

PROPOSED RULEMAKING

SECURITIES COMMISSION

[64 PA. CODE CHS. 202, 206, 302, 606,
609 AND 610]

Registration of Securities; Registration of Broker-Dealers; Agents and Investment Advisers; Administration

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(i), 206(b) and (d), 302(f), 606(d), 609(a) and (c) and 610 of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(i), 1-206(b) and (d), 1-302(f), 1-606(d), 1-609(a) and (c) and 610) (act) proposes amendments concerning the subject matter of the act to read as set forth in Annex A and further described under the Summary and Purpose of Amendments in this Preamble.

Summary and Purpose

§ 202.092. Proposed changes would update the accounting terminology used in this section.

§ 206.020. Proposed changes would allow a certified public accountant to give a tax opinion in a public offering of interests in a direct participation program, such as oil and gas programs, equipment leasing programs and commodity pools, which are filed with the Commission under section 206 of the act.

§ 302.063. Proposed changes would exempt financial institutions (banks, savings and loans and credit unions) and their representatives from registering as broker-dealers or agents under the act when securities transactions made by these entities and individuals on behalf of customers are performed through a contractual arrangement with a broker-dealer registered under the act even though the transactions may be effected on, or emanate from, the premises of a financial institution where retail deposits are taken.

§ 606.041. Proposed changes permit the Assistant Director of the Division of Licensing and Compliance to exercise certain Commission powers through delegated authority.

§ 609.032. Proposed changes would update the accounting terminology used in this section and make it clear that the accounting definitions apply to all financial statements required to be filed under the act or regulations adopted thereunder.

§ 609.033. Proposed changes would require an accountant's report filed in the auditor's format to follow generally accepted auditing standards and reports filed in an accountant's review and compilation report format to follow the Statements on Standards for Accounting and Review Services of the American Institute of Certified Public Accountants. Public accountants may continue to prepare reports required to be filed for broker-dealers and investment advisers.

§ 609.034. Proposed changes would permit issuers filing a registration statement under section 206 of the act, except issuers of interests in public direct participation programs, to submit 2 years of financial statements instead of three. In the case of a small business issuer filing under section 206 of the act for a public offering of corporate equity securities aggregating \$1 million or less,

the proposed changes would permit use of reviewed financial statements in lieu of an audit. The proposed changes also require that the financial statements appearing in a registration statement filed with the Commission under section 205 of the act comply with the relevant requirements of the United States Securities and Exchange Commission.

§ 609.036. Proposed changes would update the accounting terminology used in this section.

§ 610.010. Proposed changes would provide for the retention and destruction of records in conformity with schedules promulgated by the Commission which conform to Management Directives issued by the Office of Administration.

Persons Affected

With respect to § 202.092 (relating to guaranties of debt securities exempt), recipients of the proceeds of limited obligation revenue bonds issued by governmental instrumentalities who guaranty payments to the governmental instrumentality sufficient to pay the principal and interest on the bonds are affected by these proposed amendments. The proposed changes, however, only update accounting terminology and do not affect the existing requirements of the regulations.

With respect to § 206.020 (relating to tax opinion in offerings of limited partnership interests), issuers of interests in public direct participation programs for which a registration statement is filed with the Commission under section 206 of the act will be affected.

With respect to § 302.063 (relating to financial institutions exempt from broker-dealer and agent registration), financial institutions, including banks, savings and loans and credit unions which effect transactions on behalf of customers under a contractual arrangement with a broker-dealer registered under the act will be affected.

With respect to §§ 606.041 and 610.010 (relating to delegation and substitution; and destruction of documents and records), only the internal administrative affairs of the Commission will be affected.

With respect to §§ 609.032, 609.033 and 609.036 (relating to definitions; accountants; and financial statements; annual reports), accountants preparing financial statements to be filed with the Commission will be affected.

With respect to § 609.034 (relating to financial statements), issuers filing a registration statement with the Commission under section 205 or 206 of the act will be affected.

Fiscal Impact

None of the proposed regulatory actions increase costs on the regulated community or the Commonwealth. The Commonwealth will not incur any revenue loss as a result of the proposed regulatory actions. The proposed regulatory actions will decrease regulatory costs to issuers filing a registration statement with the Commission under section 206 of the act.

Paperwork

None of the proposed regulatory actions impose any new paperwork requirements. With respect to issuers filing a registration statement with the Commission under section 206 of the act, there will be a reduction in the number of financial statements that must be filed.

Effective Date

These proposed amendments will become effective upon publication in the Pennsylvania Bulletin as final rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 27, 1998, 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 upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the Committees' review 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, (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: 50-112. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.092. Guaranties of debt securities exempt.

(a) Under the authority contained 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 the registration under section 201 of the act (70 P.S. § 1-201) of the guaranty of payment of interest, principal or premium on bonds—guaranty—[where] when all of the following conditions are met:

* * * * *

(4) The official statement or other disclosure document being utilized in connection with the offer and sale of the bonds contains either of the following:

(i) [A certified] An audited balance sheet and [profit and loss] statement of income of the guarantor dated within 120 days prior to the commencement of the offering in this Commonwealth.

(ii) Both of the following:

(A) [A certified] An audited balance sheet and [profit and loss] statement of income of the guarantor for the most recent completed fiscal year; or if the fiscal year of the guarantor ended within [60] 90 days prior to the commencement of the offering in this Commonwealth, [a certified] an audited balance sheet and [profit and loss] statement of income for the prior most recent completed fiscal year.

(B) A statement by [an] a certified public accountant or the guarantor as to whether there have been adverse material changes in the financial condition of the guarantor from the date of the [certified] audited balance sheet submitted in compliance with clause (A) within 5 days prior to the commencement of the offering in this Commonwealth.

(5) The guaranty may not be bought, sold or traded as a security or otherwise realized upon by a [security holder] securityholder separately from that [security holder's] securityholder's interest in the bonds.

(6) The proceeds from the sale of the bonds shall be utilized for the benefit of a facility which is owned or operated—user—by either of the following:

(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in 26 U.S.C.A. § 501(c)(3) or has received an opinion of counsel that it is so exempt, and where the combined net [worth or fund balance] assets of the user and guarantor is not less than 25% of the amount of the securities being offered.

* * * * *

(7) Under the guaranty agreement, the guarantor is required to do the following:

(i) File with the [Trustee] trustee for the [Bondholders] bondholders a copy of its [certified] audited balance sheet and [profit and loss] statement of income within [150] 120 days after the completion of its fiscal year.

* * * * *

(iii) Notify the [Trustee] trustee for the [Bondholders] bondholders within 24 hours after it becomes insolvent as that term is defined in subsection (c) [(2)] (1).

(8) Under the trust indenture, mortgage, deed of trust or other similar agreement, the [Trustee] trustee for the [Bondholders] bondholders, as that term is defined in subsection (c)(2), is required to do the following:

* * * * *

(ii) Provide, to the bondholder, within 30 days of receipt of a written request from a bondholder, a copy of

the guarantor's most recent [**certified**] **audited** balance sheet and [**profit and loss**] statement of income.

(iii) Notify the bondholders of the occurrence of any of the following events no later than 30 days after an occurrence and inform the bondholders that a copy of the bondholders list described in subparagraph (i) will be provided within 30 days of receipt of a written request for the list:

* * * * *

(B) The date the [**Trustee**] trustee receives a copy of the auditor's report to the guarantor containing [**a**] going concern [**qualification**] disclosure as that term is defined in [**subsection (c)(1)**] § 609.032(a) (relating to definitions).

(C) The date on which the [**Trustee**] trustee is informed that the guarantor is insolvent as that term is defined in subsection (c) [**(2)**](1). There is no independent duty on the part of the [**Trustee**] trustee to determine the insolvency of the guarantor.

(b) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to [**certified**] **audited** balance sheets and [**profit and loss**] statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants [**, Inc.**] and accompanied by a Review Report as that term is defined in [**subsection (c)(3)**] § 609.032(a).

(c) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

[**(1) Going concern qualification**—A qualification contained in the auditor's report based upon the criteria contained in the Statement on Auditing Standard 34 promulgated by the American Institute of Certified Public Accountants, Inc.

[**(2) Insolvent**—The inability of a guarantor 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. For purposes of this paragraph, a guarantor may not be considered insolvent if the auditor's report to the guarantor's [**certified**] **audited** balance sheet and [**profit and loss**] statement of income did not contain [**a**] going concern [**qualification**] disclosure as that term is defined in [**paragraph (1)**] § 609.032(b).

[**(3) Review Report**—A level of service rendered by an independent Certified Public Accountant or Public Accountant which was performed in accordance with standards promulgated by the American Institute of Certified Public Accountants, Inc.

[**(4) Trustee for the [Bondholders] bondholders**—The person designated in the trust indenture, mortgage, deed of trust, or similar agreement to act as trustee for the bonds.

CHAPTER 206. REGISTRATION BY QUALIFICATION

§ 206.020. Tax opinion in offerings of limited partnership interests.

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(c) The tax opinion or discussion of tax aspects shall be prepared or reviewed by an independent attorney, **certified public** accountant or other qualified professional who shall be identified in the registration statement.

(d) For purposes of this section, an attorney, **certified public** accountant or other qualified professional may not be considered to be "independent" if he or a member of his firm is either:

(1) [**Is a**] A promoter, underwriter, general partner or employe of the issuer.

(2) [**Is an**] An affiliate of a promoter, underwriter, general partner or employe of the issuer.

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

CHAPTER 302. EXEMPTIONS

§ 302.063. [**Credit unions**] **Financial institutions** exempt from broker-dealer and agent registration.

(a) Under section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt [**credit unions**] **financial institutions** and individuals representing [**credit unions**] **financial institutions** from the broker-dealer and agent registration provisions of section 301 of the act (70 P. S. § 1-301), if the [**credit unions and individuals representing the credit unions fulfill the following requirements:**] activities of the financial institution and individuals representing the financial institution are conducted under a networking arrangement or brokerage affiliate arrangement.

[**(1) The credit union is licensed as a Federal credit union or is a credit union organized and supervised under the statutes of the Commonwealth.**

[**(2) The individual representing the credit union is a bona fide officer, director, partner or employe of a credit union, or an individual occupying similar status or performing similar functions.**

[**(3) The credit union engages solely in channelling activities—whether or not also acting as a trustee or custodian of individual retirement plans of its members established under the Employee Retirement Security Act of 1974 (Pub.L. No. 93-406) (88 Stat. 829) or self employed retirement plans established under the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C.A. §§ 37, 62, 72, 101, 104, 105, 172, 401—405, 503, 805, 1361, 2039, 2517, 3306, 3401, 6047 and 7207), including custodianship for self-directed IRA and Keogh accounts.**

[**(4) The credit union does not exercise investment discretion or render investment advice.**

[**(5) The credit union distributes only generic advertisements either concerning the channelling activities or on behalf of a broker-dealer.**

[**(6) The credit union discloses to its members the source, amount and limitations on insurance of the members' accounts with respect to channelled investments.**

[**(7) The credit union otherwise performs only clerical and ministerial functions for which it is**

reimbursed only for direct and indirect costs related to administrative services it provides and not as shared commissions.

(8) Other brokerage functions performed on behalf of the credit union's members are performed by a broker-dealer which:

(i) Is registered under section 301 of the act.

(ii) Registers as agents under section 301 of the act individuals representing the broker-dealer for compensation in effecting securities transactions with members of the credit union obtained as clients under channelling.

(iii) Does not exercise investment discretion or render investment advice with respect to members of the credit union obtained as clients under channelling.

(iv) Does not act as an underwriter of securities in effecting securities transactions with members of the credit union obtained as clients under the channelling.

(v) Distributes only generic advertisements to members of the credit union obtained as clients under the channelling.]

(b) [When used in] For purposes of this section, the following terms shall have the following meanings:

[Channelling—Constitutes those activities where a person engages in the business of finding or directing persons to a broker-dealer for the purpose of the broker-dealer effecting securities transactions for the latter persons' account.

Clerical and ministerial functions—The term includes distribution promotional materials to members of the credit union, assisting members in completing account opening forms and effecting debits or credits to the member's share account related to the purchase and sale of securities and receipt of dividend income from securities.

Generic advertisements—Advertisements which do not relate to a specific security or a specific securities offering. An advertisement which relates to types, kinds or categories of securities is generic unless the context is otherwise.]

Financial institution—A Federal or State chartered bank, savings and loan association, savings bank or credit union and any service corporation affiliated with these entities.

Networking arrangement or brokerage affiliate arrangement—A contractual arrangement between a broker-dealer registered under section 301 of the act and a financial institution whereby the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public which transactions are effected on, or emanate from, the premises of a financial institution where retail deposits are taken.

Subpart F. ADMINISTRATION

CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

§ 606.041. Delegation and substitution.

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(b) The Commission delegates to the Director of the Division of Licensing and Compliance [and the Chief of Licensing Section], the Assistant Director of the Division of Licensing and Compliance and the Chief, Licensing Section of the Division of Licensing and Compliance:

* * * * *

(c) The Commission delegates to the Director of the Division of Licensing and Compliance and the Assistant Director of the Division of Licensing and Compliance:

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(f) The Commission authorizes the Assistant Director of the Division of Corporation Finance [and], the Assistant Director of the Division of Enforcement and Litigation and the Assistant Director of the Division of Licensing and Compliance to exercise the delegations given in this section in the absence of [either] the Director of the Division of Corporation Finance [or], the Director of the Division of Enforcement and Litigation or the Director of the Division of Licensing and Compliance, respectively.

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

§ 609.032. Definitions.

(a) [The definitions contained in section 102 of the act (70 P. S. § 1-102), as they may be modified or expanded by Commission regulations or constructions, shall be applicable to this chapter.

(b) For the purpose of this chapter, the following terms have the meanings indicated, provided that these definitions may be modified by Commission constructions when appropriate:] Unless the context otherwise requires, or unless specific language otherwise controls, the following terms apply any time financial information is required to be filed under the act or under this title:

Accountant's report—[When used in regard to financial statements, a] A document in which an independent [public or] certified public accountant indicates the scope of the audit [or examination] which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

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Audit or examination—[When used in regard to financial statements, an examination] An audit of the statements by [an] a certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Audit—Audited and reported upon with an opinion expressed by an independent certified public accountant.

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[Certified—When used in regard to financial statements, examined and reported upon with an opinion expressed by an independent public or certified public accountant.]

Comparative financial statements—Financial statements in which data for 2 or more years are presented in adjacent columnar form.

Date of filing—[When used with respect to financial statements, the] The date on which the financial statements or any material amendment thereto are received [by] in the Harrisburg office of the Commission.

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Equity security—Any stock or similar security (including interests in a limited liability company); or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security, or any such warrant or right.

* * * * *

Going concern disclosure—The disclosure of substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year contained in the auditor's report based upon the criteria contained in the Statement on Auditing Standard 59 promulgated by the American Institute of Certified Public Accountants.

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Material—When used to qualify a requirement for the furnishing of information as to any subject, [limits the] means or refers to the magnitude of an omission or misstatement of information [required to those matters about which] that, in the light of surrounding circumstances, makes it probable that the judgement of an average prudent investor [ought reasonably to be informed] would have been changed or influenced by the omission or misstatement.

* * * * *

Principal holder of equity securities—[Used] When used in respect of a registrant or other person named in a particular statement or report, a holder of record or a known beneficial owner of more than 10% of any class of equity securities of the registrant or other person, respectively, as of the date of the related balance sheet filed.

* * * * *

Review—A review of the statements by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Review report—An accountant's review report, which is a document in which the certified public accountant indicates that a review has been performed, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

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Significant subsidiary—A subsidiary, or a subsidiary and its subsidiaries, which meet any of the conditions described in this definition based on the most recent annual financial statements, including consolidated financial statements, of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed:

(i) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share [—](based on their equity interests[—]) of the total assets [—] of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

* * * * *

Tangible book value of a company's common shares—The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) [Total liabilities] Liquidating value, including any premium of excess over par or stated value, payable upon involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) [Valuation reserves] An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) [Provisions for retirement of depreciable properties when such accounting treatment is reflected in lieu of provisions for depreciation and obsolescence] Deferred charges including debt issue costs.

(iv) [Liquidating value, including any premium of excess over par or stated value, payable upon involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation] Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principals.

(v) [An amount equal to any surplus from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(vi) Deferred charges.

(vii) Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principals; and

(viii) Good will] All other assets of an intangible nature including, but not limited to, goodwill, patents, [licenses, franchise, development expense,] copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, li-

censing agreements, noncompete covenants, customer lists, trade names, trademarks and organization [expense, unamortized debt discount and expense and all other asset accounts of an intangible nature] costs.

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§ 609.033. Accountants.

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(b) Accountant's reports shall be in accordance with the following:

(1) [*Technical requirements.* The accountant's report shall be dated; shall be signed manually; shall indicate the city and state where issued; and shall identify, without detailed enumeration, the financial statements covered by the report] *Auditor's report format.* The format of the auditor's report shall be in accordance with the reporting standards established by generally accepted auditing standards including Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(2) [*Representation as to the audit.* The accountant's report shall state whether the audit was made in accordance with generally accepted auditing standards and shall designate any auditing procedures deemed necessary by the accountant under the circumstances of a particular case which have been omitted, and the reasons for their omission. Nothing in this paragraph shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (3)] *Accountant's review report format.* The format of the accountant's review report shall be in accordance with the reporting standards established by Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

(3) [*Opinions to be expressed.* The accountant's report shall state clearly the opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; and the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements] *Accountant's compilation report format.* The format of the accountant's compilation report shall be in accordance with the reporting standards established by Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

(4) [*Exceptions.* Any matter to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements shall be disclosed.] *Certain accountant's reports.* Auditor's reports, accountant's review reports or accountant's compilation reports issued by public accountants are not permitted for reports required by § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

(a) When an issuer proposes to register its securities for sale under section 205 or section 206 of the act (70 P. S. §§ 1-205 and 1-206), and for which a registration statement has been filed with the United States Securities and Exchange Commission (SEC) under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall comply with the financial statement requirements as set forth in the rules and regulations of the SEC (17 CFR 210.1-01—210.12-29), all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form.

(b) [*When*] Except as provided in subsection (c), when an issuer proposes to register its securities for sale [pursuant to] under section 206 of the act [(70 P. S. § 1-206)], when an issuer proposes to sell its securities [pursuant to] under the exemption contained in Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and proposes to register the securities under section 205 of the act [(70 P. S. § 1-205)], or when an issuer proposes to sell its securities [pursuant to] under the exemption contained in section 203(p) of the act (70 P. S. § 1-203(p)), or when an issuer is required to file a proxy statement [pursuant to] under section 203(o)(ii) of the act (70 P. S. § 1-203(o)(ii)), it shall file the following financial statements, all of which shall be prepared in accordance with generally accepted accounting principles and presented in comparative form:

(1) A [*balanced*] balance sheet of the issuer, dated within 120 days of the date of filing with the Commission. If [*such*] the balance sheet is not [*certified*] audited, there shall be filed, in addition, [*a certified*] an audited balance sheet as of the [*registrant's*] issuer's last fiscal year, unless [*such*] the last fiscal year ended within 90 days of the date of filing, in which case there shall be filed [*a certified*] an audited balance sheet as of the end of the [*registrant's*] issuer's next preceding fiscal year.

(2) [*Income statements, statements of changes in financial position, and*] Statements of income stockholders' equity and cash flows for each of [*the three*] 2 fiscal years or less, if the issuer and its predecessors have been in existence for less than [*three*] 2 years preceding the date of the latest balance sheet filed, and for the period, if any, between the close of the latest of [*such*] the fiscal years and the date of the latest balance sheet filed, except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years. These statements shall be [*certified*] audited up to the date of the latest [*certified*] audited balance sheet filed. However, if changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of [*changes in*] stockholders' equity [*accounts*] need not be filed.

(3) Consolidated balance sheets, [*income*] statements of income, [*statements of changes in financial position and*] stockholders' equity, and cash flows complying with the [*certification*] audit requirements

[set forth] in paragraphs (1) and (2) should be filed for the issuer and its subsidiaries in accordance with this section. [Where consolidated statements are filed, individual statements of the issuer may be omitted if either of the following conditions is met and the Commission is so notified:

(i) The issuer is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interests or indebtedness to any person other than the issuer or its consolidated subsidiaries in amounts which together exceed 5.0% of the total assets as shown by the most recent year-end consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the issuer by guarantee, pledge, assignment, or otherwise are to be excluded for the purpose of this determination.

(ii) The issuer's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75% or more of the total assets shown by the most recent year-end consolidated balance sheet; and the issuer's total sales and revenues, exclusive of interest and dividends received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement for the most recent fiscal year if it were filed, constitute 75% or more of the total sales and revenues shown by the most recent annual consolidated income statement.

(4) The financial statements which would be required if the subsidiary were the issuer shall be filed for each majority-owned subsidiary of the issuer not consolidated with the issuer and if practicable, as of the same dates and for the same periods as those of the issuer. Similar statements shall be filed for each person of which the issuer owns, directly or indirectly, approximately 50% of the voting securities, and for each 50% or less owned person for which the investment is accounted for by the equity method by the issuer or a consolidated subsidiary of the issuer. If approximately 50% of the voting securities of such person are owned by another single interest, such other interest should be identified. No financial statement need be filed pursuant to this paragraph for unconsolidated subsidiaries and 50%-owned persons or 50% or less owned persons if all such subsidiaries and persons, taken in the aggregate as a single subsidiary, would not constitute a significant subsidiary.

(5) (4) If the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities[,] or capital [stock, surplus or reserve] accounts, include a balance sheet of the issuer prior to the reorganization, a column showing the changes to be effected in the reorganization, and a pro forma balance sheet after the reorganization. Explain in a footnote the adjustments made. If [such] a reorganization has taken place at any time covered by the [income] statements of income filed, explain in a footnote the effect thereof.

(6) (5) If the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation[,] or otherwise, describe the plan of succession, show, in columnar form, the balance sheets of the parties to the transaction, the changes effected or to be effected and the balance sheet of the issuer as a result of the transaction, and [profit and loss] statements of income for each of the businesses for the periods covered by paragraph (2), to include a consolidating pro forma statement of income. This paragraph [shall] does not apply[, however,] to the issuer's succession to the business of any totally-held subsidiary or to the acquisition of subsidiaries not constituting, in the aggregate, a significant subsidiary.

(7) (6) * * *

(8) For registration of securities—except those involving limited partnership interests and any corporation which has or intends to have significant oil and gas operations—to be sold to the public for cash not exceeding \$5 million income statements, statement of changes in financial position and stockholder's equity for each of the 2 fiscal years or less if the issuer and its predecessor has been in existence for less than 2 years preceding the date of the latest balance sheet filed. The statement shall be certified up to the date of the latest certified balance sheet filed.

(9) (7) For [filings] an issuer proposing to register its securities under section 206 of the act [(70 P. S. § 1-206), in addition to the statements required in either paragraph (2) or (8)], the registration statement shall contain summary [income] statements of income for each of the [five] 3 most recent fiscal years and for the period from the date of the end of the latest fiscal year to the date of the latest balance sheet filed. The summary statements of income required in this paragraph are in addition to the financial statements required under paragraph (2).

(c) When an issuer proposes to register its equity securities for sale under section 206 of the act, which securities are exempt from registration under section 5 of the Securities Act of 1933 under an exemption contained in section 3(a)(11) of the Securities Act of 1933, or Regulation A or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933, the issuer shall file the financial statements required by subsection (b) except that the financial statements may be reviewed by an independent certified public accountant in accordance with the standards established by the American Institute of Certified Public Accountants or the Canadian equivalent if:

(1) The amount of the present offering does not exceed \$1 million.

(2) The issuer previously has not have sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation or any other method directed toward the public.

(3) The issuer previously has not been required under Federal, State, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(4) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) does not exceed \$1 million.

(d) The financial statements required by subsections (b) and (c) shall be included in the prospectus or offering circular distributed to offerees in this Commonwealth.

(e) For purposes of this subsection, the corporate form of financial statement title has been used. Financial statement title terminology may differ for other types of accounting entities, including not-for-profit organizations. In this case, the analogous financial statements of those entities should be included.

(f) When consistent with the protection of investors, the Commission may permit the omission of one or more of the financial statements required by this section or the filing in substitution therefor of appropriate statements of comparable character. The Commission, by order, also may require the filing of other financial statements in addition to, or in substitution for, the financial statements required by this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) [**Where**] When an issuer is required under the act, and this title to distribute financial information to [**security-holders**] securityholders, the issuer shall include the following financial statements as a part thereof:

(i) Financial statements to include balance sheets, [**income**] statements of income, [**changes in financial position, and**] stockholders' equity[,] and cash flows all in comparative [**columnar**] form, for the issuer's last [**two**] 2 fiscal years.

(ii) Consolidated financial statements of the issuer and its parent or its subsidiaries, or both, in comparative [**columnar**] form, for the issuer's last [**two**] 2 fiscal years.

(2) [**Such**] The financial statements shall be audited and prepared in conformity with generally accepted accounting principles applied consistently with past periods or noting any changes[; **however, such**]. The financial statements need not be audited [**where**] when the issuer is permitted by this title or by order of the Commission to distribute unaudited financial information to [**security-holders**] securityholders.

(b) [**Form, order and terminology.**] *Form of financial statement.* For purposes of this section, the corporate form of financial statement title is used. Financial statement title terminology may differ for other types of accounting entities including not-for-profit organizations. In this case, the analogous financial statements of those entities should be included.

[(1) Financial statements may be filed in such form and order and may use such generally accepted terminology as will best indicate their significance consistent with commonly accepted usage of the issuer's industry.

(2) The information required with respect to any statement shall be furnished as a minimum requirement, to which shall be added such further information as is necessary to make the required statements, in light of the circumstances under which they are made not misleading.

(3) Negative amounts shall be shown in brackets or parentheses and so described in the related caption, columnar heading, or note to the statement or schedule, as appropriate.]

CHAPTER 610. DESTRUCTION OF DOCUMENTS AND RECORDS

§ 610.010. Destruction of documents and records.

(a) The Commission may destroy registration filings, exemption filings, notices or statements and correspondence and exhibits related thereto [**as obsolete 7 years after the date of filing; provided that the Commission maintains as a permanent record a card index containing the information that it prescribes by rule relating to the filing of the documents and Commission action taken with respect thereto; and further provided that the Commission maintains a permanent record containing the information as it prescribes by rule relating to orders, rulings, hearings and disciplinary action taken by the Commission with reference to the filings**] in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act (70 P. S. § 1-603(b)) and any Commission action taken related to these filings.

(b) The Commission may destroy an application for registration of broker-dealers, investment advisers [**or**], agents or investment adviser representatives and correspondence and exhibits related thereto [**as obsolete 5 years after the registration of the broker-dealer, investment adviser or agent has been cancelled, withdrawn or has otherwise become inactive; provided, that the Commission shall maintain as a permanent record a card index containing the information that it prescribes by rule relating to the filing of the documents and Commission action taken with respect thereto; and further provided that the Commission will maintain a permanent record containing the information it prescribes by rule relating to orders, rulings, hearings and disciplinary actions taken by the Commission with respect to the filings**] in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act and any Commission action taken related to these filings.

(c) [**Copies on microfilm or in another form which may be retained by the Commission in its discretion of destroyed records shall be accepted for purposes as equivalent to the original when certified by the Secretary of the Commission.**] Documents relating to investigations, hearings and proceedings shall be retained in a manner consistent with a records retention schedule adopted by

order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record any Commission action relating to investigations, hearings and proceedings, transcripts of hearings and summary information relating to investigations authorized under section 510 of the act (70 P.S. § 1-510).

(d) Information required to be retained by the Commission under this section may be maintained in paper, microfilm or electronic format. Copies of destroyed documents retained in a microfilm or electronic format shall be accepted as original documents when certified by the Secretary of the Commission.

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