*§ 606.011 (relating to financial reports to security holders).*

Section 606.011 is proposed to be amended to exclude from specified financial statement delivery requirements issuers of securities that are not reporting companies under the Federal securities laws and are exempt from

registration under the act when the transaction was made in connection with a merger, a distribution to existing shareholders or the Commission granted a discretionary exemption. Issuers of securities filing under sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78dd), if they have made a filing within the past 120 days, also would be excluded from the financial statement delivery requirement. The Commission proposes to amend § 606.011.

*§ 609.011 (relating to amendments to filings with Commission).*

The proposed amendment to § 609.011 will delete Commission Form AM and the requirement that amendments to Commission filings be made on Commission Form AM and will adopt a general procedural requirement to amend notices, registration statements and other matters previously filed with the Commission. The Commission proposes to amend § 609.011.

*Persons Affected by these Regulations*

With respect to proposed amendments to § 102.111, issuers of securities to qualified institutional buyers will be affected by the proposed action.

With respect to the proposed deletion of § 202.080, broker-dealers who would rely upon the exemption provided in section 202(h) of the act to offer and sell securities to their officers, partners and employees who are residents of this Commonwealth would no longer have to file Commission Form 202-H.

With respect to proposed § 202.094, the persons affected are large multinational foreign corporations offering and selling securities to investors in the United States.

With respect to proposed amendments to § 203.189, the persons affected are those issuers that want to offer and sell securities to only a few persons in this Commonwealth.

With respect to proposed § 203.190, persons affected are those persons using the Internet to make offers of securities.

With respect to proposed § 204.012, persons affected are issuers of securities in offerings when sales will be made only to accredited investors.

With respect to the deletion of § 207.081, persons affected are issuers of debt securities subject to registration under section 206 of the act.

With respect to § 207.091, persons affected are issuers of offerings made in reliance upon the Federal exemption from registration for intrastate offerings and offerings of interests in public direct participation programs.

With respect to the proposed deletion of § 207.110, persons affected are issuers selling securities registered under section 206 of the act but not registered under the Securities Act of 1933.

With respect to § 209.010, persons affected are issuers of securities sold in reliance upon the exemptions provided by section 203(d) and (p) of the act and investment companies selling securities in this Commonwealth.

With respect to § 302.065, persons affected are licensed Canadian brokers and agents effecting transactions in this Commonwealth with a preexisting client who temporarily is present in this Commonwealth at the time of the transactions.

With respect to § 606.011, persons affected are issuers of securities exempt from registration under the act

because the transaction involved a merger, distribution to existing shareholders or Commission granted discretionary exemption, and issuers of securities filing under section 13 or 15(d) of the Securities Exchange Act of 1934, if a filing has been made within the past 120 days.

With respect to § 609.011, persons affected are those seeking to amend documents previously filed with the Commission.

*Fiscal Impact*

The proposed regulatory actions will decrease regulatory costs to the public. The Commonwealth General Fund will sustain a loss of approximately \$20,000 in fee revenue from the proposed amendments to § 203.189 as securities offered and sold in certain isolated transactions will no longer be required to make a notice filing under section 203(d) of the act and pay the applicable fee. Likewise, the General Fund may sustain a minimal loss of fee revenue from the adoption of § 302.065 as certain Canadian brokers and their agents no longer would be subject to registration requirements.

The remaining proposed regulatory amendments will not have a fiscal impact on the Commonwealth.

*Paperwork*

Sections 202.080, 207.081, 207.110 and 209.010 will eliminate paperwork as the proposed regulatory actions deletes rules requiring the filing of specified forms and documents. With respect to §§ 207.091 and 609.011, paperwork would be reduced as information will no longer be required to be filed with the Commission in a specified format.

*Effective Date*

These proposed amendments will become effective upon publication in the *Pennsylvania Bulletin* as final rule-making.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 24, 1997, the Commission submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments it will notify the Commission within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations by the Commission, the General Assembly and the Governor of objections raised.

*Availability in Alternative Formats*

This proposed rulemaking may be made available in alternative formats upon request. The Commission also will receive comments on this proposed rulemaking in alternative formats. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator at (717) 787-6828.

*Contact Person*

Interested persons are invited to send comments concerning the proposed amendments within 30 days of publication of this notice to G. Philip Rutledge, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130. Mr. Rutledge also is the contact person for an explanation of the proposed amendments.

M. JOANNA CUMMINGS,  
*Secretary*

**Fiscal Note:** 50-110 (1) General Fund; (2) Implementing Year 1996-97 is \$20,000; (3) 1st Succeeding Year 1997-98 is \$20,000; 2nd Succeeding Year 1998-99 is \$20,000; 3rd Succeeding Year 1999-00 is \$20,000; 4th Succeeding Year 2000-01 is \$20,000; 5th Succeeding Year 2001-02 is \$20,000; (4) Fiscal Year 1995-96 \$2,074 million; Fiscal Year 1994-95 \$2,146 million; Fiscal Year 1993-94 \$2,135 million; (7) Nonapplicable; (8) recommends adoption. The Commission anticipates to save approximately \$30,000 annually in administrative costs which will not be required due to the elimination of various filings.

**Annex A**

**TITLE 64. SECURITIES**

**PART I. PENNSYLVANIA SECURITIES COMMISSION**

**Subpart A. DEFINITIONS**

**CHAPTER 102. DEFINITIONS**

**§ 102.111. Institutional investor.**

(a) *Institutional investor.* Institutional investor, as defined in section 102(k) of the act (70 P. S. § 1-102(k)), includes:

\* \* \* \* \*

**(10) A qualified institutional buyer as that term is defined in 17 CFR 230.144A (relating to private resales of securities to institutions), or any successor rule thereto.**

\* \* \* \* \*

**Subpart B. REGISTRATION OF SECURITIES**

**CHAPTER 202. EXEMPT SECURITIES**

**§ 202.080. [Securities issued by broker-dealers] (Reserved).**

**[ (a) A registered broker-dealer proposing to offer and sell its securities to residents of this Commonwealth who are officers, partners or employees of such registered broker-dealer in reliance upon the exemption contained in section 202(h) of the act (70 P. S. § 1-202(h)) shall file a notice with the Commission at least ten days prior to the proposed date of sale on the following form, designated by the Commission as Form 202-H. ]**

*(Editor's Note:* As part of this proposal, the Commission is proposing to delete the text of Form 202-H, which appears at 64 Pa. Code pages 21—23, serial pages (25152), (25153) and (30399).)

**[ Form 202-H need not be filed where a registered broker-dealer proposes to offer and sell its securities only to general partners or executive officers of such broker-dealer. For purposes of this subsection, the term "executive officer" means the president,**

secretary, treasurer, or any vice president in charge of a principal business function of the broker-dealer.

(b) Unless the issuer receives notice from the Commission that the exemption has been revoked pursuant to section 204(b) of the act (70 P. S. § 1-204(b)), the securities may be sold and issued pursuant to the terms of the notice on Form 202-H after such ten-day period or such shorter time as the Commission may, by order permit. If any material term of the offering is proposed to be changed, an amendment on Form AM to Form 202-H shall be filed with the Commission, and, unless the Commission otherwise orders, the ten-day period prior to issuance shall be deemed to commence on the date of filing of the Form AM. ]

§ 202.094. World class issuer exemption.

Under the authority in section 202(i) of the act (70 P. S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) of any security meeting the following conditions:

(1) The securities are one of the following:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase the options, warrants, convertible securities or preferred stock.

(ii) Units consisting of equity securities permitted by subparagraph (i) and warrants to purchase the same equity security being offered in the unit.

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services or another rating organization designated by order of the Commission. For purposes of this subsection, nonconvertible debt securities means securities that cannot be converted for at least 1 year from the date of issuance and then only into equity shares of the issuer or its parent.

(iv) American Depository Receipts representing securities described in subparagraphs (i)—(iii).

(2) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(3) The issuer, at the time an offer or sale is made in reliance on this section, has been a going concern engaged in continuous business operations for the immediate past 5 years and during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this paragraph, the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the 5-year requirement.

(4) The issuer, at the time an offer or sale is made in reliance on this section, has a public float of \$1 billion or more. For purposes of this paragraph:

(i) Public float means the market value of all outstanding equity shares owned by nonaffiliates.

(ii) Equity shares means common shares, nonvoting equity shares and subordinated or restricted voting equity shares but does not include preferred shares.

(iii) An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of the person.

(5) The market value of the issuer's equity shares, at the time an offer or sale is made in reliance on this section, is \$3 billion or more. For purposes of this subsection, equity shares means common shares, nonvoting equity shares and subordinated or restricted voting shares but does not include preferred shares.

(6) The issuer, at the time an offer or sale is made in reliance on this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in 17 CFR 230.901(a)(1) (relating to general statement) or successor rule promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or designated by the United States Securities and Exchange Commission under 17 CFR 230.902(a)(2) (relating to definitions) promulgated under the Securities Act of 1933.

CHAPTER 203. EXEMPT TRANSACTIONS

§ 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 [ 36 ] 12 consecutive months. [ Sales ] Only sales described in subsection [ (b) ] (c) will [ not ] 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 [ 36 ] 12 consecutive months. [ Offers ] Only offers described in subsection [ (b) ] (c) will [ not ] be counted as offers for purposes of the numerical limitations contained in this paragraph.

\* \* \* \* \*

(b) [ *Exclusions.* The following offers and sales will not be counted as offers or sales under the provisions of subsection (a)(1) and (2):

(1) Offers and sales of securities of the issuer which were made in reliance upon an exemption from registration under section 202 or 203 of the act (70 P. S. §§ 1-202 and 1-203) or under this chapter or Chapter 202 (relating to exempt securities) other than offers and sales which occurred within the preceding 18 months from the date of an offer or sale to be made under this section that were made in reliance upon section 203(d) or (f) of the act, § 203.187 (relating to small issuer exemption) or § 204.010(a)(1) and (2).

(2) Offers and sales of securities of the issuer which were registered under section 205 or 206 of the act (70 P. S. §§ 1-205 and 1—206). ]

**Waivers.**

(1) If the securities to be sold in reliance on this section are registered with the Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) or exempt from registration under SEC Regulation A adopted under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and the issuer has complied with section 203(h) of the act (70 P.S. § 1-203(h)), the requirements of subsection (a)(3) and (5) do not apply.

(2) If the securities being offered and sold in reliance on this section are made to Accredited Investors, as defined in § 204.010(d)(5) (relating to increasing the number of purchasers and offerees), in this Commonwealth and the offers and sales would qualify for an exemption from registration under section 5 of the Securities Act of 1933 under Rule 505 or 506 of SEC Regulation D, 17 CFR 230.505 and 230.506 (relating to exemption for limited offers and sales of securities not exceeding \$5,000,000; and exemption for limited offers and sales without regard to dollar amount of offering), the requirements of subsection (a)(3) do not apply.

(c) [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 occur under § 204.010 within 12 consecutive months of an offer or sale made under this section.] *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) or (f) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), 17 CFR 230.506 (relating to exemption for limited offers and sales without regard to dollar amount of offering) or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

(d) [The filing requirements of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) are not applicable to offers and sales of securities made under this section.] *Integration.* 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 occur under § 204.010 within 12-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.

**§ 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.

**CHAPTER 204. EXEMPTION PROCEEDINGS**

§ 204.012. Waivers for offerings where sales are made only to accredited investors.

(a) *Waivers.* When an issuer meets the conditions described in subsection (b), the Commission, under section 204(a) of the act (70 P.S. § 1-204(a)), waives the following requirements of section 203(d) of the act (70 P.S. § 1-203(d)) and increases the number of purchasers and offerees permitted by section 203(d) and (e) of the act.

(1) The condition of section 203(d)(i) of the act not to sell securities purchased for 12 months after the date of purchase (12-month holding period) is waived, if resales of the securities are made only to accredited investors or to the issuer during the 12-month holding period.

(2) The requirement under § 203.041 (relating to limited offerings) to file with the Commission a copy of the agreement of the investor to hold the securities purchased under section 203(d) for the 12-month holding period is waived, if a copy of the agreement between the issuer and the investor in accordance with the requirements of paragraph (1) is filed with the Commission.

(3) The condition contained in section 203(d)(ii) of the act concerning mass mailing or public media advertising made in connection with the solicitation of sales of securities to be made under section 203(d) is waived.

(4) The number of offerees permitted under section 203(e) to whom an issuer may offer securities if sales resulting from those offers are exempt under section 203(d) is increased to an unlimited number in this Commonwealth.

(5) The number of purchasers permitted under section 203(d) to whom the issuer may sell securities is increased to an unlimited number in this Commonwealth.

**(b) Conditions.**

(1) The securities are sold in good faith reliance that the offering would qualify for an exemption from registration under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) under section 3(a)(11) of the 1933 Act (15 U.S.C.A. § 77.c(a)(11)) or regulations adopted by the United States Securities and Exchange Commission (SEC) under section 3(b) of the 1933 Act, except an offering under Rule 505 of SEC Regulation D, and the

securities sold, whether in or outside of this Commonwealth, will be sold only to accredited investors.

(2) The issuer specifies in any advertisement, communication, sales literature or other information which is publicly disseminated in connection with the offering of securities, including by means of electronic transmission or broadcast media, that the securities will be sold only to accredited investors. For purposes of this section, publicly disseminated means communicated to 100 or more persons or otherwise communicated, used or circulated in a public manner.

(3) The issuer does not engage in any solicitation of prospective purchasers by telephone until the issuer has reasonable grounds to believe that the person to be solicited is an accredited investor.

(4) The issuer places a legend on the cover page of any disclosure document proposed to be used in connection with the offering or on the cover page of the subscription agreement advising that the securities described in the disclosure document or the subscription agreement will be sold only to accredited investors.

(5) The issuer is not an investment company as defined in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(6) The issuer is not a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(7) The issuer is not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees) nor are its promoters, officers or directors subject to any disqualification described in that section.

(c) *Definition of accredited investor.* For purposes of this section, the term accredited investor has the same meaning as that term is defined in § 204.010(d)(5).

(d) *Exemption* Nothing in this section otherwise prohibits, in connection with the offering, the availability of the exemption in section 203(c) of the act (70 P.S. § 1-203(c)) or § 203.184 (relating to offers and sales to principals).

#### CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.081. [Trust indenture requirements] (Reserved).

[Evidences of indebtedness and other debt securities to be registered by qualification under section 206 of the act (70 P.S. § 1-206) will not normally be approved for sale unless they are issued under a trust indenture complying with the provisions of the Trust Indenture Act of 1939 (15 U.S.C.A. § 77aaa et seq.), or providing that:

(1) There shall be one or more trustees thereunder, at least one of which shall be a corporation organized and doing business under the laws of the United States or of a state which is authorized under the laws to exercise corporate trust powers and is subject to supervision or examination by Federal or state authority; provided that where it

appears that the requirements of a corporate trustee may not be necessary for the protection of investors, the Commission may, upon conditions that it deems appropriate, waive the requirement and permit the trustee to be an individual or other person.

(2) If the indenture requires or permits the appointment of one or more co-trustees in addition to the corporate trustee, then the rights, powers, duties and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by the corporate trustee or the corporate trustee and the co-trustee jointly, except to the extent that under any law of any jurisdiction in which particular acts are to be performed, the corporate trustee shall be incompetent or unqualified to perform the acts, in which event the rights, powers, duties and obligations shall be exercised and performed by the co-trustee.

(3) In the case of certificates of interest or participation, the trustee shall have the legal power to exercise the rights, powers and privileges of a holder of securities in which the certificates evidence an interest or participation.

(4) If a trustee has or shall acquire a conflicting interest the trustee shall, within 90 days after ascertaining that it has the conflicting interest, either eliminate the conflicting interest or resign, the resignation to become effective upon the appointment of a successor trustee and the successor's acceptance of the appointment and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture.]

#### § 207.091. Subscription contracts.

(a) With respect to securities proposed to be sold under [a registration statement filed under section 205 of the act (70 P.S. § 1-205),] 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.

[No formal approval by the Commission with respect to the form or content of the contract may be required; provided that nothing in this section is

deemed to constitute a waiver of section 507 of the act (70 P. S. § 1-507) or the antifraud provisions of the act and the regulations adopted thereunder.

(b) With respect to securities proposed to be sold in reliance on section 3(a)(11) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(11)) and the rules adopted thereunder, under a registration statement under section 206 of the act (70 P. S. § 1-206) for which the filing of Form 206 is required under this section, as a condition of registration of the securities a subscription or sale contract used in connection therewith shall be in the following form: ]

*(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of the Subscription Offer Form, which appears at 64 Pa. Code pages 207-10—207-14, serial pages (200096)—(200100).)*

Provided that nothing in this subsection shall be deemed to constitute a waiver of section 507 of the act (70 P. S. § 1-507) or the antifraud provisions of the act and the regulations adopted thereunder.

(c) With respect to a subscription or sale contract used in this Commonwealth, a signed or conformed copy of an executed contract shall be preserved for a period of 3 years following the last sale of securities or 1 year after the disposition of proceeds, whichever is longer. ]

§ 207.110. [ Quarterly reports of the progress of a registered offering ] (Reserved).

[ (a) For purposes of this section, the term "period" means each 3-month period from the date of effectiveness of the registration through termination of the offering.

(b) A report on Commission Form 207-K, which follows this section, shall be filed with the Commission, within 30 days after the end of each period, up to and including the period in which the offering terminates, by each issuer offering securities for its own account, directly or through an underwriter, in an offering registered under section 206 of the act (70 P. S. § 1-206) but not registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa). The report shall contain information concerning sales made during the period covered by the report and the uses made during such period of any proceeds received.

(c) For the period in which the registration terminated, the Issuer shall attach with the Form 207-K a balance sheet and profit and loss statement, both of which may be unaudited and internally prepared, giving effect to the application of proceeds during the period from the date of effectiveness of the registration through termination of the offering. For good cause shown, this financial information may be filed supplementally within 15 days after the form has been filed.

(d) Commission Form 207-K filed for the period in which the Issuer's offering terminated shall be deemed to fulfill the filing requirements of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds). ]

*(Editor's Note: As part of this proposal, the Commission is proposing to delete Form 207-K which appears at 64 Pa. Code pages 207-19—207-22, serial pages (200105—200108).)*

CHAPTER 209. BOOKS, RECORDS, AND ACCOUNTS

§ 209.010. Required records; report on sales of securities [ and use of proceeds ].

\* \* \* \* \*

(b) Except as set forth in paragraph [ (4) ] (3), filing requirements are as follows:

(1) [ Each issuer offering or selling securities for its own account, directly or through an underwriter, under an exemption contained in section 203(d) or (p) of the act shall file a report with the Commission by completing Parts I and III of the form in subsection (c) within one of the following time periods:

(i) Within 60 days after the end of each 12-month period following the most recent filing of Form 203-D or 203-P during which the securities continued to be offered, except that, when the offering terminates and disposition of all proceeds of the offering occurs prior to the end of a 12-month period, a report shall be filed within 60 days from the date of the disposition and no further report need be filed thereafter.

(ii) Within 60 days after the date the offering terminates when the termination occurred less than 12 months after the date of the most recent filing of Form 203-D or 203-P and no sales were made in this Commonwealth. The reports required by this subparagraph shall contain information relating to sales made from the commencement of the offering through the end of the period covered by the report and the uses made of the proceeds received.

(2) An issuer which is 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), filing under section 203(i), 205 or 206 of the act shall file an annual report with the Commission by submitting Uniform Sales Report Form, known as Form USR-1 (or a successor form thereto) within 55 days after 1 year from the effective date of the registration statement filed under section 205 or 206 of the act or of the date of filing for an exemption or exemption renewal under section 203(i) of the act.

(3) Issuers which have an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, shall file a report with the Commission by completing Parts I and II of the form in subsection (c) within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

[ (4) The following issuers are not required to file the form in subsection (c):

(i) Issuers involved in an offering of securities where the total aggregate offering does not exceed \$100,000.

(ii) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons

are classified in the Investment Company Act of 1940, filing under section 203(i) of the act to exempt an indefinite amount of securities and have paid the maximum fee specified in section 602(b)(iv) of the act (70 P. S. § 1-602(b)(iv)).

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b)(iii) of the act.

(iv) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act where the issuer has timely filed Commission Form 207-K in accordance with § 207.110 (relating to quarterly reports of the progress of a registered offering) for the period in which the issuers' offering terminated. ]

(2) An issuer which is 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), shall file with the Commission an annual report on sales of securities in this Commonwealth on Form NF adopted by the North American Securities Administrators Association, Inc. (or a successor form thereto) within the following time periods:

(i) With respect to an open-end or closed-end investment company or face amount certificate company, the report required by this subsection shall be filed with the Commission within 120 days after its fiscal year end.

(ii) With respect to a unit investment trust, the report required by this subsection shall be filed with the Commission within 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the United States Securities and Exchange Commission.

(3) The following issuers are not required to file the form in subsection (c) or Form NF (or successor form thereto):

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the maximum fee specified in section 602(b.1)(iv) of the act (70 P. S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act (70 P. S. § 1-206) of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act (70 P. S. § 1-602(b.1)(iii)).

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the following form, designated by the Commission as Form 209:

**FORM 209**  
**PENNSYLVANIA SECURITIES COMMISSION**  
**REPORT ON SALES OF SECURITIES [ AND DISPOSITION OF PROCEEDS ]**  
**General Instructions**

WHO MUST FILE: Issuers which have sold securities in Pennsylvania [ **either**

**I. ]** Pursuant to registration by qualification under Section 206, EXCEPT where the offering is registered under Section 5 of the Securities Act of 1933 AND the maximum fee has been paid (see Section 602(b)(iii)),

**[ II. In reliance upon exemption from registration under Sections 203(d) or (p), EXCEPT for an offering where the TOTAL AGGREGATE dollar amount for the ENTIRE offering is \$100,000 or less. ]**

WHEN TO FILE:

**[ I. Registrations under Section 206: ]** File Form 209 within 420 days after the effective date of the registration statement in Pennsylvania.

**[ II. Exemptions under Sections 203(d) or (p):**

NOTE: "Exemption Filing" refers to the receipt by the Commission of Form 203-D or SEC Form D submitted with Commission Form D Supplement; or Commission Form 203-P.

**A. NO SALES IN PA and the issuer has TERMINATED the Offering in PA within 12 months of the Exemption Filing:**

1. File Form 209 within 60 days of termination of the offering.
2. Complete ONLY PART I and sign the Form. No further report need be filed thereafter.

**B. SALES IN PA and, within 12 months from the date of the Exemption Filing, the issuer has TERMINATED the offering in PA and utilized All of the Proceeds:**

1. File Form 209 within 60 days of disposition of all offering proceeds.
2. No further report need be filed thereafter.

**C. SALES IN PA BUT, within 12 months from the date of the Exemption Filing, the issuer HAS NOT TERMINATED the offering in PA OR utilized all of the Proceeds:**

1. File Form 209 within 60 days of disposition of all offering proceeds.
2. File a final Form 209 within 60 days of termination of the offering in PA and disposition of all proceeds. No further report need be filed thereafter. ]



\* \* \* \* \*

- 7. [ For Part III, the time period covered by this report should commence with the DATE Commission Form 203-D, SEC Form D and Commission Form D Supplement, or Form 203-P WAS FILED with the Commission with respect to securities sold under Section 203(d) or (p) of the Act.
- 8. In Item 13(B), compute all amounts from the DATE Commission Form 203-D, SEC Form D and Commission Form D Supplement or Commission Form 203-P WAS FILED with the Commission cumulatively to the final date of the reporting period for this Report. Round all amounts to the nearest dollar.
- 9. For items 10 and 11, state the cumulative amount of securities offered and sold in Pennsylvania from the date the securities INITIALLY were offered for sale in the Commonwealth.
- 10. NOTE: Regulation 606.011 requires issuers which have sold securities to Pennsylvania residents under Sections 203(d), 203(o)(ii), 203(r) (including Regulations 203.183 through 203.188), 205 and 206 of the 1972 Act to provide annual financial statements to all Pennsylvania investors within 120 days after the end of the issuer's fiscal year for as long as such securities are held of record by a Pennsylvania resident.
- 11. ] Please remove instruction sheet before filing this Form.

FILE NO.: \_\_\_\_\_

FORM 209

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION

PART I Issuer Information

\* \* \* \* \*

- [ 4. A. Is the offering continuing in Pennsylvania?  YES  NO If NO, complete (B) below.  
NOTE: If an offering is continuing an update of the disclosure document may be required. If the issuer utilizes any updated or additional disclosure documents, the issuer must amend its filing with the Commission's Division of Corporation Finance in Harrisburg.
- B. If the offering has terminated in Pennsylvania, did the issuer sell and securities in Pennsylvania?  
 YES  NO ]

PART II Report of Sales of Securities Registered under Section 206.

- [ 5. ] 4. \*\*\*
- [ 6. ] 5. \*\*\*

\* \* \* \* \*

[ PART III Report on Sales of Securities and Use of Proceeds under Sections 203(d) or 203(p).

- 7. Check the appropriate box(es) with respect to section(s) of the Act under which the securities covered in this report were sold:  
 Section 203(d)  Section 203(p)
- 8. Describe the type of security sold and the offering price per share or unit.
- 9. Total offering. (if offering was made ONLY in PA, omit and go directly to #10)  
(A) Total number of shares or units offered for sale: \_\_\_\_\_ .  
(B) Total aggregate offering price of shares or units offered for sale: \$ \_\_\_\_\_ .
- 10. Securities offered in Pennsylvania since inception of offering.  
(A) Total number of shares or units offered for sale in Pennsylvania: \_\_\_\_\_ .  
(B) Total aggregate offering price of shares or units offered for sale in Pennsylvania? \$ \_\_\_\_\_ .  
(C) Date Commission Form 203-D, SEC Form D and Commission Form D Supplement or Form 203-P was filed with the Commission \_\_\_\_\_ 19 \_\_\_\_ .
- 11. Securities sold in Pennsylvania since inception of offering.  
(A) Total number of shares or units sold in Pennsylvania: \_\_\_\_\_ .  
(B) Total aggregate price of shares or units sold in Pennsylvania: \$ \_\_\_\_\_ .  
(C) Date first sale of securities occurred in Pennsylvania: \_\_\_\_\_ .  
(D) Total number of persons of whom securities were sold in PA: \_\_\_\_\_ .
- 12. If the response to Item 4(A) was YES, provide the following information. (If the response was NO, omit and proceed to item (13):  
(A) Date the issuer's fiscal year ends: \_\_\_\_\_ .  
(B) Date the issuer sent its most recent annual financial statement to persons who were sold the issuer's securities in the offering that is the subject of this Report: \_\_\_\_\_ . See General Instruction 10.
- 13. Use of Proceeds.

The use of proceeds requested in item 13(B) may, at the option of the issuer, be reported on a combined basis with funds from other sources. If this option is selected, go directly to Item 13(A) and check all appropriate

boxes. If this option is NOT being selected to report use of proceeds from PA sale, check one of the following lines indicating the section of the Report that relates and then proceeds directly to Item 13(B): \_\_\_\_\_ Section 203(d) or \_\_\_\_\_ Section 203(p).

(A) The following financial information may be presented on a consolidated basis including the proceeds received from all boxes checked.

- Section 203(d)
- Section 203(p)
- Other PA Sales: Section of the Act relied upon \_\_\_\_\_  
Total amount received \$ \_\_\_\_\_.
- Non-PA Sales and other sources of funds (e.g. bank financing).  
Total amount received \$ \_\_\_\_\_.

(B) State, or furnish a reasonable estimate of, the amount of offering proceeds to the issuer used for each of the purposes listed below. Do not include any amount in "working capital" to which a more specific category is applicable. Place an asterisk to the right of any amount that is an estimate.

Direct or indirect payments to directors, officers, general partners of the issuer or their associates, to persons owning ten percent or more of any class of equity securities of the issuer; and to affiliates of the issuer	Direct or Indirect Payment to others	
Underwriting discounts and commissions	\$	\$
Finder's Fee	\$	\$
Expenses paid to or for underwriters	\$	\$
Other offering Expenses	\$	\$
<b>SUBTOTAL</b>	<b>\$</b>	<b>\$</b>
Construction of plant, building and facilities	\$	\$
Purchase and installation of machinery and equipment	\$	\$
Purchase of real estate	\$	\$
Acquisition of other business(es)	\$	\$
Repayment of indebtedness	\$	\$
Working capital (incl. Salaries Expenses & Reimbursements)	\$	\$
Temporary investment (specify)	\$	\$
	\$	\$
Other purposes (specify)	\$	\$
	\$	\$

**NOTE:** Specify under "other purposes" any purpose for which at least 5 percent of the issuer's total offering proceeds or \$50,000, whichever is less, has been used, provided such amount has not been previously included or accounted for in any other item on this table.

14. Does the use of proceeds in item 13 represent a material change in the use of proceeds described in the offering material?  YES  NO If yes, explain. ]

Each of the persons executing [ Part I and \_\_\_\_\_ of ] this report on behalf of the Issuer hereby affirms that the statements made herein, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact. Each of such persons further affirms that he is familiar with the penalties contained in the Pennsylvania Securities Act of 1972, and all regulations adopted thereunder for making any false or incomplete statement in connection with the sale of a security or in any filing with the Commission.

IN WITNESS WHEREOF, this report has been executed [ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ . ]

\* \* \* \* \*

**Subpart C. REGISTRATION OF  
BROKER-DEALERS, AGENTS AND INVESTMENT  
ADVISERS**

**CHAPTER 302. EXEMPTIONS**

**§ 302.065. Canadian broker-dealer exempt.**

Under section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P. S. § 1-301) when

effecting transactions in securities in this Commonwealth with persons described in paragraph (1), if the broker-dealer meets the conditions of paragraph (2).

(1) The customer is one of the following:

(i) A person from Canada who temporarily is present in this Commonwealth with whom the Canadian broker-dealer had a bona fide business-customer relationship before the person entered this Commonwealth.

(ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate

to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.

(2) The Canadian broker-dealer meets the following conditions:

(i) Is a member in good standing of a self-regulatory organization or stock exchange in Canada at the time it is effecting transactions into this Commonwealth in reliance on this section.

(ii) Is registered as a broker or dealer in good standing in the Province or Territory of Canada from which it is effecting transactions into this Commonwealth in reliance on this section.

(iii) Discloses to its customers in this Commonwealth at the time of a transaction made in reliance on this section that it is not registered under the act.

#### Subpart F. ADMINISTRATION

### CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

#### § 606.011. Financial reports to security holders.

(a) In the case of securities issued under [ the exemptions in sections ] section 203(d) [ , (o)(ii), (q) and (r) ] of the act (70 P. S. § [ § ] 1-203(d) [ , (o)(ii), (q) and (r) ]), or registered under [ sections ] section 205 [ and ] or 206 of the act (70 P. S. §§ 1-205 [ or ] and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer [ if the issuer is not, on the date of the close of that fiscal year, a reporting company as defined in section 102(q) of the act (70 P. S. § 1-102(q)) ].

(b) The financial statements shall comply with [ the requirements of ] section 609(c) of the act (70 P. S. § 1-609(c)) and the rules and regulations adopted thereunder [ . If ] , except that, if the securities were issued in a transaction subject to this section wherein none of

the financial statements delivered to offerees were required to be audited or if no financial statements were required to be given to the offerees, the financial statements need not be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78, 78m and 78o(d)) and, within 120 days of that date, has made a filing with the United States Securities and Exchange Commission in accordance with either of those sections.

### CHAPTER 609. REGULATIONS, FORMS AND ORDERS

#### § 609.011. [ Amendment form ] Amendments to filings with Commission.

Whenever an application, notice, statement, report or any other document (Document) has been filed with the Commission and the person [ filing such application, notice, statement, report or other document ] who filed the Document wishes to amend [ such document ] or otherwise ensure that [ such document ] the Document is current and accurate [ , an amendment shall be made on the following form, designated by the Commission as Form AM: ] in all material respects, the person shall make a filing with the Commission constituting the amendment which also shall identify the Document being amended including, with respect to an amendment to a form promulgated by the Commission, the name of the form, the date the form originally was filed with the Commission and the items or schedules of the form which are being amended.

(Editor's Note: As part of this proposal, the Commission is proposing to delete Form AM which appears at 64 Pa. Code pages 609-6—609-8, serial pages (148434)—(148436).)

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