

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 258]

Medical Assistance Estate Recovery Program

Statutory Authority

The Department of Public Welfare (Department), Office of Administration, proposes to add Chapter 258 (relating to MA estate recovery program) to read as set forth in Annex A.

The Department is proposing this new chapter under the authority of sections 201(2), 1410 and 1412 of the Public Welfare Code (62 P. S. §§ 201(2), 1410 and 1412).

Need for the Proposed Regulations

The purpose of these proposed regulations is to interpret and implement section 1412 of the Public Welfare Code (62 P. S. § 1412) which requires the Department to establish and implement a Medical Assistance (MA) estate recovery program. The proposed regulations will implement requirements of the Federal Medicaid Program (42 U.S.C.A. § 1396p(b)(1)), which mandate that each state operate an estate recovery program.

Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396u) established the Medicaid program in 1965 as a cooperative Federal-state program through which various health care services are provided to poor and needy individuals. Under Title XIX, a participating state must designate a single state agency to administer or supervise the administration of the state Medicaid program. 42 U.S.C.A. § 1396a(a)(5). The designated state agency must prepare an MA plan consistent with Federal law and regulations and submit it to the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services (DHHS), for approval. Upon approval of its plan by HCFA, the state becomes eligible for Federal matching funds for reimbursement of the cost of specific types of medical care and services. 42 U.S.C.A. § 1396a.

The Commonwealth participates in the Title XIX Medicaid program. The Department is designated the single State agency responsible for administration of the Commonwealth's Medicaid program which is known as the MA program.

Pub. L. No. 103-66 amended Title XIX to add a requirement that participating states establish and implement a program to recover MA payments from the probate estates of certain individuals. (42 U.S.C.A. § 1396p(b)(1)). To comply with this Federal mandate, the Legislature amended the Public Welfare Code in 1994 to authorize creation and implementation of the estate recovery program. (62 P. S. § 1412) (act of June 16, 1994 (P. L. 319, No. 49) as amended by the act of June 30, 1995 (P. L. 129, No. 20)). The estate recovery program has been in operation in this Commonwealth since August 15, 1994. Notice of rule change was published in the *Pennsylvania Bulletin* at 25 Pa.B. 1916 (May 13, 1995). During the period of its operation, many questions have arisen as to interpretation and procedures under the statute. These proposed regulations are needed to supply guidance with respect to issues not directly addressed by the Federal and State statute, and to resolve ambiguities in the

statutory language. Conforming changes to §§ 178.1(h) and 257.21(b) (relating to general policy on MA resources common to all categories of MA; policy) will be made when those chapters are revised.

Significant Provisions

The scope of the proposed regulations is established by § 258.1 (relating to policy). Although the Legislature has authorized the Governor to adopt a broad estate recovery program, the Department has generally elected to establish the minimum program required by Federal law consistent with the policy of Executive Order 1996-1. The Department will recover only from the estates of persons aged 55 years or older at the time assistance was received. The Department will restrict its recovery efforts to obtaining reimbursement for the following types of medical assistance: nursing facility services, home and community based services, and related hospital and prescription drug services and will not seek reimbursement for other services. The Department will also restrict its recovery efforts to property which passes through a decedent's estate. Accordingly, property held jointly with a right of survivorship, Totten trust bank accounts and property held in trust at time of death will generally not be subject to estate recovery.

Section 1412 of the Public Welfare Code uses the term "probate estate" to define the scope of estate recovery, and in this Commonwealth, the term "probate" generally refers to a proceeding involving a will. See 20 Pa.C.S. § 3131 (relating to place of probate). However, the Federal statute requires the Commonwealth to include all assets included in an estate as defined for purposes of State probate law. Nationally, the term "probate" has a much broader meaning. See for example, *Black's Law Dictionary* (4th Ed. 1968). We believe it is clear from the Federal statute, as well as from Federal interpretative materials, that intestate estates are subject to the estate recovery program. The Legislature's intent was to conform to Federal law and accordingly, the Department has adopted an interpretation which includes property passing by intestacy in its definition of "estate property." (§ 258.2. Definitions).

The Department has not included permanently institutionalized persons under the age of 55 within the estate recovery program. In Regional Medicaid Letter 95-42, the Federal government clarified that recovery from these persons is not required unless a state has a process for determining that persons under age 55 are permanently institutionalized. The Department does not have such a process. The services provided to these persons upon reaching age 55 and thereafter will be subject to the estate recovery program.

Property which is not included in a decedent's estate is generally not subject to the estate recovery program. It is not improper or illegal for individuals to structure their financial affairs to avoid application of the estate recovery program. However, 12 Pa.C.S. §§ 5101—5110 (relating to Pennsylvania Uniform Fraudulent Transfer Act) limits the ability of individuals to transfer property for less than reasonably equivalent value. Section 258.3(f) (relating to property liable to repay the Department) provides that property which can be recovered for the benefit of an estate under the Pennsylvania Uniform Fraudulent Transfer Act is subject to the Department's estate recovery claim. Additionally, § 258.3(f) establishes a rebuttable presumption that property which is transferred for less

than reasonably equivalent value within 1 year prior to death is subject to recovery under the Pennsylvania Uniform Fraudulent Transfer Act.

Commonwealth law authorizes the direct transfer of wages, small bank accounts, certain life insurance proceeds and patient care account balances directly to family members or funeral directors. (20 Pa.C.S. § 3101 (relating to payments to family and funeral directors)). The Department will not object to the direct transfer of funds to funeral directors to pay for burial expense. However, the Department's claim to these assets is ahead of that of family members. Section 258.3(e) provides that family members who receive this money remain answerable to the Department.

Section 1412 of the Public Welfare Code places the burden of insuring payment of the Department's claim upon the personal representative. The Department has provided instructions to the personal representative in § 258.4 (relating to request for statement of claim). Section 258.5 (relating to computation of claim) outlines how the Department's claim is computed.

Section 1412 of the Public Welfare Code adopts the priority scheme of 20 Pa.C.S. § 3392 (relating to classification and order of payment). This priority scheme is mirrored in § 258.6 (relating to priority of the Department's claim). The proposed regulation also clarifies that the Department's claim against assets subject to 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) is superior to that of family members but inferior to certain funeral expenses.

Federal law requires that the Department postpone the collection of reimbursement whenever the decedent has a surviving spouse, minor child or blind or disabled child. In § 258.7 (relating to postponement of collection), the Department has attempted to balance the statutory right of these surviving relatives to use property during the postponement period with the Department's right to eventual collection once the postponement period expires. The proposed regulation generally provides that certain property will be preserved and protected during the postponement period and that eligible survivors may use the property. In the case of cash and cash equivalents, the eligible survivors may consume income, pay medical bills, and with court approval, consume principal. Additionally, the Department has decided that it would not be cost-effective to attempt to protect certain property during the postponement period. Thus, for example, where an estate contains less than \$50,000 dollars in cash or cash equivalents, the Department will not attempt to protect those assets. Lesser amounts of cash and cash equivalents do not generally produce significant amounts of income and any attempt by the Department to protect these assets would result in a burdensome number of requests for access to the principal to pay the living expenses of eligible survivors. No interest will be charged on the Department's claim during the postponement period.

Section 1412 of the Public Welfare Code imposes personal liability upon both personal representatives and transferees when the Department's claim is not paid. The proposed regulations in §§ 258.8 and 258.9 (relating to liability of personal representative; and liability of transferees) explain the conditions upon which personal liability will be imposed upon personal representatives and transferees. If specified procedures are followed, the court order approving distribution of estate assets will usually discharge the personal representative from potential liability to the Department. In addition, to protect purchasers and to insure the marketability of real estate title, a

special provision in the proposed regulations provides that real estate, which is sold in the normal course of estate administration, will pass free from any claim by the Department (§ 258.9(c)).

Federal law requires that the Department make provisions for undue hardship waivers in accordance with standards set by the Federal government (42 U.S.C.A. § 1396p(b)(3)). The Department has adopted hardship criteria suggested in HCFA's State Medicaid Manual. (§ 258.10). Additionally, the Department has given itself discretion to waive claims, compromise claims and postpone collection under other circumstances.

Occasionally, the Department learns of significant estates where no administrator has been appointed. In these cases, the Department may authorize one of its employees to be appointed as administrator (§ 258.11). Additionally, the Department may make available lists of unadministered estates to encourage attorneys and others to administer these estates.

Appeals regarding the estate recovery program will generally be adjudicated by the Department's Bureau of Hearings and Appeals (§ 258.12). Common pleas courts will have concurrent jurisdiction to adjudicate disputes regarding the amount of the Department's claim. Common pleas courts may not determine undue hardship or otherwise exercise discretion vested in the Department.

Affected Individuals, Groups and Organizations

Affected persons include attorneys administering estates, courts and heirs of decedents.

Accomplishments/Benefits

These proposed regulations will increase compliance by estates with the Federally mandated estate recovery requirements and will decrease confusion regarding those requirements.

Fiscal Impact

Public Sector

Commonwealth

The estate recovery program has generated in excess of \$25.3 million since its inception in August 1994. The Department anticipates that these proposed regulations will slightly increase revenues due to better compliance with estate recovery requirements.

Local Government

These proposed regulations may impact the process of estate administration in the courts of common pleas. However, no significant impact is expected.

Private Sector

General Public

The estate recovery program results in an increase of revenue to the Commonwealth and helps to ensure continued financing of long-term care services under MA at the expense of heirs and beneficiaries of deceased individuals. Additionally, the costs of administering estates are increased. This increase in cost is not believed to be significant.

Paperwork Requirements

The estate recovery program affects the paperwork requirements for the Commonwealth and the general public because additional paperwork is required to obtain and provide statements of claim. However, there is no reasonable alternative to the increased paperwork. These

proposed regulations do not increase paperwork beyond that required since August 15, 1994.

Effective Date

Immediately upon publication of a final rulemaking.

Sunset Date

A sunset date is not anticipated because the underlying statute is permanent.

Public Hearings

Public hearings concerning these proposed regulations are not planned.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections, regarding the proposed regulations to the Department of Public Welfare, Charles Jones, Acting Chief, Third Party Liability Section, P. O. Box 8486, Harrisburg, PA 17105, (717) 772-6247 within 30 days of the date of publication of this notice in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments after the 30-day comment period will be considered for any subsequent revisions of these regulations.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 8, 1999, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 regulations, it will notify the Department within 10 days of the expiration 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 the review of objections raised, prior to final publication of the regulations, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTON,
Secretary

Fiscal Note: 14-445. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

CHAPTER 258. MA ESTATE RECOVERY PROGRAM

Subpart G. RESTITUTION AND REIMBURSEMENT

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§ 258.1. Policy.

(a) This chapter applies to the estates of MA clients who were 55 years of age or older at the time that MA was received and who died on or after August 15, 1994, and who received MA on or after August 15, 1994. It does not apply to individuals who received MA before they reached 55 years of age, and whose MA eligibility terminated before reaching age 55.

(b) The estate of an MA client who was 55 years of age or older at the time that MA was received is liable to repay the Department for the amount of MA paid for all nursing facility services, home and community based services and related hospital and prescription drug services provided upon reaching 55 years of age. Only MA services provided on or after August 15, 1994, are subject to the Program. Services provided prior to August 15, 1994, are not subject to the Program.

§ 258.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Cash equivalent assets—Stocks, bonds, notes, bank accounts, mutual fund shares and other financial instruments convertible into cash.

Decedent—A deceased MA client who was 55 years of age or older at the time that MA was received.

Decree of distribution—An instrument by which heirs receive property of a deceased. It is the final determination of the parties to a proceeding.

Department's claim—The claim of the Department computed and made under this chapter.

Estate property—All real and personal property of a decedent which is subject to administration by a decedent's personal representative, whether actually administered or not.

Facility of payment clause—A provision which authorizes the direct payment to an individual.

Family exemption—The exemption provided by 20 Pa.C.S. § 3121 (relating to when allowable).

Home and community based services—A broad array of Medicaid services provided to an individual to avoid institutionalization under the waiver authority of section 1915(c) of the Social Security Act (42 U.S.C.A. § 1396n(c)).

Immediate family member—Spouse, child, parent or sibling.

Income producing asset—Property which is used in a trade or business such as a family farm, family business or rental property. The term excludes cash, stocks and bonds, mutual fund shares or other marketable financial instruments.

Nursing facility services—General, hospital based, and county nursing facility services and services provided in an intermediate care facility for the mentally retarded.

Perfected liens—A claim or charge on a property for payment of a debt, for which the person owed the debt

has taken the necessary legal steps required to secure his interest in the subject property.

Personal representative—An executor or administrator of any description.

Postponement period—The period during which the Department will defer collection of its claim.

Primary residence—The principal home of the decedent at the time of death or prior to admission to a nursing facility.

Program—The Estate Recovery Program.

Protectable asset—An asset which shall be preserved and protected for eventual payment of the Department's claim after the postponement period. The term includes:

- (i) Real estate and all improvements thereto.
- (ii) Items of personal property with a fair market value in excess of \$10,000.
- (iii) Cash and cash equivalent assets of an estate with an aggregate value in excess of \$50,000 dollars.
- (iv) Other property with a fair market value in excess of \$10,000.

Related hospital and prescription drug services—Hospital and prescription drug services received by a decedent as follows:

- (i) While the client was a resident in a nursing facility or was receiving home and community based services.
- (ii) While the client was on temporary leave from a nursing facility.
- (iii) Subsequent to a transfer from a nursing facility to a hospital.

Response period—The period during which the Department will respond to a notice requesting a statement of claim. The response period is 45-calendar days unless extended in accordance with this chapter.

Surviving spouse or child—The surviving spouse of a decedent or a child who is blind or totally and permanently disabled, as determined under the standards of the Supplemental Security Income (SSI) program operated under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f).

Testamentary trust—Trust created by the will of a decedent.

Transferee—An individual or entity, other than a personal representative, possessing or receiving property subject to the Department's claim. Both initial and subsequent recipients of property are transferees.

§ 258.3. Property liable to repay the Department.

- (a) All estate property is subject to the Department's claim.
- (b) Property held by a decedent and another at the time of death as joint tenants with rights of survivorship, or as tenants by the entireties, is not subject to the Department's claim.
- (c) The proceeds of life insurance on the decedent which are directly payable to a third party are not subject to the Department's claim. However, life insurance which is payable to the decedent's estate is subject to the Department's claim even if the life insurance policy contains a facility of payment clause.
- (d) Assets placed in trust prior to the death of the decedent, including irrevocable burial reserves, are not subject to the Department's claim so long as the assets

are not payable to the decedent's estate. Trust assets and burial reserve proceeds which are or become payable to the decedent's estate are subject to the Department's claim. Assets designated for a testamentary trust are subject to the Department's claim.

(e) Property within the scope of 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), including unpaid wages, certain bank accounts, certain life insurance and patient care accounts, are subject to the Department's claim.

(f) Notwithstanding subsections (b)—(d), a property which a personal representative could recover for the benefit of the estate under 12 Pa.C.S. Chapter 51 (relating to the Uniform Fraudulent Transfers Act) is subject to the Department's claim. For purposes of this chapter, the Department will presume that any transfer of assets which a decedent made within 1 year of death for less than a reasonably equivalent value is recoverable for the estate.

§ 258.4. Request for statement of claim.

(a) The personal representative of the estate of any decedent who was 55 years of age or older at the time of death has a duty to ascertain whether the decedent received MA services during the 5 years preceding death and, if so, shall give notice to the Department requesting a statement of claim. The 5-year time frame is for notification purposes only and does not limit the Department's claim. Effective August 15, 1994, the amount of MA paid for services rendered after August 15, 1994, to an individual 55 years of age or older is subject to the Department's claim. The notice shall be mailed by certified mail return receipt to the address of the Department specified by § 258.14 (relating to service on the Department). The notice shall include, at a minimum, the following information:

- (1) A statement that the personal representative is requesting a statement of claim against the estate of the decedent.
- (2) The decedent's name.
- (3) The decedent's last address.
- (4) The decedent's date of birth.
- (5) The decedent's date of death.
- (6) The decedent's Social Security Number.
- (7) The personal representative's name, address and telephone number.

(b) The Department will submit a statement of claim to the personal representative within the response period. If the notice from the personal representative is mailed to the incorrect address, or does not otherwise fully comply with subsection (a), the response period shall be suspended until a fully complying notice is received. If the Department fails to submit a statement of claim to the personal representative within the response period, the Department's claim will be forfeited.

(c) The Department's Third Party Liability Section will date stamp all notices from personal representatives when received. The date stamp conclusively establishes the date of the Department's receipt of the notice. The Department will also date all statements of claim. The date on the statement of claim conclusively establishes the Department's submission date for the statement of claim, regardless of any postmark date.

(d) A personal representative may extend the Department's response period. Additionally, if the last date of

the response period falls on a weekend, State holiday or other day that the offices of the Third Party Liability Section are closed, the response period will be extended until the next business day.

(e) The Department may issue a statement of claim based upon information received by telephone, fax machine or electronic mail. However, use by the personal representative of the alternative forms of communication will not cause the Department's response period to commence.

(f) The Department may amend a statement of claim after the response period has elapsed. The amended claim shall relate back to the date of the original statement of claim.

§ 258.5. Computation of claim.

(a) The Department's claim with respect to a decedent will consist of the total of all MA payments made with respect to the decedent for nursing facility services, home and community based services and related hospital and prescription drug services rendered on or after August 15, 1994.

(b) Premium payments and cost-sharing for decedents who were qualified Medicare beneficiaries shall be included in the statement of claim for the time the decedent received nursing facility services, home and community based services or related hospital and prescription drug services rendered on or after August 15, 1994.

(c) If the decedent was a surviving spouse or child, the Department's statement of claim will include the Department's claim against a previously deceased spouse or parent deferred by the Department during the postponement period.

(d) With respect to claims against third parties for the costs of MA services delivered through a Managed Care Organization (MCO) contract, the Department will recover the actual payment to the hospital or other medical provider for the service. If no specific payment is earmarked by the MCO for the service, such as in the example of a capitated payment to physicians, the Department will recover its fee schedule amount for the service.

(e) If the MCO fails to provide the Department with information necessary to compute the statement of claim within contractual deadlines, the Department will use the amount of the capitation payments made to the MCO since the date of the injury as its claim against the third party until sufficient information is provided to compute a statement of claim in accordance with subsection (d). If the Department is forced to use the capitation payment to compute its statement of claim, the MCO will be liable to the Department for the amount of the Department's diminished recovery in accordance with the terms of the MCO's contract with the Department.

(f) There shall be a rebuttable presumption that the Department's statement of claim is correct. The burden of proof is upon the personal representative to show that the Department's statement of claim is incorrect by a preponderance of evidence.

(g) The Department will not reduce its claim on account of attorneys' fees or other costs incurred by the estate to obtain or liquidate assets. These costs may be treated as expenses of administration of the estate.

§ 258.6. Priority of the Department's claim.

(a) The Department's claim is entitled to priority under 20 Pa.C.S. § 3392(3) (relating to classification and order

of payment) to the extent it includes payment for services rendered within 6 months of death. Otherwise, the Department's claim shall be paid under 20 Pa.C.S. § 3392(6).

(b) The Department's claim against deposit accounts and patient care accounts subject to 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) shall be subordinate to reasonable funeral expenses and to those claims having priority over the Department under 20 Pa.C.S. § 3392.

(c) The Department's claim against assets subject to 20 Pa.C.S. § 3101 is superior to that of family members and any person receiving money under these provisions of law shall be answerable to the Department.

(d) The Department's claim is subordinate to the family exemption and to perfected liens on specific property.

§ 258.7. Postponement of collection.

(a) The Department will postpone collection of its claim until the later of one of the following:

(1) The death of any surviving spouse.

(2) The death of any child who is blind or totally and permanently disabled, as determined under the standards of the Supplemental Security Income (SSI) Program.

(3) The date any surviving child attains 21 years of age.

(b) The personal representative has a duty to insure protection of the Department's claim during the postponement period.

(c) The personal representative will be deemed to have complied with his responsibilities to protect the Department's claim during the postponement period if, after liquidating the assets as is appropriate and paying all expenses of administration and claims against the estate, the personal representative takes one or more of the following actions until the Department's claim is fully protected, or until all protectable assets are protected.

(1) If the decedent's estate contains real estate, the personal representative shall cause a mortgage or other recorded encumbrance to be placed against the real estate in favor of the Department.

(2) If the decedent's estate contains individual items of personal property with an aggregate fair market value in excess of \$10,000, the personal representative shall cause a properly perfected security interest to be placed against the items of personal property in favor of the Department.

(3) If the estate contains cash or cash-equivalents in an aggregate amount in excess of \$50,000, the personal representative shall cause the money to be placed in trust, with terms and trustees approved by the Department. The trust shall name the Department as remainderman and shall allow the spouse or child, or both, as appropriate, to consume income without court approval, shall allow the consumption of principal to pay reasonable medical expenses of the spouse or child, or both, and shall allow the consumption of principal for the benefit of the spouse or child, or both, with court approval. The personal representative may serve as trustee and a reasonable trustee fee may be provided by the trust document.

(4) If the decedent's estate contains protectable assets which are not adequately protected by the procedures

provided in paragraphs (1)—(3), the personal representative shall request and follow the directions of the Department.

(d) No interest is charged on the Department's claim during the postponement period.

(e) Postponement of collection may be waived by a spouse, adult child or legal representative of a child under 18 years of age.

§ 258.8. Liability of personal representative.

(a) The personal representative has a duty to insure that the Department's claim is adequately presented to the Court and, unless the Department's claim is postponed, to pay the Department's claim after payment of all superior claims.

(b) The personal representative is personally liable to pay the Department's claim if property subject to the Department's claim, and not subject to postponement of collection, is transferred without valuable and adequate consideration to an heir or other person having a lower priority claim, without satisfaction of the Department's claim.

(c) When the Department's claim is postponed, the personal representative is personally liable if property subject to the Department's claim is transferred without valuable and adequate consideration to an heir or other person having a lower priority claim, without protecting the Department's claim.

(d) A decree of distribution will discharge the liability of the personal representative to the Department only if the following conditions are met:

(1) The Department is served with a copy of the proposed distribution at least 30 days in advance of court approval.

(2) The court records show that the personal representative made the inquiry required by § 258.4 (relating to request for statement of claims) and obtained a statement of claim, if appropriate.

(3) The court records show that any claim of the Department was presented to the court and paid, or that there were insufficient assets to pay the Department's claim.

(4) The Department is served with a copy of the final distribution order and paid all amounts that it is due.

(e) Notwithstanding subsection (d), a decree of distribution will not discharge the liability of the personal representative to the Department if the petition for distribution fails to disclose the existence of property subject to the Department's claim, or if the personal representative refuses to present and pay the Department's claim.

§ 258.9. Liability of transferees.

(a) A transferee is liable to pay the Department's claim when it receives property subject to the Department's claim for which it did not pay valuable and adequate consideration—that is, fair market value—for the property. The transferee's liability is limited to the fair market value of the property received.

(b) When the Department's claim is postponed, any transferee is personally liable to pay the Department's claim if the transferee receives property subject to the Department's claim and the transferee fails to protect the Department's claim during the postponement period.

(c) The arm's length sale of the decedent's real property at fair market value by the personal representative to a party unrelated to the decedent or the personal representative shall be deemed to be supported by valuable and adequate consideration.

§ 258.10. Undue hardship waivers.

(a) The Department will waive its claim in cases of undue hardship.

(b) The Department may find undue hardship and may waive its claim with respect to the real and personal property constituting the primary residence of a decedent and an immediate family member of the decedent, if they have:

(1) Continuously resided in the residence for at least 2 years immediately preceding the decedent's receipt of nursing facility services.

(2) No other alternative permanent residence.

(3) Annual gross family income that does not exceed 100% of the Federal poverty guidelines.

(c) The Department may find undue hardship and may waive its claim with respect to an income-producing asset if an immediate family member of the decedent meets one of the following conditions:

(1) Utilizes the asset to generate the primary source of income for the household.

(2) Would have a gross family income of less than 100% of the Federal poverty guidelines without use of the asset.

(d) The Department may find undue hardship and may postpone collection of its claim until one of the following:

(1) The death of a sibling who has an equity interest in the property and has been living in the house for at least 2 years prior to the death of the decedent.

(2) Upon the disposition of the property by the sibling living in the house.

(e) The Department has exclusive authority to waive its claim, compromise its claim or postpone collection, in other circumstances when undue hardship exists, or when collection is not cost effective, as determined by the Department on an individual case-by-case basis.

(f) Waiver requests shall be submitted to the following address: Estate Recovery Program, Post Office Box 8486, Harrisburg, Pennsylvania 17105-8486.

§ 258.11. Unadministered estates.

(a) The Department may cause one of its employees to administer an estate if no administrator has been appointed and assets may exist to pay the Department's claim.

(b) The Department's Office of Legal Counsel may provide legal services to an estate if a Departmental employe has been designated to administer the estate. Alternatively, the administrator may employ private counsel.

(c) The Department will charge the estate a reasonable fee, as an expense of administration, if administration services and attorney services are provided to the estate by Commonwealth employes.

(d) The Department may periodically develop lists of unadministered estates which may have assets. The lists will be made available to any attorney or member of the public who may desire to seek appointment as administrator. The Department may also refer unadministered estates to local private counsel to administer the estate.

§ 258.12. Administrative enforcement.

(a) In addition to any other remedies allowed by law, the Department may administratively assess liability upon a personal representative or transferee in accordance with §§ 258.8 and 258.9 (relating to liability of personal representative; and liability of transferees). This assessment may be appealed under § 258.13 (relating to appeals and jurisdiction).

(b) A final administrative order in any proceeding to assess liability against a personal representative or transferee shall be binding upon the parties in any subsequent judicial proceeding to enforce the administrative order.

§ 258.13. Appeals and jurisdiction.

(a) A personal representative, transferee or family member adversely affected by a decision of the Department under this chapter may appeal to the Department's Bureau of Hearing and Appeals within 30 days of the date the affected person is notified of the decision.

(b) An appeal shall be mailed to the Bureau of Hearings and Appeals, Department of Public Welfare, Post Office Box 2675, Harrisburg, Pennsylvania 17105.

(c) The Bureau of Hearings and Appeals has exclusive jurisdiction over disputes involving a request for waiver, compromise or postponement of collection. Appeals will be reviewed by the Bureau under an abuse of discretion standard. The Bureau's decision is binding on all parties, subject to the Secretary's reconsideration and appellate review.

(d) The Bureau of Hearings and Appeals has concurrent jurisdiction with the courts of common pleas over disputes involving the computation of the Department's claim or assessment of liability against a personal representative or transferee. If the personal representative or transferee files an appeal with the Bureau of Hearings and Appeals, the filing will be deemed to be an irrevocable election to proceed exclusively before the Bureau. The Bureau's decision is binding upon all parties, subject to the Secretary's reconsideration and appellate review.

§ 258.14. Service on the Department.

The address for requesting a statement of claim, or for serving legal papers on the Department is: Third Party Liability Section, Department of Public Welfare, Estate Recovery Program, Post Office Box 8486, Harrisburg, Pennsylvania 17105-8486.

[Pa.B. Doc. No. 99-1179. Filed for public inspection July 23, 1999, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 17]

Authorization to Verify Identification Number; Notice of Intent to Promulgate Regulation and Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in sections 1103.1 and 6103 of the Vehicle Code (75 Pa.C.S. §§ 1103.1 and 6103), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Title 67 of the

Pennsylvania Code by amending Chapter 17, Authorization to Verify Identification Number.

The purpose of this rulemaking is to allow for authorized employes of the Department of Transportation to inspect and verify that the vehicle identification number conforms with the description provided on the vehicle title application submitted to the Department.

The Department anticipates that this rulemaking will affect owners of vehicles for which an application for title is being made that also requires the verification of the vehicle identification number as part of the application process.

Accordingly, the Department is requesting that within 30 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or that have questions, suggestions or comments, please contact Thomas Zamboni, at 1101 South Front Street, Third Floor, Riverfront Office Center, Harrisburg, PA 17104, or by calling (717) 787-2895.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 99-1180. Filed for public inspection July 23, 1999, 9:00 a.m.]

[67 PA. CODE CH. 175]

Vehicle Equipment and Inspection; Notice of Intent to Promulgate Regulation and Request for Public Participation

The Department of Transportation, Bureau of Motor Vehicles, under the authority contained in sections 4303 and 6103 of the Vehicle Code as amended (75 Pa.C.S. §§ 4303 and 6103), and consistent with the goals of Executive Order 1996-1, February 6, 1996, Regulatory Review and Promulgation, announces its intention to amend Title 67 of the *Pennsylvania Code* by amending Chapter 175, Vehicle Equipment and Inspection.

The purpose of this rulemaking is to bring Chapter 175 into compliance with act of July 6, 1995, P. L. 246, No. 30, which amended section 4703 of the Vehicle Code (75 Pa.C.S. § 4703) (relating to operation of vehicle without official certificate of inspection). This rulemaking will establish equipment and inspection criteria for farm vehicles with a gross weight or gross vehicle weight rating of greater than 17,000 pounds and for which a Type I biennial certificate of exemption has been issued. Interim equipment and inspection criteria were published at 25 Pa.B. 3540 (August 26, 1995), effective October 2, 1995, which were to continue in effect until regulations governing equipment standards and inspection criteria for the subject vehicles were promulgated by the Department.

The Department anticipates that this rulemaking will affect owners of farm vehicles with a gross weight or gross vehicle weight rating of greater than 17,000 pounds and for which a Type I biennial certificate of exemption has been issued.

Accordingly, the Department is requesting that within 30 days of the publication of this notice in the *Pennsylvania Bulletin*, all interested persons desiring to participate in the development of this rulemaking or that have questions, suggestions or comments, please contact Tho-

mas Zamboni, at 1101 South Front Street, Third Floor, Riverfront Office Center, Harrisburg, PA, 17104, or by calling (717) 787-2895.

BRADLEY L. MALLORY,
Secretary

[Pa.B. Doc. No. 99-1181. Filed for public inspection July 23, 1999, 9:00 a.m.]

HUMAN RELATIONS COMMISSION

[16 PA. CODE CH. 45]

Housing Accommodations/Commercial Property

The Pennsylvania Human Relations Commission (Commission), which earlier adopted the guidelines and a statement of policy relating to advertising, now presents those guidelines and statement of policy in the form of proposed rulemaking. The guidelines and a statement of policy were published at 27 Pa.B. 5485 (October 18, 1997). An amendment to the guidelines and a statement of policy was published at 28 Pa.B. 5578 (November 7, 1998). In compliance with and under the authority of the act of June 25, 1997 (P.L. 326, No. 34) (Act 34), the guidelines and statement of policy were not subject to review under section 205 of the act of July 31, 1968 (P.L. 469, No. 240) (45 P.S. § 1205) and are effective for a period not to exceed 2 years from the effective date of Act 34, which was August 24, 1997. The guidelines and statement of policy as amended were to serve as proposed rulemaking. On or before the expiration of the 2-year period, the advertising guidelines and statement of policy as amended expire and are to be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

Under the publication of the guidelines and statement of policy as amended, the Commission sought input from interested and affected groups and requested comments from the readers. The guidelines and statement of policy as amended have been published in numerous newsletters and widely circulated by the Commission. They have been favorably received by the affected organizations and groups. Since publication, the Commission has received many inquiries regarding advertisements and has successfully developed and followed the procedures spelled out in the guidelines and statement of policy as amended.

The purpose of this proposed rulemaking is to inform the public of words, phrases, symbols and the like, which are unlawful, when used in housing advertisements. In addition, they are a guide to advertisers and publishers in their efforts to insure that any housing advertisements published or caused to be published by them do not violate Act 34. This proposed rulemaking also contain rules which if followed will constitute reasonable efforts to comply with the advertising provisions of Act 34 so that a finding of knowing and willful violation of those portions of Act 34 is precluded.

Fiscal Impact

The Commission believes that the regulations will result in no additional cost to the Commission or to the general public. Any additional costs which arise were created by the Act 34 and not this proposed rulemaking.

Paperwork Requirements

No additional, routine paperwork will be required by the new regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 13, 1999, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on State Government and the Senate Committee on Labor and Industry. In addition to submitting the proposed rulemaking, the Department 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 rulemaking, it will notify the Department within 10 days of the closing 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 of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

Effective Date

This proposed rulemaking shall take effect upon final publication in the *Pennsylvania Bulletin*.

Contact Person/Public Comments

Interested persons are invited to submit written comments regarding this proposed rulemaking in writing to Nancy L. Gippert, Assistant Chief Counsel, Human Relations Commission, 101 South Second Street, Suite 300, P.O. Box 3145, Harrisburg, PA 17101. The comments should be submitted within 60 days of publication.

HOMER C. FLOYD,
Executive Director

Fiscal Note: 52-10. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 16. COMMUNITY AFFAIRS

PART II. GOVERNOR'S OFFICE

Subpart A. HUMAN RELATIONS COMMISSION

CHAPTER 45. HOUSING ACCOMMODATIONS/COMMERCIAL PROPERTY

(Editor's Note: As part of this proposal, the Commission is proposing to delete the existing text of the statement of policy in 16 Pa. Code Chapter 45, Subchapter B, and replace it with the regulations as proposed in Annex A.)

§§ 45.101—45.103. (Reserved).

§§ 45.121—45.126. (Reserved).

§ 45.141. (Reserved).

§ 45.142. (Reserved).

§§ 45.151—45.154. (Reserved).

GENERAL

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- 45.181. List.
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- 45.191. Advertisements.
 45.192. Affirmative defenses.
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 45.194. Federal regulations.

GENERAL**§§ 45.161. Purpose.**

(a) The purpose of this subchapter is to insure that advertisements for housing and commercial property do not include words, phrases, symbols, and the like, which violate the advertising provisions of the act.

(b) Section 45.192 (relating to affirmative defenses) contains affirmative defenses which will preclude a finding of a willful and knowing violation of the advertising provisions of the act.

(c) This subchapter implements the statutory mandate of section 9.1(b) of the act (43 P. S. § 959.1(b)).

§ 45.162. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, which are identical to those found in section 4 of the act (43 P. S. § 954):

Act—The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

Advertisement or advertising—See 43 P. S. § 954(3).

Advertiser—See 43 P. S. § 954(aa).

Housing accommodation—See 43 P. S. § 954(i).

Housing for older persons—See 43 P. S. § 954(w).

Person—See 43 P. S. § 954(a).

Personal residence—See 43 P. S. § 954(k). This term applies to any "person" as defined in this section.

§ 45.163. General rules.

The prohibited words and phrases in § 45.182 (relating to words to be avoided) are unlawful when used in housing advertisements. In addition to those words and phrases, any word or phrase that is commonly understood to be offensive to a group of people in a protected class also violates the act.

PROHIBITED USAGES**§ 45.171. Race/color/national origin.**

It is unlawful to advertise a limitation, preference or discrimination on account of race, color or national origin. Examples include the use of:

(1) Any color to describe a group of people—for example, white, brown, red, black or yellow.

(2) Any nationality or race to describe a group of people—for example, Caucasian, Negroid, Chinese, Asian Immigrant, French Hawaiian, Arab, Oriental, African-American, Irish, and the like.

(3) Landmarks or organizational locations which are indicative of a particular nationality or race, unless all of the landmarks in the area are noted—for example, if proximity to a specific place associated with a particular

ethnic group is noted as a directional landmark, reference should be made to all other nearby comparable facilities of interest to other groups.

(4) Code words which are recognizable in a particular neighborhood as connoting neighborhoods that restrict certain races or ethnic groups.

§ 45.172. Familial status/age.

(a) It is unlawful to advertise a preference, limitation or discrimination against families with children in the household or against persons 40 years of age or older. Examples include, the following:

(1) The use of any phrase which notes a preference, limitation or discrimination for adults, couples or singles or families without children—for example, "adult atmosphere," "mature adults preferred," "great for retired couple or couple just starting out," "adult/family sections," "no kids/pets okay," "couples only," "ideal for singles," "adult community" or "suitable for one or two adults."

(2) The use of any colloquialisms which imply the same as those in paragraph—for example, paragraph (1) "empty nesters," "honeymooners" or "swinging singles."

(3) The listing the number of children allowed.

(b) Notwithstanding the prohibitions in subsection (a), It is not unlawful to:

(1) List the size and number of rooms or bedrooms.

(2) Indicate that the housing meets the requirements for "housing for older persons" as defined in section 4 of the act (43 P. S. § 954). A publisher may rely on the advertisers written representations of such, unless the publisher has reason to believe otherwise.

(3) To advertise a preference against children and advertise age restrictions when the housing accommodations qualifies as "housing for older persons" as defined in section 4 of the act.

§ 45.173. Disability.

(a) It is unlawful to advertise a preference, limitation or discrimination against persons with disabilities or to advertise that the property is not accessible.

(b) It is not unlawful to describe housing as accessible to persons with disabilities.

§ 45.174. Religion.

(a) It is unlawful to advertise a preference, limitation or discrimination on the basis of religion. Examples include:

(1) The use of any religious denomination—for example, Christian, Jew, Muslim or Buddhist.

(2) Phrases such as "surround yourself with Christians."

(3) The use of a particular landmark or location which is indicative of a particular religion.

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful for any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization to:

(1) Advertise a preference to persons of the same religion or denomination or to members of the private or fraternal organization.

(2) Advertise that the making of the selection is calculated by the organization to promote the religious princi-

ples or the aims, purposes or fraternal principles for which it is established or maintained.

§ 45.175. Sex.

(a) It is unlawful to advertise any preference, limitation or discrimination on the basis of sex. Examples include "males only need apply," "professional male preferred" or "perfect for single female."

(b) Notwithstanding the prohibitions in subsection (a), it is not unlawful to:

(1) Advertise a preference based on sex in the rental or leasing of housing accommodations in single-sex dormitory.

(2) Advertise a preference based on sex in the rental or leasing of housing accommodations for rooms in one's personal residence in which common living areas are shared.

LIST OF WORDS OR PHRASES TO AVOID

§ 45.181. List.

The list of words in § 45.182 (relating to words to be avoided) does not contain every possible word and phrase that may violate the act. Its purpose is to provide as complete a list as possible. For example, while many nationalities, types of disabilities and races are mentioned, the list is not inclusive. Any word indicating ancestry, race, color, religion or disability is equally prohibited in the context of real estate advertisements. The list will provide guidance on how to recognize the type of language that may be violative of the act. When the context of the word or phrase is key to its possible unlawful meaning that will be noted.

§ 45.182. Words to be avoided.

(a) It is unlawful to use the following words or phrases in housing advertisements unless used in a clearly non-discriminatory context such as "white cabinets" or "french doors." The list is neither intended nor reasonably able to be all inclusive. It is also unlawful to use words or phrases not appearing on the list, but which are used in a context which may reasonably be interpreted as indicating an unlawful discriminatory intent.

Able-bodied

Adult—If the housing is "housing for older persons" as defined by the Federal Fair Housing Act (42 U.S.C.A. §§ 3601—3619 and 3631) and the act, it is appropriate to say so.

(i) A newspaper/publisher may publish an advertisement for housing, and be held harmless for liability for an advertisement which uses the terms "senior housing," "senior community," "retirement community," if the advertiser provides a statement formally, in writing, to the newspaper/publisher that the property being advertised meets the requirements for housing for older persons as defined in the act.

(ii) Equivalent phrases referring to persons 55 and 62 and older such as "adult community, 55 and over," "adult community, 62 and over," "adult 55+," "adult 62+" to describe housing for older persons, will also be acceptable.

(iii) The term "adult" alone or with terms that do not meet housing for older persons requirements will remain unlawful terms as a description of housing for older persons.

African-American
Asian
American

Ancestry (any)
Black
Blind
Buddhist
Catholic
Caucasian
Chicano/Chicana
Child/children—Restrictions, unless "housing for older persons."
Chinese
Christian
Church, near
Color (any when used to describe persons)
Colored
Couple
Crippled
Deaf
Disability (any)—It is acceptable to describe housing as accessible to persons with disabilities. It is not acceptable to attempt to limit the housing to certain persons by stating that it is not accessible.
Disabled
Empty nester
Ethnic neighborhood
Ethnic group (any)
Foreigners
Handicapped
Hindi
Hispanic
Ideal for . . . (a type of person)
Immigrants
Independently, capable of living
Indian
Integrated
Interracial
Irish
Jew/Jewish
Latino/Latina
Mentally handicapped, ill, retarded
Mexican-American
Middle Eastern(er)
Minority
Mixed community
Mormon
Moslem
Mosque, near
Muslim
Nationality (any)
Newlyweds
Parish, near
Perfect for (a type of person)
Polish
Prefer
Protestant
Puerto Rican
Race (any, when used to describe a person)
Religion (any, when used to describe persons)
Retarded
Retired persons, retirees—If it is "housing for older persons," use that phrase, as many people who are retired may not qualify for housing for older persons while many people still working may in fact be eligible for housing for older persons.

Segregated

Senior—Use “housing for older persons”. See note under adult and retired persons. Many people who do not consider themselves senior may be eligible for housing for older persons.

Suitable for Synagogue, near

Temple, near

White

Young Youthful

(b) Any of the words in subsection (a) may be used if they are part of an address. For example, Poplar Church Road, Lutheran Street, Churchville, Black Ridge or Indian Hills, and the like, are permissible.

ADDITIONAL REQUIREMENTS

§ 45.191. Advertisements.

It is unlawful to advertise any discriminatory preference or limitation, even if the property is otherwise exempt from coverage under the act.

§ 45.192. Affirmative defenses.

It shall be an affirmative defense precluding a finding that a housing advertiser has knowingly and wilfully violated the act and this subchapter if the housing advertiser has complied with one of the following:

(1) Attempted, in good faith, to comply with the list and specific examples of impermissible housing advertisements described in this subchapter.

(2) Complied with a written advisory of the Commission concerning what constitutes appropriate housing advertisements. The Commission will maintain the written advisory on file and provide a copy of the advisory to the advertiser.

(3) Made reasonable efforts in good faith to comply with the act.

§ 45.193. Good faith efforts.

An advertiser will be deemed to have acted in good faith if the advertiser complies with one or more of the following:

(1) As to an advertisement for “housing for older persons,” if the advertiser produces a signed written statement by a housing provider which states that the facility or community complies with the requirements of the housing for older persons exemption and the advertiser has no actual knowledge that the facility or community is not actually eligible for the exemption.

(2) If the word or phrase complained of is in compliance with the list in § 45.182 (relating to words to be avoided) and is not, on its face, discriminatory within the context of the advertisement.

(3) If the advertiser produces a written Commission advisory that the language complained of is legal, within the same context in which the advertiser requested the opinion from the Commission.

§ 45.194. Federal regulations.

Federal regulations published by the Department of Housing and Urban Development, regarding housing ad-

vertisements in areas of concurrent jurisdiction, shall preempt anything to the contrary in this subchapter.

[Pa.B. Doc. No. 99-1182. Filed for public inspection July 23, 1999, 9:00 a.m.]

SECURITIES COMMISSION

[64 PA. CODE CHS. 202—205, 207, 209, 211, 504, 603, 606 AND 609]

National Securities Market Improvement Act of 1996 Amendments

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-606(d) and 1-609(a)) (act), proposes to amend and adopt regulations concerning the subject matter of the act to read as set forth in Annex A to this notice and further described under the Summary and Purpose of Proposed Amendments.

Summary and Purpose of Proposed Amendments

- § 202.070. Proposed changes would delete the requirement to file Form 202-G.
- § 202.091. Proposed changes would update legal citations in this regulation.
- § 202.093. Proposed changes would clarify use of advertising in connection with the solicitation of charitable pooled income funds.
- § 202.095. This proposed amendment would exempt certain charitable gift annuities from registration under the act.
- § 203.041. Proposed changes would adopt a new filing form to claim this exemption on Commission Form E and delete Commission Form 203-D and Commission Form D Supplement.
- § 203.091. Proposed changes would conform the prospectus filing requirement with amendments made to the act by the act of November 24, 1998 (P. L. 829, No.109) (Act 109).
- § 203.101. Proposed changes would conform the availability of this exemption to amendments made to the act by Act 109 prohibiting use of general solicitation and payment of sales compensation in connection with offers and sales of securities under section 203(j) of the act.
- § 203.141. Proposed changes would delete the requirement to file Form 203-N.
- § 203.151. Proposed changes would conform the regulation governing intra-State mergers, acquisitions, reorganizations and reclassifications with amendments made to section 203(o) of the act by Act 109.

- § 203.161. Proposed changes would revise Commission Form 203-P used by nonprofit organizations selling debt securities that are secured by a first lien mortgage and would remove obsolete language.
- § 203.171. Proposed changes would delete the requirement to file Form 203-Q.
- § 203.183. Proposed changes would correct typographical errors and remove obsolete language.
- § 203.184. Proposed changes would add "son-in-law" and "daughter-in-law" to the list of relatives of a principal to whom securities could be sold under this exemption.
- § 203.185. Proposed changes would remove obsolete language.
- § 203.186. Proposed changes would delete requirement for filing of Form 203R-6.
- § 203.187. Proposed changes would incorporate integration provisions adopted by Act 109.
- § 203.189. Proposed changes would incorporate integration provisions adopted by Act 109.
- § 203.191. The Commission proposes to adopt a regulation requiring the filing of Commission Form E to claim the exemption in section 203(s) of the act as required by section 203(s)(i) of the act. Section 203(s) of the act was added by Act 109.
- § 203.201. The Commission proposes to adopt a regulation requiring the filing of Commission Form E to claim the exemption in section 203(t) of the act as required by section 203(t)(i) of the act. Section 203(t) of the act was added by Act 109.
- § 204.010. Proposed changes would delete references to offerings made under United States Securities and Exchange Commission (SEC) Rule 505 or 506, which now are addressed in sections 203(s) and 211(b) of the act, respectively.
- § 204.011. Proposed changes would provide clarifying language as to when waivers under this section are available.
- § 204.012. Proposed changes would delete, due to a new exemption in section 203(t) of the act, current language addressing offerings made solely to accredited investors. New language would be inserted to waive the requirement to file a registration statement with the Commission prior to making offers (but not sales) in this Commonwealth when the issuer had filed a registration statement with the SEC.
- § 205.040. It is proposed to delete the current language in that Act 109 rendered it obsolete.
- § 207.071. Proposed changes would conform with regulation with the new scope of authority granted the Commission under Act 109 for escrow of promotional shares.
- § 207.072. The Commission proposes to adopt a regulation concerning the escrow of use of proceeds as permitted by amendments to section 207(g) of the act by Act 109.
- § 207.101. Proposed changes would revise the total period of effectiveness permitted under section 207(j) of the act to make it consistent with amendments adopted in Act 109.
- § 207.130. Proposed changes would revise this section to make it consistent with statutory changes made by enactment of the act of Act 126.
- § 207.140. The Commission proposes to delete the current language as Act 109 rendered it obsolete. New language would be inserted to waive the requirement of a manual signature and permit issuers making notice filings with the Commission through electronic means to type their signatures on electronic forms.
- § 209.010. Proposed changes would clarify language in Form 209.
- § 211.010. The Commission proposes to adopt a regulation concerning the notice filing requirements for Federally covered securities and which documents filed with the SEC also must be filed with the Commission.
- § 504.060. Proposed changes would clarify the type of communication to purchasers and sellers in connection with a rescission offer made under section 504(d) or (e) of the act.
- § 513.010. This regulation would provide that the requirements of § 504.060 for rescission offers would apply to any rescission offer ordered by the Commission under this section unless otherwise specified by order of the Commission.
- § 603.011. Proposed changes would update filing addresses and authorize electronic filing with the Commission.
- § 606.041. Proposed changes would delete various delegations with respect to items affected by passage of Act 109. The Commission proposes to delegate authority to the Director of the Division of Corporation Finance to register an offering filed under section 206 which has met the requirements for registration under the Mid-Atlantic Regional Review Protocol of Small Corporate Offering Registrations.
- § 609.031. The proposed amendments change legal citations to conform to Act 109.
- § 609.034. The proposed amendments change legal citations to conform to Act 109.

Persons Affected by these Amendments

These proposed regulatory actions generally are required to effectuate statutory changes made to the act by Act 109. The regulatory proposals primarily affect companies seeking to raise capital through the offer and sale of securities in this Commonwealth.

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 by eliminating certain filing requirements.

Paperwork

The Commission proposes to adopt new Commission Form E for making certain notice filings with the Commission required under the act. New sections 203(s) and 203(t) of the act, enacted by Act 109, require a notice filing on a form prescribed by the Commission. The Commission also proposes to repeal current Form 203-D and Form D Supplement and replace it with Form E. Form E, therefore, would become a multipurpose form which issuers could use to claim any of the three private placement exemptions under the act which require a notice filing.

The proposed regulatory actions also would repeal Form 202-G, Form 203-N and Form 203-Q. Act 109 relieved issuers of the statutory responsibility to make notice filings with the Commission. Lastly, the Commission proposes to amend Form 203-P to reduce the amount of information required to be filed, revise Form 209 to clarify the type of information requested and repeal Form 203R-6. Therefore, these regulatory proposals will reduce substantially the current paperwork requirements for issuers offering and selling securities in this Commonwealth.

Effective Date

The 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 1, 1999, 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.

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, 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: 50-113. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.070. [**Employee**] Securities issued in connection with employee benefit plans.

(a) [**Both the participation by an employe in a benefit plan which is qualified under the Internal Revenue Code of 1986 §§ 401, 421, 422, 422A and 423, and securities sold, issued or credited to an employe under such a plan shall be deemed to be exempted from the registration requirement of section 201 of the act (70 P. S. § 1-201) by section 202(g) of the act (70 P. S. § 1-202(g)).**] An issuer may rely on the exemption in section 202(g) of the act if one of the following applies:

(1) The securities are being issued in good faith reliance that the transaction would qualify for an exemption under Securities and Exchange Commission Rule 701 (17 CFR 230.701) (relating to exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation).

(2) The securities have been registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(b) [**Notice shall be given to the Commission with respect to the form and terms of employe benefit plans not covered by subsection (a) at least 15 days prior to the commencement of operation of the plan in this Commonwealth and sale of securities thereunder. The notice shall be on the following form, designated by the Commission as Form 202-G**]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form 202-G as it currently appears in 64 Pa. Code pages 202-7—202-9, serial pages (234879)—(234881).)

[**Unless the Commission revokes the exemption referred to in this section, or notifies the issuer that the exemption is denied, the plan shall be treated in the same manner as qualified plans described in subsection (a).**]

The exemption contained in section 202(g) of the act (70 P. S. § 1-202(g)) may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the antifraud provision of Part IV of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

* * * * *

§ 202.091. Shares of professional corporations.

* * * * *

(b) The meaning of "professional corporation" for this section shall be as follows:

(1) Except as provided in paragraph (2) [of this subsection], the term "professional corporation," [for the purposes of this section, shall mean] means one of the following:

(i) [a] A corporation incorporated under [the Professional Corporation Law (15 P. S. §§ 2901—2914)] 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of [such] the act by virtue of [section 4 of such act (15 P. S. § 2904); or] 15 Pa.C.S. § 2904 or 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(ii) [a] A professional association organized under [the Professional Association Act (15 P. S. §§ 12601—12619)] 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988). The reference in this section to "shares" shall include the interest of an associate in a professional association.

* * * * *

(c) [The provisions of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) and § 606.011 (relating to financial reports to security holders) may not be applicable to a professional corporation which has heretofore offered or sold its shares in transactions exempt from the registration requirements of section 201 of the act (70 P. S. § 1-201) by virtue of the provisions of section 203(d) of the act (70 P. S. § 1-203(d)) or an order of the Commission issued under section 203(r) of the act (70 P. S. § 1-203(r)).] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the antifraud provisions of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.093. Charitable contributions to pooled income funds.

* * * * *

(b) [The fund will not be in violation of § 606.031 (relating to advertising literature) if advertising literature, as defined in § 606.031(a), concerning the Fund and its charitable purposes is disseminated to potential contributors by direct mail (but not by means of mass media advertising other than that contained in regular publications of the organization which established the Fund).] Advertising literature [need not be filed with the Commission; however, advertising literature], as defined in § 606.031 (relating to advertising literature), may be used by the Fund in connection with the solicitation of contributions but is subject to the [antifraud] antifraud provisions of sections 401—[407] 409 of the act (70 P. S. §§ 1-401—[1-407] 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.095. Charitable gift annuities.

(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 registration under section 201 of the act (70 P. S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

(1) The charitable gift annuity meets the terms and conditions of being exempt from the laws of this Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P. S. §§ 361—364) (annuity).

(2) Each prospective annuitant is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the qualified charity, as that term is defined in the Charitable Gift Annuity Exemption Act (qualified charity).

(3) None of the persons responsible for solicitation of purchasers of annuities will receive commissions or other special compensation based upon the amount of the annuity purchased.

(4) A person who, for compensation, advises the qualified charity as to the advisability of investing in, purchasing or selling securities, including annuities, or otherwise performs as an investment adviser is either an investment adviser registered with the Commission under section 301 of the act (70 P. S. § 1-301) or is a Federally covered adviser that is in compliance with section 303(a) of the act (70 P. S. § 1-303(a)).

(b) Advertising literature, as defined in § 606.031(a) (relating to advertising literature), may be used by the qualified charity in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401—409 of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.041. Limited offerings.

[(a) The notice required in section 203(d) of the act (70 P. S. § 1-203(d)) shall be filed with the Commission on the following form, designated by the Commission as Form 203-D:]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form 203-D as it appears in 64 Pa. Code pages 203-3—203-7, serial pages (200011)—(200015).)

(b) Issuers that have filed or will be timely filing with the United States Securities and Exchange Commission (SEC) Form D, as defined in § 204.010(d)(4) (relating to increasing number of purchasers and offerees), may, in lieu of complying with subsection (a), file with the Commission a copy of SEC Form D and the following form designated by the Commission as Form D Supplement:]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form D Supplement as it appears in 64 Pa. Code pages 203-8—203-13, serial pages (200016)—(200021).)

(a) The notice required by section 203(d) of the act (70 P. S. § 1-203(d)) shall be filed with the Commission within the time period specified by that section on the following form, designated by the Commission as Form E:

PSC FORM E
Eff: 1/25/99
Instruction Sheet

TDD/AT&T Relay Center: 1-800-654-5984

PENNSYLVANIA SECURITIES COMMISSION
Eastgate Office Building, 2nd Floor,
1010 N. 7th Street
Harrisburg, PA 17102-1410
(717) 787-8061
(1-800-600-0007 in PA)

NOTICE FILING UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972 TO CLAIM AN EXEMPTION
UNDER:

SECTION 203(d) "LIMITED OFFERING EXEMPTION"
SECTION 203(s) "SEC RULE 505 EXEMPTION"
SECTION 203(t) "ACCREDITED INVESTOR EXEMPTION"

Under Regulation 603.011, a document is not deemed filed with the Pennsylvania Securities Commission ("Commission") unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers making sales of securities in Pennsylvania in reliance upon Section 203(d) (including Regulation 204.010) of the Pennsylvania Securities Act of 1972 ("Act") and issuers making offers and sales of securities under Section 203(s) or (t) of the Act.

WHEN AND WHERE TO FILE: Form E must be filed at the Commission's Harrisburg Office at the address above not later than the day on which the issuer receives from any person in Pennsylvania (i) an executed subscription agreement or other contract to purchase the securities being offered or (ii) consideration for such securities, whichever is earlier.

NOTE: Under 64 Pa. Code § 604.011, a facsimile transmission of any materials to the Commission does not constitute a filing with the Commission.

General Instructions

1. One manually signed copy, and one photocopy of this Form, each with all attachments, shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. **INCORPORATION BY REFERENCE TO FORM D OF THE U. S. SECURITIES & EXCHANGE COMMISSION ("SEC FORM D"). IF THE ISSUER FILES A COMPLETE AND EXECUTED COPY OF SEC FORM D WITH THIS FORM, THE ISSUER MAY RESPOND TO ITEMS 3, 7, 8, AND 9 ON THIS FORM BY CROSS-REFERENCING TO ITEMS 1, C.1-4, C.5 AND B.1-4 OF SEC FORM D.**
4. This Form must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
5. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days of the occurrence of the event which required the filing of such amendment.
6. In addition to Instruction 3, an issuer may incorporate by reference information contained in any document attached hereto or previously filed with the Commission. Any such reference should be to the page and paragraph number or other specified portion of the document where the information is located.
7. Attach a copy of any offering circular, prospectus, memorandum, brochure, subscription agreement or other document which has been or is proposed to be used in connection with the sale of the securities which are the subject of this filing. **IF THE ISSUER DOES NOT PROPOSE TO USE ANY SUCH DOCUMENT, SUBMIT A WRITTEN EXPLANATION DETAILING THE MANNER IN WHICH THE ISSUER PROPOSES TO DISCLOSE ALL MATERIAL FACTS TO PROSPECTIVE INVESTORS IN PENNSYLVANIA.**
8. The appropriate filing fee required in Section 602(b.1)(viii) or (ix) shall accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P. S. § 1-203(d)(iv), 203(s)(ii) and 203(t)(iii)). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P. S. § 1-602(b.2)).

FILING FEE FOR SECTION 203(d) AND 203(s):

Offering in Pennsylvania is less than \$1 million:	\$150
Offering in Pennsylvania is \$1 million or more:	\$400

FILING FEE FOR SECTION 203(t):

\$500

9. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

NOTICE FILING UNDER THE PENNSYLVANIA SECURITIES ACT OF 1972 ("ACT") TO CLAIM AN EXEMPTION UNDER:
(CHECK ONE)

- SECTION 203(d)—"LIMITED OFFERING EXEMPTION" (Complete Parts I, II & V)
- SECTION 203(s)—"SEC RULE 505 EXEMPTION" (Complete Parts I, III & V)
- SECTION 203(t)—"ACCREDITED INVESTOR EXEMPTION" (Complete Parts I, IV & V)

PART I. Information about the Issuer ("Issuer")

1. Legal Status of the Issuer

- (A) Exact Name of Issuer: _____
- (B) State and Date of incorporation or formation: _____
State Date

2. Addresses

- (A) Address of principal office of Issuer: _____
Number and Street
- City State Zip Code Telephone No.
- (B) Address of Issuer's primary place of business in Pennsylvania (if other than listed in (A)): _____
Number and Street
- City State Zip Code Telephone No.

- (C) Name and address of person to whom correspondence regarding this filing should be sent: _____
Name Title Number and Street
- City State Zip Code Telephone No.
- (D) Name and address of counsel to Issuer (if other than listed in (C)): _____
Name Number and Street
- City State Zip Code Telephone No.

3. Briefly describe the business of the Issuer. _____ Check here if responding to this item by incorporating Item 1 of completed SEC Form D attached hereto.

4. State the names and addresses of persons holding any of the following positions with the Issuer:

- (A) General partner
- (B) Promoter (as defined in Section 102(o) of the Act)
- (C) Manager (if a limited liability company)
- (D) President
- (E) Chief executive officer
- (F) Chief operating officer
- (G) Chief financial officer
- (H) Director who owns 5% or more of any class of voting equity securities of the Issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111).

5. Indicate if any person described in Item 4 currently is registered as an agent under Section 301 of the Act or as a principal of a broker-dealer registered under Section 301 of the Act.

NO__ YES__
If YES, provide the individual's name, employer and Central Registration Depository number.

6. Indicate if any person described in Item 4 has been the subject of a Commission order issued under Section 512 (Statutory Bars) or Section 513 (Rescission Orders) of the Act or an order of a court of competent jurisdiction under Section 509(c) of the Act (Civil Contempt).

NO___ YES___

If YES, describe fully.

7. Description of Securities to be Sold

Describe type and amount of securities proposed to be sold, price per unit and expected net proceeds to the Issuer. ___ Check here if responding to this item by incorporating Items C.1-4 of completed SEC Form D attached hereto. Price Per Unit must be shown here or on SEC Form D.

8. Use of Proceeds

Describe in detail the intended use of proceeds from the offering, stating the amounts to be used for each purpose and in order of priority of uses. ___ Check here if responding to this item by incorporating Item C.5 of completed SEC Form D attached hereto.

9. Sales Commissions

(A) List amounts proposed to be paid for any underwriting fee or sales commission. Identify all persons who will receive any such fee and the basis on which it will be paid. ___ Check here if responding to this item by incorporating Items B.1-4 of completed SEC Form D attached hereto.

(B) With respect to any person receiving compensation who is not a broker-dealer registered under Section 301 of the Act, explain why the person is not a promoter as that term is defined in Section 102(o) of the Act.

10. Previous Sales of Securities in Pennsylvania

(A) By the Issuer.

Describe all sales of securities made in Pennsylvania during the past two years that directly or indirectly benefitted the Issuer. Include securities issued in exchange for property, services, or other securities and new securities resulting from modification of outstanding securities. In each case, state:

- (i) The date of sale and description of the securities sold;
- (ii) Underwriting or selling fees or commissions paid and to whom paid;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities.

(B) By a person related to the Issuer.

Within the period of two years prior to the date of this Notice, did any person described in Item 4(A)—(H) hold, with respect to another person (who is not the Issuer), a position as a general partner, promoter (as defined in Section 102(o) of the Act), manager (if a limited liability company), president, chief executive officer, chief operating officer, chief financial officer or a director with a 5% or more ownership of any class of voting equity securities (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111) at the time when that other person sold securities in Pennsylvania for which a filing with the Commission was required?

NO___ YES___

If YES, provide the following information:

- (i) Name of that other person which sold the securities;
- (ii) The position held with that other person;
- (iii) Section of the Act or regulation relied upon for the offer and sale of securities;
- (iv) If the proceeds from the sale were paid directly or indirectly to, or used directly or indirectly for, the benefit of the Issuer, please describe in detail.

PART II. Section 203(d)—“LIMITED OFFERING EXEMPTION”

Check this box if the Issuer is relying on Section 203(d) of the Act (including Regulation 204.010) for sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.

11. The Issuer, by executing this Notice, agrees, as a condition of the availability of the exemption in Section 203(d), to:

(A) Provide WRITTEN NOTICE to all purchasers of the two business day right of withdrawal contained in Section 207(m)(2) of the Act. The notice should appear prominently by underlining or capitalization in materials to be given to investors, which materials must be FILED with this Form. Section 207(m)(2) is reproduced below:

Section 207(m)(2). “Each person who accepts an offer to purchase securities exempted from registration by Section 203(d), directly from the issuer or affiliate of the issuer, shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person within 2 business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within 2 business days after he makes the initial payment for the securities being offered.”

(B) Obtain the written agreement of each purchaser not to sell, except in accordance with Regulation 204.011, the security within 12 months after the date of purchase and FILE with this Form a copy of the proposed agreement that investors will be asked to sign.

12. As a condition of the availability of the exemption in Section 203(d), the Issuer, by executing this Notice, represents to the Commission that:
- (A) No public media advertisement will be used or mass mailing made in connection with soliciting sales of securities.
- (B) No cash or securities will be given or paid, directly or indirectly, to any promoter as compensation in connection with a sale of securities unless such compensation is given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act and any person receiving such compensation is either that broker-dealer or an agent of that broker-dealer who is registered under Section 301 of the Act.
13. Has any person described in Item 9(B) been convicted of any crime or made the subject of any sanction described in Section 305(a)(ii)—(ix) of the Act.
 NO ___ YES ___
- If YES, describe fully. Be advised that an affirmative answer may disqualify the issuer from relying upon Regulation 204.010(a)(1)(i) and (ii).

PART III. Section 203(s)—“SEC RULE 505 EXEMPTION”

- Check this box if the Issuer is relying on Section 203(s) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.
14. As a condition of the availability of the exemption in Section 203(s), the Issuer, by executing this Notice, represents to the Commission that:
- (A) The offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the Securities Act of 1933 (“1933 Act”) pursuant to Rule 505 SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R. § 230.505).
- (B) No mass mailing will be used, public media advertising made, or other form of general solicitation utilized in connection with offers and sales of securities in Pennsylvania which are the subject of this Notice.
- (C) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.
- (D) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of ten per cent or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(s)(v) of the Act.

Part IV. Section 203(t)—“ACCREDITED INVESTOR EXEMPTION”

- Check this box if the Issuer is relying on Section 203(t) of the Act for offers and sales of securities in Pennsylvania in connection with the offering for which this Notice is being filed.
15. As a condition of the availability of the exemption in Section 203(t), the Issuer, by executing this Notice, represents to the Commission that:
- (A) The offer and sale of the securities which are the subject of this Notice are exempt from registration under Section 5 of the 1933 Act pursuant to Section 3(a)(11) of the 1933 Act, SEC Regulation A adopted under Section 3(b) of the 1933 Act (17 C.F.R. §§ 230.251—263), or Rule 504 of SEC Regulation D adopted under Section 3(b) of the 1933 Act (17 C.F.R. § 230.540).
- (B) It will specify in any advertisement, communication, sales literature, or other information being publicly disseminated in connection with the offering of securities which is the subject of this Notice (including by means of electronic transmission) that the securities will be sold only to Accredited Investors as that term is defined in Rule 501 of SEC Regulation D (17 C.F.R. § 230.501).
- (C) It will not engage in any solicitation of prospective purchasers by telephone until the Issuer has reasonable grounds to believe that the person being solicited is an Accredited Investor.
- (D) It will place 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 stating that the securities described in the disclosure document or subscription agreement will be sold only to Accredited Investors.
- (E) No compensation will be given or paid, directly or indirectly, to any person in connection with a sale of securities in Pennsylvania (except for compensation given or paid in connection with a sale made by a broker-dealer registered under Section 301 of the Act) which is the subject of this Notice.
- (F) It is not an investment company as defined in the federal Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.).
- (G) It 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.
- (H) Neither the Issuer nor a predecessor of the Issuer; affiliate of the Issuer; officer, director or general partner of the Issuer; promoter of the Issuer presently connected with the Issuer in any capacity; beneficial owner of 10% or more of any class of equity securities of the Issuer; underwriter of the securities to be offered or any partner, director or officer of the underwriter is subject to the disqualification provisions in Section 203(t)(v) of the Act.

PART V. Affirmations (to be completed by all Issuers)

16. By executing this Form on behalf of the Issuer, the signatory affirms that:

(A) The undersigned is familiar with the provisions of Section 203(d), (s), or (t) of the Act and all regulations adopted thereunder, including Regulation 204.010.

(B) 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.

IN WITNESS WHEREOF, this Notice has been duly executed on _____ (Insert Date)

BY: _____ (NAME OF ISSUER)

**_____
Title**

[(c)] (b) * * * *
* * * *

[(d)] (c) * * * *

(d) During the period of the offering, the issuer shall take steps necessary to ensure that the material information contained in its notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file **an amendment** with the Commission **[an amendment on Form AM] in accordance with § 609.011 (relating to amendments to filings with Commission)** within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.091. Equity securities issued by reporting company.
* * * *

(c) For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P. S. § 1-203(i.1)), the term "equity security" includes:

(1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(2) Nontransferable warrants to purchase any of the foregoing.

(3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

FORM 203-I
(Instruction Sheet)

PENNSYLVANIA SECURITIES COMMISSION
* * * *

Notice under Section 203(i) of the
Pennsylvania Securities Act of 1972

NOTE: Under Regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

Who May File: Only issuers meeting the following requirements may file Form 203-I: (1) the issuer is a reporting company as defined in Section 102(q) of the Pennsylvania Securities Act of 1972 (Act); (2) the issuer is NOT 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; (3) the issuer's securities are proposed to be registered under section 5 of the Securities Act of 1933 or exempt from registration under Regulation A promulgated under section 3(b) and, in fact, become so registered or exempted; (4) the issuer's securities are equity securities as defined in § 203.091(c) which are listed on a national securities exchange registered under the Securities Exchange Act of 1934 or quoted on the National Association of Securities Dealers Automated Quotation System; (5) the issuer has not received, as of the date of filing Form 203-I with the Commission, an auditor's report for the immediately preceding fiscal year expressing substantial doubt about the issuer's ability to continue as a going concern where the securities to be sold in reliance upon the exemption in Section 203(i.1) are not being underwritten on a firm commitment basis by a broker-dealer registered under Section 301 of the Act; (6) the issuer is not subject to an effective stop order or refusal order and no public proceeding or investigation looking toward such an order is pending under the Act or the Securities Act of 1933 and (7) the issuer **[undertakes to mail] files** two copies of the final prospectus **[within two business days after filing same with the U. S. Securities and Exchange Commission] with Form 203-I.**

* * * *

GENERAL INSTRUCTIONS

* * * *

4. During the period of the offering, copies of a post-effective amendment or sticker to the prospectus or offering circular shall be **[mailed to] filed with** the Commission within two business days after it is filed with the U. S. Securities and Exchange Commission.

5. In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission **[on Form AM] in accordance with § 609.011 (relating to amendments to filings with Commission)** within 5 business days of the occurrence of the event which required the filing of such amendment.

* * * *

File No. _____ FORM 203-I

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION
Notice Under Section 203(i.1) of the
Pennsylvania Securities Act of 1972

* * * * *

PART II Answer YES or NO to questions 6 through 11 and question 12 if applicable. The exemption is NOT available to an Issuer which answers NO to any of the following questions:

* * * * *

YES NO

9. Does the Issuer hereby undertake to [] [] [mail] file two copies of the final prospectus or offering circular [to] with the Commission [within 2 business days after the prospectus or offering circular is filed with the Securities and Exchange Commission]?

* * * * *

PART III Affirmation

* * * * *

IN WITNESS WHEREOF, This statement has been duly executed [this ___ day of _____, 19__] (Insert Date)

* * * * *

[(c) For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P. S. § 1-203(i.1), the term "equity security" includes common stock, preferred stock and nondebt securities convertible into common or preferred stock; nontransferable warrants to purchase any of the foregoing; and transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.]

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P. S. § 1-203(j)), the exemption shall be available [where] only if:

(1) The entire bond or other evidence of indebtedness, together with the real or chattel mortgage, deed of trust, agreement of sale or other instrument securing the same is offered and sold as one unit.

* * * * *

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair market value of the property at the time of the transaction.

(4) No public media advertisement is used, mass mailing made or other form of general solicitation is utilized in connection with soliciting the transaction.

(5) No compensation is paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

(6) The issuer, at the time of the transaction, is in compliance with any applicable licensing requirements of the Department of Banking.

[Provided, that the]

(b) The exemption [contained] in section 203(j) [of the act (70 P. S. § 1-203(j))] may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the [anti-fraud] anti-fraud provisions of Part IV of the act [(70 P. S. § 1-407)] (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

[(b) No public media advertisement or mass mailing may be made in connection with soliciting offers or sales of such mortgage units; provided, that nothing herein shall limit mailings to institutional investors or registered broker-dealers, as those terms are defined in the act and the regulations adopted thereunder.]

§ 203.141. Sales to existing security holders.

(a) [Notice shall be given to the Commission of any proposed offers and sales of securities by an issuer to its existing equity security holders under the exemption contained in section 203(n) of the act (70 P. S. § 1-203(n)) on the following form, designated by the Commission as Form 203-N:]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of FORM 203-N as it appears in 64 Pa. Code pages 203-22—203-26 and serial pages (209004) and (200031)—(200034).)

[(b)] * * *

* * * * *

[(c)] (b) * * *

* * * * *

[(d)] (c) For purposes of subsection [(b)] (a)(2), an offer will be deemed to have been made pro rata when the following [exists] exist:

* * * * *

[(e)] (d) * * *

[(f)] (e) * * *

[(g)] (f) * * *

(g) For purposes of this section, the term "pro rata" means the offering will be made in this Commonwealth proportionately on the basis of the number of shares owned by the existing security holder or the security holder's percentage ownership interest in the issuer. By way of illustration, an offering will be deemed to have been made on a pro rata basis where the issuer offers its existing security holder an opportunity to purchase one new share of stock for each five shares owned as of a record date or when the issuer offers an existing security holder owning 3% of the issuer's stock as of a record date, the opportunity to purchase 3% of the issuer's current offering.

§ 203.151. Proxy [statements] materials.

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the

Commission for review under section 203(o) [(ii)] of the act (70 P. S. § 1-203(o) [(ii)]), the materials shall conform to SEC Rule 14A, 17 CFR 240.14a-1—240.14b-1 (relating to solicitation of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) In a transaction subject to the filing requirements of section 203(o) [(ii)] of the act [(70 P. S. § 1-203(o)(ii))], filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals—as that term is defined in § 203.184 (relating to offers and sales to principals)—of the entities whose security holders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the Commission for a transaction requiring the filing of proxy materials with the Commission under section 203(o) [(ii)] of the act [(70 P. S. § 1-203(o)(ii))] by filing the following form designated by the Commission as Form 203- [o-(ii)] O together with the exemption filing fee specified in section [602(b)(v) of the act (70 P. S. § 1-602(b)(v))] 602(b.1)(v) of the act (70 P. S. § 1-602(b.1)(v)):

FORM 203- [o(ii)] O
(Instruction Sheet)

PENNSYLVANIA SECURITIES COMMISSION
[333 Market Street, Harrisburg, Pennsylvania
17101]
THE EASTGATE OFFICE BUILDING
1010 NORTH SEVENTH STREET, 2ND FLOOR
HARRISBURG, PENNSYLVANIA 17102-1410
TELEPHONE: (717) 787-8059

* * * * *

[Notice under Section 203(o)(ii) of the
Pennsylvania Securities Act of 1972] NOTICE
UNDER SECTION 203(o) OF THE
PENNSYLVANIA SECURITIES ACT OF 1972

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers of securities meeting the following requirements must file Form 203-O:

(1) The proposed transaction is incident to a vote by security holders or written consent of some or all security holders in lieu of such vote;

(2) No proxy materials are required or permitted to be filed with the Securities and Exchange Commission by either party to the transaction;

(3) More than twenty-five percent of the security holders of either party to the transaction are residents of this Commonwealth; and

(4) The number of persons to whom securities are offered and sold in this Commonwealth exceeds 25, exclusive of principals (as that term is defined in § 203.184 (relating to offers and sales to principals)) of the entities whose security holders are voting or providing written consent.

WHERE AND WHEN TO FILE: At the Commission's Harrisburg office prior to the vote or solicitation of written consent. Materials prepared in connection with a proposed transaction under Section

203(o) must be filed AND reviewed by the Commission prior to distribution to the security holders of each party to the proposed transaction.

General Instructions

1. [Two copies of this Form and all exhibits or schedules should be filed with the Commission at the above address.] One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities Commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. [Do not abbreviate names or use initials. All questions should be answered fully.
4. Each copy of the] The Form filed with the Commission [should] must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by [a principal] an executive officer duly authorized [and the corporate seal affixed, duly attested]; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
- [5] 4. [During the period of the offering described in the Form, the issuer shall be required to file necessary amendments thereto to correct or update any information contained therein to take account of any material change.] In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file any amendment with the Commission in accordance with § 609.011 (relating to amendment filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.
- [6. All checks should be made payable to the Commonwealth of Pennsylvania.
- 7] 5. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any documents attached thereto or previously [on file] filed with the Commission. Any [such] reference should be [in] to the page and paragraph number [of] or other specified portion of the document where the information is located.

- 6. Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.
- [8. The Form should only be used for situations which arise under Section 203(o)(ii). If any question arises as to the necessity for filing this Form or the applicability of this section, call or write to the Commission at the address listed above.
- 9. Please remove the instruction sheet before filing this Form.]
- 7. The appropriate filing fee required by Section 602(b.1)(v) of the Act must accompany the filing of this Form and is a condition of availability of the exemption (see 70 P. S. § 1-203(o)). Checks are to be payable to the "Commonwealth of Pennsylvania."
- [10. Persons are advised to review thoroughly the anti-fraud provisions of Part IV of the Act, as well as those contained in the Federal Securities Laws. No offering

should be made by means of any document or documents which are false or misleading in any respect or fail or omit to state any material fact. Further, no offering should be made without offering literature, if such literature is necessary to ensure that offerees are fully apprised of all facts and circumstances necessary to permit a person to make an informed investment decision about the securities being offered. Your attention is also directed to recent court decisions and actions taken by the United States Securities and Exchange Commission regarding the necessity of giving complete information to investors in securities offerings.]

8. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

FORM 203-[o(ii)Pg. 2]O

[File No. _____
 Fee Paid: \$ _____
 Deficiency Letters _____
 Effect Date: _____
 (For Commission Use Only)]

COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA SECURITIES COMMISSION

APPLICATION UNDER SECTION 203(o) [(ii)] OF THE PENNSYLVANIA SECURITIES ACT OF 1972

* * * * *

- 4. (A) Legal Form of Issuer (Corporation, Partnership, etc.): _____

- (B) State and Date of Incorporation or formation: _____
 State Date
- (C) [Name of any Predecessor of Issuer: _____
- (D)] Describe briefly the nature of Issuer's business.

* * * * *

- 8. Describe all sales of securities directly or indirectly for the benefit of the Issuer made in this Commonwealth during the past three years. Include securities issued in exchange for property, services or other securities and new securities resulting from the modification of outstanding securities. In each case, state:
 [(a) the] (A) The date of sale and title and amount of securities sold;
 [(b) class] (B) Class of persons to whom securities were sold;
 [(c) per] (C) Per unit and aggregate offering price or nature of consideration paid;
 [(d) underwriting] (D) Underwriting or selling fees or commissions;
 [(e) the] (E) The exemption or other provision of the Pennsylvania Securities Act relied upon and the facts upon which such reliance is based [;].
 [(f) the date of receipt of a certificate of exemption or the date of any filing with the Commission with respect to such sale.

(g) Does issuer believe that in each instance described above full compliance was had with all provisions of the Act, including all statements made in filings with the Commission with respect to such sales?]

9. Affirmation.

By executing this Form on behalf of the issuer, the signatory affirms that:

(A) [Issuer affirms that a] A copy of the proxy or other materials referred to in Item 6 has been or will be mailed to all affected security holders in accordance with applicable state laws.

[10.] (B) [Issuer hereby affirms that there] There is no stop order in effect and no public proceeding pending under any Federal or State securities or other law governing any party with respect to the transaction described in the materials submitted under Item 6.

(C) The undersigned is familiar with the provisions of Section 203(o) and all regulations adopted thereunder.

(D) 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.

[11. Each of the persons executing this Notice on behalf of the issuer hereby affirms that he is familiar with Section 203(o) and all regulations adopted thereunder. Each of the persons executing this Notice on behalf of the Issuer hereby further affirms that the statements made herein, including all attachments hereto, taken individually or collectively, 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 statements in connection with the sale of a security or in any filing with the Commission.]

IN WITNESS WHEREOF, [Issuer has caused] this Application [to be] has been duly executed [on its behalf by the undersigned thereunto duly authorized] _____ .
(Insert Date)

(Name of Issuer)

By: _____

[Affix corporate seal if Issuer is a corporation.]

(Title)

[By: _____

(Title)

AFFIDAVIT

STATE OF _____:

COUNTY OF _____:

On this _____ day of _____, 19____, before me, a personally appeared _____ and _____ who, duly being sworn, according to law, do depose and say that, to the best of _____ knowledge and belief the statements contained in the foregoing notice are true and correct and that complete answers have been given to each of the items contained herein, and that they are _____ and _____ respectively of _____ corporation and are duly authorized to execute papers on behalf thereof.

My Commission Expires:]

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P. S. § 1-203(p)) shall complete and file with the Commission two copies of the following notice, designated by the Commission as Form 203-P.

FORM 203-P
(Instruction Sheet)

PENNSYLVANIA SECURITIES COMMISSION
[471 Education Building, Harrisburg,
Pa. 17120]
THE EASTGATE OFFICE BUILDING
1010 NORTH SEVENTH STREET, 2ND FLOOR
HARRISBURG, PENNSYLVANIA 17102-1410
TELEPHONE: (717) 787-8059

* * * * *

NOTICE UNDER SECTION 203(p) OF THE
PENNSYLVANIA SECURITIES ACT OF 1972

NOTE: Under regulation 603.011, a document is not deemed filed with the Commission unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers offering or selling securities in this Commonwealth in reliance upon Section 203(p) of the Act.

WHERE TO FILE: At the Commission's Harrisburg office at least ten days before any of the securities are sold in this Commonwealth.

GENERAL INSTRUCTIONS

1. [**Two copies of this Form and all exhibits or schedules should be filed with the Commission at the above address.**] One manually signed copy and one photocopy of the Form and two copies of all attachments must be filed with the Pennsylvania Securities Commission. If mailed, it is advisable to send registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. **Answer each item completely. An answer of "not applicable" is inappropriate.** If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. [**Do not abbreviate names or use initials. All questions should be answered fully.**]
4. **Each copy of the]** The Form filed with the Commission [**should**] must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by [**a principal**] an executive officer duly authorized [**and the corporate seal affixed, duly attested**]; if a partnership, it should be signed in the name of the partnership by a general partner; if an unincorporated association or other organization, not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
- [5.] 4. [**During the period of the offering described in the Form, the issuer shall be required to file necessary amendments thereto to correct or update any information contained therein to take account of**

any material change.] **In the event that, at any time from the date of filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to amendment filings with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.**

- [6.] 5. In lieu of answering any specific question in the Form, the issuer may incorporate by reference information contained in any document attached thereto or previously [**on file**] filed with the Commission. Any [**such**] reference should be to the page and paragraph number or other specified portion of the document where the information is located.
6. **All purchasers must be informed of the two business day right of withdrawal contained in Section 207(m)(2) of the Act and disclosure of such a notice should appear prominently by underlining or capitalization in materials to be given to investors. Section 207(m)(2) is reproduced below:**
 Section 207(m)(2). "Each person who accepts an offer to purchase securities exempted from registration by Section 203(p) directly from the issuer or affiliate of the issuer, shall have the right to withdraw his acceptance without incurring any liability to the seller, underwriter (if any) or any other person within 2 business days from the date of receipt by the issuer of his written binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within 2 business days after he makes the initial payment for the securities being offered."
7. [**The Form should only be used for situations which arise under Section 203(p). If any question arises as to the necessity for filing this Form or the applicability of this section, call or write to the Commission at the address listed above.**]
8. **Please remove this instruction sheet before filing this Form.]**
 Attach copies of any offering circular, prospectus, memorandum, subscription agreement or other document or brochure which has been or is proposed to be used in connection with the offering of the securities which are the subject of this filing.
8. **The issuer will be required to maintain the books and records required by Section 209 and the regulations thereunder and, if applicable, will be required to make the reports required by Sections 209 and 606(a) and the regulations adopted thereunder.**

- 9. [Persons are advised to review thoroughly the anti-fraud provisions of Part IV of the Act, as well as those contained in the Federal Securities Laws. No offering should be made by means of any document or documents which are false or misleading in any respect or fail or omit to state any material fact. Further, no offering should be made without offering literature, if such literature is necessary to ensure that offerees are fully apprised of all facts and circumstances necessary to permit a person to make an informed investment decision about the securities being offered. Your attention is also directed to recent court decisions and actions taken by the United States Securities and Exchange Commission regarding the necessity of giving complete information to investors in securities offerings.
- 10. Your attention is further directed to the provisions of Section 207(m) and the regulations adopted thereunder with respect to withdrawal of acceptance by an offeree, and Section 209 and the regulations

adopted thereunder with respect to the required records and reports.]

The appropriate filing fee required in Section 602(b.1)(v) of the Act must accompany the filing of this Form and is a condition of the availability of the exemption (see 70 P. S. § 1-203(p). Checks are to be payable to the "Commonwealth of Pennsylvania." There is no provision for a refund of a filing fee (see 70 P. S. § 1-602(b.2)).

- 10. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER, FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

FORM 203-P

[File No. _____
 Action Taken: _____
 (For Commission Use Only)]

**COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA SECURITIES COMMISSION**

**NOTICE UNDER SECTION 203(p) OF THE
 PENNSYLVANIA SECURITIES ACT OF 1972**

* * * * *

- 4. (A) Legal Form of Issuer (corporation, partnership, association etc.) _____

- (B) State and Date of Incorporation [or formation and Act under which formed]:

State	Date	[Act and Citation]
-------	------	----------------------

* * * * *

- 5. (E) Describe the terms of any escrow being created to satisfy the requirements of [Subsection] Section 203(p)(iii).

* * * * *

- 7. State the [subsection of Section 501(c) of the Internal Revenue Code of 1954] Section of the Internal Revenue Code under which Issuer claims tax exempt status, if any. _____
 Has any such tax exemption ever been challenged? _____ (YES or NO)
 If yes, describe fully all surrounding facts and circumstances and state the result of such challenge.

- 8. [(A) Are any security holders (of record) of Issuer residents of Pennsylvania?
 YES NO]
- (B) Has the Issuer, within the previous two years, sold securities in Pennsylvania?
 YES NO

If [the answer to (B) above is "yes",] YES, describe the circumstances under which sales were made, including: (i) offering prices; (ii) the dates, classes and amounts of securities sold; (iii) the exemption or other provision of the [applicable Pennsylvania securities law] Act or regulations of the Commission relied upon in each [such] instance [and the dates of any filing with this Commission with respect to such sale].

- 9. [The issuer hereby undertakes to keep and maintain the books and records and to file the reports required by Section 209 and the regulations adopted thereunder and will authorize the person having custody of such books and records to make them available to the Commission.
- 10. Attach a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the sale of securities which are the subject of this Notice.
- 11. Each of the persons who has executed this Notice on behalf of the Issuer affirms that all conditions contained in Section 203(p) of the Pennsylvania Securities Act of 1972 have been, or will be, met with respect to the securities offering which is the subject of this Notice.
- 12. Each of the persons executing this Notice on behalf of the Issuer hereby affirms that the statements made in this Notice, including all attachments hereto, taken individually or collectively, 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 provisions of Section 203(p) and all regulations adopted thereunder, and with the penalties provided for making any false or incomplete statement in any application or other filing submitted to the Commission.]

Affirmation. By executing this Form on behalf of the issuer, the signatory affirms that:

- (A) The undersigned is familiar with the provisions of Section 203(p) and all regulations adopted thereunder.
- (B) The statements made in this Notice, including all attachments hereto, taken individually or collectively, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Notice has been duly executed [this _____ day of _____, 197__]

(Insert Date)

(NAME OF ISSUER)

By: _____

(Title)

[By: _____

(Title)]

[AFFIDAVIT

STATE OF _____

SS.

COUNTY OF _____

On this _____ day of _____, 19__ , before me, a Notary Public, _____ who, duly being sworn, according to law, do _____ depose and say that, to the best of _____ knowledge and belief the statements contained in the foregoing notice are true and correct and that complete answers have been given to each of the items contained herein, and (if Issuer is a corporation or association the following) that they are _____ and _____ respectively of _____ corporation/association and are duly authorized to execute papers on behalf thereof.

My Commission Expires: _____]

(b) Except in cases where the delivery of a complete offering circular, before or concurrently with any offer of securities, is not required by order of the Commission as a condition of qualification under section 203(p) of the act (70 P. S. § 1-203(p)), every offering of debt securities pursuant to [such] this section shall be made by an offering circular containing complete information about the securities and the issuer, including the following:

* * * * *

(15) A notice describing the provisions of section 207(m)(2) (70 P. S. § 1-207(m)(2)) and informing an offeree or purchaser of the method of exercising the rights created by that section and the regulations promulgated thereunder[;].

* * * * *

§ 203.171. Liquidations, dividends and distributions.

[(a)] The phrase "bona fide distribution" as used in section 203(q) of the act (70 P. S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration provisions of section 201 of the act (70 P. S. § 1-201) or made in violation of [sections 401—407,] the [anti-fraud] antifraud provisions of the act [(70 P. S. §§ 1-401—1-407), or both] (70 P. S. §§ 1- 401—1-409) or Subpart D (relating to fraudulent and prohibited practices).

[(b) The notice of distributions or dividends required in section 203(q) of the act shall be filed with the Commission by the Distributor on the Form, designated as Commission Form 203-Q.]

(Editor's Note: As part of this proposal, the Commission is proposing to delete FORM 203-Q as it appears in 64 Pa. Code pages 203-41—203.45, serial pages (200049)—(200053).)

§ 203.183. Agricultural cooperative associations.

* * * * *

(b) The following words and terms [shall], have, for the purposes of this section, the following meanings:

* * * * *

(2) [MembersFor] Members—For purposes of subsection (a)(2) only, includes patrons to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patrons to be treated as members.

(3) [Securitiesembership] Securities—Membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences:

* * * * *

(4) [Engaged in agriculturePersons] Engaged in agriculture—Persons engaged in farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations shall be deemed to be engaged in agriculture.

[(c) The provisions of § 209.010(b) (relating to required records; report on sales of securities and use of proceeds) and of § 606.011 (relating to financial reports to security holders) may not be applicable to the offer and sale of securities without registration in conformity with this section.]

§ 203.184. Offers and sales to principals.

* * * * *

(b) For purposes of this section, the term "principal," means the following:

* * * * *

(5) A relative of a person specified in paragraphs (1)—(4). For purposes of this subsection, the term "relative" means one of the following:

* * * * *

(iv) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law [or], sister-in-law, son-in-law or daughter-in-law.

* * * * *

[(e) Section 209.010 (relating to required records; report on sales of securities and use of proceeds) is not applicable to offers and sales of securities under this section.]

§ 203.185. Offers prior to effectiveness of registration by qualification exempt.

* * * * *

(b) [Section 209.010(b) (relating to required records; report on sales of securities and use of proceeds) is not applicable to offers made without registration under this section] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) or a transaction made in violation of the antifraud provisions of the act (70 P. S. §§ 1-401—1-409) or Subpart D (relating to fraudulent and prohibited practices).

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P. S. § 1-203(r)), 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 securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions:

* * * * *

(3) [Where both of the following conditions are met:

(i) Notice shall be given to the Commission with respect to form and terms of the investment plan at least 15 days prior to the commencement of the operation of the plan in this Commonwealth and the sale of securities thereunder. Such notice shall be on the following form, designated by the Commission as Form 203-R-6:]

(Editor's Note: As part of this proposal, the Commission is proposing to delete the FORM 203-R-6 as it appears in 64 Pa. Code pages 203-52—203-54, serial pages (200060)—(200062).)

[(ii) Compulsory] When compulsory participation in the investment plan by the employe as a condition of employment is not required.

(4) When employes being solicited to purchase securities under the investment plan receive, at least 7 days prior to entering into a binding obligation to purchase or subscribe for the purchase of

securities issued or to be issued under the investment plan, written offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment, and an opinion of counsel that the security when sold will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer.

(5) When any prospective financial statements, as that term is defined in § 609.010 (relating to use of prospective financial statements), used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(d).

(b) [All employes being solicited to purchase securities under such plans shall receive in the written disclosure document required by item 9 of Commission's Form 203-R-6 full and adequate disclosure of all material facts as required by section 401(b) of the act (70 P.S. § 1-401(b)), including detailed risk factors relating to any material potential loss of investment.] The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P.S. § 1-201) or a transaction made in violation of the antifraud provisions of Part IV the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 203.187. Small issuer exemption.

* * * * *

(b) [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.

(c)] *Integration.*

(1) ***

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

[(d)] (c) *Computation.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.189. Isolated transaction exemption.

* * * * *

(c) *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) or (s) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), SEC Rule 506 (17 CFR 230.506) or this section shall be counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section shall be counted as offers and sales under the

applicable numerical limitations [set forth] in § 204.010(a)(1) and (2) if offers and sales occur under § 204.010 within a period of 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

* * * * *

§ 203.191. SEC Rule 505 offerings.

(a) *Filing requirement.* The notice required by section 203(s)(i) of the act (70 P.S. § 203(s)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *Compensation.* The term "compensation," as used in section 203(s)(iv) of the act, is not limited to receipt of monetary consideration.

(c) *Integration.* Offers and sales made under this section shall be counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act (70 P.S. § 1-203(d) and (f)) and § 204.010 (relating to increasing number of purchasers and offerees).

(d) *Beneficial ownership.* For purposes of section 203(s)(v), whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3 (relating to determination of beneficial owner)).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.201. Accredited investor exemption.

(a) *Filing requirement.* The notice required by section 203(t)(i) of the act (70 P.S. § 203(t)(i)) shall be filed with the Commission within the time period specified in that section on Commission Form E as set forth in § 203.041 (relating to limited offerings).

(b) *General solicitation.* Use of general solicitation in a manner permitted by section 203(t) will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § 606(c)) and § 606.031 (relating to advertising literature) but is subject to the antifraud provisions of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

(c) *Compensation.* The term "compensation," as used in section 203(t)(iv) of the act, is not limited to receipt of monetary consideration.

(d) *Beneficial ownership.* For purposes of section 203(t)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3) (relating to determination of beneficial owner).

(e) *Amendments.* During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Commission in accordance with § 609.011 (relating to filing amendments with Commission) within 5 business days of the occurrence of the event which required the filing of the amendment.

CHAPTER 204. EXEMPTION PROCEEDINGS

§ 204.010. Increasing number of purchasers and offerees.

(a) [*Sales of securities.* Under section 204(a) of the act (70 P. S. § 1-204(a)), the number of purchasers and offerees permitted by section 203(d) and (e) of the act (70 P. S. § 1-203(d) and (e)), respectively, are increased in the manner set forth in this section, except as provided in subsection (b), if all securities transactions made in this Commonwealth under section 203(d) and (e) of the act, including those made under paragraphs (1) and (2) are effected by broker-dealers registered under section 301 of the act (70 P. S. § 1-301):

(1) In addition to the 25 persons to whom sales of securities may be made under section 203(d) of the act, sales of securities under that section also may be made in this Commonwealth during a 12 consecutive month period to:

(i) Ten additional persons; and

(ii) An unlimited number of experienced private placement investors, as that term is defined in subsection (d)(1); or

(iii) As an alternative to, but not in combination with, subparagraphs (i) and (ii), an unlimited number of persons if all sales made under section 203(d) of the act (70 P. S. § 1-203(d)), including those made under this subparagraph, meet all of the following conditions:

(A) The securities are offered or sold in good faith reliance that the offering would qualify for exemption from the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) under Securities and Exchange Commission (SEC) Rules 501, 502, 503 and 505 or 506 of Regulation D (17 CFR 230.501, 230.502, 230.503, 230.505 and 230.506 (relating to rules governing limited offer and sale of securities without registration under the Securities Act of 1933)), as made effective in SEC Release No. 33-6389.

(B) Commission Form 203-D or, in the alternative, SEC Form D (as defined in subsection (d)(4) and Commission Form D Supplement found at § 203.041 (relating to limited offerings), accompanied by a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the offer or sale of the securities, is filed with the Commission no later than the day on which the

securities are first issued or the issuer first receives consideration from a person therefor, whichever is earlier.

(C) The purchaser satisfies the definition of accredited investor in subsection (d)(5) or has a net worth or, where applicable, joint net worth with his spouse (in either event exclusive of home, furnishings and automobiles) at the time of sale of five times the purchaser's total purchase price. The conditions of this subparagraph will be satisfied if the broker-dealer registered under section 301 of the act (70 P. S. § 1-301) who makes the sale satisfies the requirements of subsection (e).

(2) In addition to the 50 persons to whom offers of securities may be made under section 203(e) of the act (70 P. S. § 1-203(e)), offers of securities under that section also may be made in this Commonwealth during a 12 consecutive month period to:

(i) Forty additional persons; and

(ii) The number of additional persons equal to those experienced private placement investors, as that term is defined in subsection (d)(1), who actually purchase the securities being offered in the securities transaction; or

(iii) As an alternative to, but not in combination with subparagraphs (i) and (ii), an unlimited number of persons if all sales resulting therefrom meet the conditions of paragraph (1)(iii). The restriction contained in section 203(d)(ii) of the act (70 P. S. § 1-203(d)(ii)) concerning mass mailings is waived in connection with solicitations made in compliance with this subparagraph.

(3) Issuers which intend to rely on the provisions of subsection (a)(1)(i) and (ii) and have filed or will be timely filing SEC Form D with the SEC may, in lieu of filing Commission Form 203-D, file SEC Form D and Commission Form D Supplement found at § 203.041 with the Commission accompanied by a copy of any offering circular, prospectus, memorandum or other document or brochure which has been or is proposed to be used in connection with the offer or sale of the securities no later than the day on which the securities are first issued or the issuer first receives consideration from a person therefor, whichever is earlier.]

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

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

(2) The total number of persons to whom securities may be sold in this Commonwealth during a period of 12 consecutive months under section 203(d) shall be 35 persons, except that sales made to

experienced private placement investors, as that term is defined in subsection (d) are not included in the numerical limitation established by this paragraph.

(b) [*Disqualification*] *Conditions.*

(1) [Subsections (a)(1)(i), (ii), (a)(2)(i) and (ii) are not available to an issuer if the] *Disqualification.* The issuer or a person who is an officer, director, principal, partner (other than a limited partner), promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction, or otherwise found to have met any of the criteria described in section 305 (a)(ii)—(xiii) of the act (70 P. S. § 1-305(a)(ii)—(xiii)) unless the person subject to the disqualification is registered under section 301 of the act (70 P. S. § 1-301).

(2) [Subsections (a)(1)(iii) and (a)(2)(iii) are not available, if any of the persons described in SEC Rule 252(c), (d), (e) or (f) of Regulation A (17 CFR 230.252(c)—(f)) (relating to securities exempted) promulgated under the Securities Act of 1933 (15 U.S.C.A. § 77c(b)):

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered under any state securities law within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B).

(ii) Has, within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B), been convicted of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

(iii) Is currently subject to a state administrative enforcement order or judgment entered by that state's securities administrator within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B) or is subject to a state administrative enforcement order or judgment in which fraud or deceit, including but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within 5 years of the filing of the notice required under subsection (a)(1)(iii)(B).

(iv) Is subject to a state administrative enforcement order or judgment which prohibits, denies or revokes the use of an exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of a court of competent jurisdiction, permanently restraining or enjoining, the party from engaging in or continuing conduct or practice in connection with the offer, purchase or sale of a security or involving the making of a false filing with the state entered within 5 years prior to the filing of the notice required under subsection (a)(1)(iii)(B).] *Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the Commission the notice required by section 203(d) of the act and § 203.041

(relating to limited offerings) and pays the filing fee required by section 602(b.1)(viii) of the act (70 P. S. § 1-602(b.1)(viii)).

(3) [Subsections (a)(1)(iii) and (a)(2)(iii) are not available for the securities of an issuer subject to the disqualification provisions of SEC Rule 252(c), (d), (e) or (f) of Regulation A (17 CFR 230.252(c)—(f)) promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa)] *Broker-dealer requirement.* All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act (70 P. S. § 1-301), except that this condition does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

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

(c) *Exceptions.*

[(1)] Subsection [(b)(2)(i)—(iii) and (v) shall] (b)(1) does not apply if the person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer employing the person is licensed or registered in this [state] Commonwealth and in the Form BD filed with [this state] the Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to allow a person disqualified under subsection [(b)(2)(i)—(iii) or (v)] (b)(1), to act in a capacity other than that for which the person is registered.

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

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

* * * * *

(4) [*Form D.* The form promulgated by the SEC (Reg. § 239.500 (17 CFR 239.500) under section 4(6) of the Securities Act of 1933 (15 U.S.C.A. § 77(d)(6)) and which, under SEC Rule 503 (17 CFR § 230.503), must be filed with the SEC by an issuer seeking to exempt securities transactions under SEC Regulation D.

(5) [*Accredited investor.* A person who meets the definition of accredited investor [set forth] in SEC Rule 501(a) (17 CFR 230.501(a)).

(e) [*Broker-dealers*] *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P. S. § 1-301) [who makes a sale under subsection (a)(1)(ii) or (iii)] that sells a security to

an experienced private placement investor in reliance on subsection (a) must receive a written representation that the purchaser [meets the standards set forth in subsection (a)(1)(iii)(C) or, where applicable,] meets the definition of "experienced private placement investor" [set forth] in subsection (d)(1)[;] and must have reasonable grounds to believe, and must believe after reasonable inquiry, that the written representation is correct.

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

(f) [*Principal place of business*] *Statutory basis for offers and sales under this section.* [Where an issuer is organized under the laws of this Commonwealth or organized under the laws of another state but has its principal place of business in this Commonwealth, a broker-dealer registered under section 301 of the act is not required to effect the securities transactions under sections 203(d) and (e) of the act, including those made under subsections (a)(1) and (2), in order:

(1) For the issuer to rely upon subsection (a)(1)(i), (ii), (2)(i) and (ii).

(2) For the issuer to rely upon subsection (a)(1)(iii) and (2)(iii) if the issuer, in addition to filing Commission Form 203-D or SEC Form D, files Part B of Commission Form D Supplement with the Commission to waive the broker-dealer requirements in subsection (a), and the Commission does not deny the application within 5 business days from the date of the filing. The Commission may deny the waiver application if the offering appears to be in violation of the law or abusive.] All offers and sales made to persons permitted by this section are deemed to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act are applicable to offers and sales to persons permitted by this section.

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

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

(1) The restricted securities [*subsequently*] are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) *subsequent to a notice filed with the Commission under section 203(d) and § 203.041(relating to limited offerings).*

* * * * *

§ 204.012. Waivers for [offerings where sales are made only to accredited investors] preeffective offers under section 203(h).

[(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. § 77c(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).]

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

CHAPTER 205. REGISTRATION BY COORDINATION

§ 205.040. [Automatic effectiveness for] Series of unit investment trusts as separate issuers.

[(a) Under section 205(d) of the act (70 P. S. § 1-205(d)), the requirements of section 205(b) and (c)(1)(iii) of the act (70 P. S. § 1-205(b) and (c)(1)(iii)) are waived for a registration statement filed under section 205 of the act by a unit investment trust, as the person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), which complies with the following:

(1) The unit investment trust is registered under the Investment Company Act of 1940.

(2) The unit investment trust is not engaged in the business of investing in securities issued by one or more open-end management investment companies, as those persons are classified in the Investment Company Act of 1940.

(3) Each series underlying a unit investment trust constitutes a separate and distinct issuer

under the act and shall individually file the following materials with the Commission. If a unit investment trusts offers multiple series, Form U-1 shall identify which series is being offered in this Commonwealth.

(i) One completed and properly executed Uniform Application to Register Securities (Form U-1), including the name and address of the trustee.

(ii) A statement identifying one or more previous series of the unit investment trust for which the effective date of the registration statement was determined under section 205(b) and (c) of the act (70 P. S. § 1-205(b) and (c)).

(iii) A copy of any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the United States Securities and Exchange Commission (SEC).

(iv) Information required by section 205(d) of the act (70 P. S. § 1-205(d)), including notice of SEC effectiveness, price amendment and post-effective amendment containing one copy of the final prospectus.

(v) The appropriate fee as prescribed in section 602(b)(iv) of the act (70 P. S. § 1-602(b)(iv)).

(vi) The representation filed with the SEC under SEC Rule 487 (17 CFR 230.487) (relating to effectiveness of registration statements filed by certain unit investment trusts), which includes the following:

(A) The portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in such previous series identified by the registrant.

(B) Except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment thereto is being filed, the registration statement or pre-effective amendment thereto does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the registrant.

(b) The Commission may deny, suspend or revoke the availability of this section to a unit investment trust if it appears to the Commission that a registration statement which has, or intends to become effective in this Commonwealth in reliance upon this section, is incomplete or inaccurate in any material respect or the registrant has not complied with the requirements set forth in subsection (a).]

For purposes of complying with the requirements of sections 201 and 211(a) of the act (70 P. S. §§ 1-201 and 1-211(a)), each series underlying a unit investment trust, as that person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), constitutes a separate and distinct issuer under the act and shall be required to make a separate filing with the Commission under section 211(a).

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.071. Escrow of promotional securities.

* * * * *

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

(1) Issued within the [2-] 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

* * * * *

(4) Issued within the [2-] 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

* * * * *

(c) The escrow of promotional securities shall be covered by an agreement which shall be subject to the [written] approval of the Commission [, in substantially the format and in accordance with the provisions set forth in the following form, designated by the Commission as Form SE:].

(Editor's Note: As part of this proposal, the Commission is proposing to delete FORM SE as it appears in 64 Pa. Code pages 207-3—207-7, serial pages (200089)—(200092) and (234901).

One manually signed copy of the [form] agreement shall be filed with the Commission prior to the effectiveness of a registration of the issuer's securities.

[(d) For the purpose of section 207(g) of the act, in determining whether the issuer has been in existence for more than 3 years the following factors, by way of illustration, are to be considered:

(1) Whether the issuer has significant revenues or earnings or both prior to the date of the filing of the registration statement.

(2) Whether the current officers and directors have been directing the operations of issuer for a significant period of time prior to the date of the filing of the registration statement.

(3) Whether the current or proposed business operations of the issuer are substantially similar to those conducted for a significant period of time prior to the date of the filing of the registration statement.]

§ 207.072. Escrow of proceeds.

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

rity be escrowed for a specific use as set forth in the prospectus. The escrow depository shall be a bank or trust company acceptable to the Commission.

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

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

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

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

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

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

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

(7) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

§ 207.101. Effective period of registration statement.

* * * * *

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

to file a new registration statement with Securities and Exchange Commission.

FORM 207-J
Instruction Sheet

* * * * *

WHO MUST FILE: Issuers that want to extend the effective period of a Section 205 registration statement for an additional period of one year provided, however, that filing Form 207-J shall not extend the offering for a period beyond [the effective period of the registration statement with the] three years from the initial effective date of the registration statement in this Commonwealth. Form 207-J may not be used if the issuer was required to file a new registration statement with the United States Securities and Exchange Commission.

* * * * *

4. (A) Initial effective date of registration statement in Pennsylvania:

(B) Description of securities registered:

[(C) Dollar amount of securities registered: _____ in Pennsylvania; _____ in all States.

(D) Dollar amount of securities sold to date in Pennsylvania: _____ .

(E) Dollar amount of securities proposed to be sold during remainder of offering: _____ in Pennsylvania; _____ in all States.

(F) Expected date of termination of offering in Pennsylvania: _____ .]

* * * * *

IN WITNESS WHEREOF, this Form has been duly executed [this ___ day of _____, 19__]

(Insert Date)

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

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

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

* * * * *

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

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to

be followed in exercising the right, shall be given in the text of [a] the prospectus [or other offering memorandum].

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

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

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

(1) It shall be in writing.

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

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

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

* * * * *

(2) Is [delivered to a telegraph or other message service for transmittal] sent electronically, including by e-mail or facsimile.

(3) Is deposited in the United States [mails] Postal Service, sent registered or certified mail, and [in the case of paragraph (2) and in the case of this paragraph, telegraph, postage or other transmittal] all applicable fees are paid by the sender [and the notice is addressed to the issuer or its affiliate at the place indicated in the instructions referred to in subsection (a)(3)].

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

[(c) The requirements of this section shall apply to offerings of securities which are exempt under sections 203(d), (f), (p) or (r) of the act (70 P. S. §§ 1-203(d), (f), (p) or (m)) unless otherwise provided by order of the Commission.

(d) [(e) The following language [of a] illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act [notice for a section 206 of the act (70 P. S. § 1-206) registration is set forth by way of illustration]:

"If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a **written** notice explaining your right to withdraw your acceptance pursuant to section 207 (m)(1) of the Pennsylvania Securities Act of 1972 [(70 P. S. § 1-207(m))], you may elect, within two business days after the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a

full refund of all monies paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a [letter or telegram] written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw." [Such letter or telegram should be sent and postmarked prior to the end of the aforementioned second business day. If you are sending a letter, it is prudent to send it by certified mail, return receipt requested, to ensure that it is received and also to evidence the time when it was mailed. Should you make this request orally, you should ask for written confirmation that your request has been received."]

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

"If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance pursuant to section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all monies paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.

§ 207.140. [Modification of statutory provisions to accommodate electronic filing] Signatures on electronic filings.

[For purposes of coordinating the provisions of the act with uniform procedures to facilitate electronic filings of registration statements under sections 205 and 206 of the act (70 P. S. §§ 1-205 and 1-206) by means of a securities registration depository, the Commission, under the authority provided in section 207(n) of the act (70 P. S. § 1-207(n)), modifies the provisions of section 207(j.1) of the act (70 P. S. § 1-207(j.1)) as follows:

(1) Notwithstanding any provision in section 207(j.1) of the act to the contrary, a registration by coordination by a unit investment trust, as that person is defined in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21) is effective for a period beginning with its effective date in this State and ending 1 year after the date the registration statement for the same securities became effective with the United States Securities and Exchange Commission.

(2) A registration by coordination for an open-end or closed-end investment company or face amount certificate company, as those persons are

classified in the Investment Company Act of 1940, is effective for the period beginning with its effective date and ending 60 days after the registrant's fiscal year end for the fiscal year in which the filing under section 205 of the act became effective.]

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

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

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

* * * * *

(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:

* * * * *

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

* * * * *

- 5. (A) Offering in Pennsylvania:
(i) Total number of shares or other units: _____
(ii) Per share or unit price: _____
(iii) Maximum aggregate offering price: _____
(B) Sales in Pennsylvania [or other units]: [_____]
(i) Number of shares or other units: _____
(ii) [Aggregate offering price] Aggregate proceeds received: _____

* * * * *

CHAPTER 211. FEDERALLY COVERED SECURITIES

§ 211.010. Notice filings for federally covered securities.

(a) The notices required under section 211(a) of the act (70 P. S. § 211(a)) to be filed by an open-end or closed-end investment company, unit investment trust or face amount certificate company, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64) (investment companies) shall be made on the Uniform Investment Company Notice Filing Form (Form NF) and shall be accompanied by the applicable filing fees and administrative assessments in sections 602(b.1)(iv) and 602.1(a)(5) of the act (70 P. S. §§ 1-602(b.1)(iv) and 1-602.1(a)(5)).

(b) No documents filed by Investment Companies with the SEC need be filed with the notice described in subsection (a) except for those documents filed with the SEC relating to mergers, acquisitions or reorganizations. In that case, copies of registration statements, prospectuses or posteffective amendments filed with the SEC are required to be filed with the Commission at the time the notice required by subsection (a) is filed.

(c) The notice required by section 211(b) of the act shall be filed with the Commission on Form D promulgated by the SEC and effective as of Septem-

ber 1, 1996, not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth and shall be accompanied by the filing fee in section 602(b.1)(vii) of the act.

Subpart E. ENFORCEMENT

CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

§ 504.060. Rescission offers.

* * * * *

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

* * * * *

(2) For a person making a rescission offer for possible violations of [sections] section 301 or 401—[406] 409 of the act (70 P. S. §§ 1-301 and 1-401—[1-406] 1-409) if the following apply:

* * * * *

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

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

* * * * *

(iii) The issuer provides a letter offering rescission to each rescission offeree which[, at a minimum, follows the format and] contains only the information set forth in Item 14 of the General Instructions to Commission Form RO.

* * * * *

(f) The following form has been designated by the Commission as Form RO:

* * * * *

DISCLOSURE GUIDE

* * * * *

10. Attach a copy of the proposed Notice of Rescission Offer which [, at a minimum, should follow the format and] contains only the information set forth in Item 14. [Although rescission offer materials may be distributed prior to the end of the Commission staff review period set forth in Regulation 504.060(b)(1), it may be preferable to wait for completion of staff review in the event the Waiver Request is denied] You are strongly advised to refrain from distributing the rescission offer materials until the completion of the staff review period set forth in Regulation 504.060(b)(1), in the event the Waiver Request is denied.

* * * * *

NOTICE OF RESCISSION OFFER

14. Where a rescission offer is made by the seller of the securities to the purchaser, the letter advising of the rescission offer [should follow, at a minimum, the format and] must contain only the information set

forth below. Where a rescission offer is being made by the purchaser to the seller, the letter advising of the rescission offer [should follow, at a minimum, the format and] must contain only the information set forth below except that appropriate modifications should be made in paragraphs 1 and 2 to conform to the provisions of Section 504(e) of the act.

* * * * *

CHAPTER 513. RESCISSION ORDERS

§ 513.010. Rescission orders.

When the Commission, under section 513 of the act (70 P. S. § 1-513), orders an issuer or control person of an issuer to effect a rescission offer, the rescission offer shall be effected in accordance with § 504.060(a) (relating to rescission offers) unless the Commission, by order, otherwise prescribes.

Subpart F. ADMINISTRATION

CHAPTER 603. ADMINISTRATIVE FILES

§ 603.011. Filing requirements.

(a) Except as set forth in [subsections] subsection (f) [and (g)], documents and other communications to be filed with the Commission shall be filed in the Harrisburg office of the Commission.

* * * * *

(d) No notice, statement, form[,] or other document will be accepted for filing; no request for copies of documents will be granted; and no action will be taken by the [Securities] Commission unless the filings and request are accompanied by the required fees or charges as provided by the act and this section.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be made payable to the order of "Commonwealth of Pennsylvania" and delivered or mailed to: Secretary, Pennsylvania Securities Commission; [333 Market Street; Harrisburg, Pennsylvania 17101] 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410.

* * * * *

(g) In connection with [the registration or exemption of securities or securities transactions under sections 202, 203, 205, 206 or 210 of the act required disclosure documents] notice filings relating to a Federally covered security under section 211, notice forms may be filed electronically with the [Securities Registration Depository, 1700 N. Moore Street, Suite 1215, Arlington, VA 22209 (SRD) or a successor address thereto if the disclosure document is a registration statement that is required to be filed with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e)] Commission as permitted by order of the Commission. In conjunction with [the] an electronic filing, fees or assessments required under sections 602 or 602.1 of the act (70 P. S. §§ 1-602 or 1-602.1) [may] shall be paid by means of [a check in the appropriate amount made payable to the order of "Securities Registration Depository" or electronic funds transfer in the appropriate amount to the SRD. Documents and payments filed with the SRD under this subsection will be deemed as filed

with the Commission] an Automated Clearing House transfer of funds to the Commission's depository bank.

CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

§ 606.041. Delegation and substitution.

* * * * *

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

* * * * *

(6) The power exercisable under section 303(a)(i) of the act to grant a waiver of any requirement imposed under section 303(a)(i) of the act or section 304 of the act (70 P. S. § 1-304) or any regulation promulgated thereunder and impose conditions on, or limit the scope of, an initial or renewal license of a broker-dealer, agent, investment adviser or investment adviser representative.

* * * * *

(d) The Commission delegates to the Director of the Division of Corporation Finance:

(1) The power exercisable under section [205(d) of the act (70 P. S. § 1-205(d)), to waive the requirement in section 205(c)(2)(iii)] 206(c) of the act (70 P. S. § 1-206(c)) to order effective a registration statement filed under section 206 of the act for securities that have met the requirements for registration under the Mid-Atlantic Regional Review Protocol for Small Corporate Offering Registrations.

* * * * *

(12) [The power exercisable under section 609(a) of the act to waive the condition of § 203.141(a) (relating to sales to existing security holders) to file Commission 203-N if an issuer has filed, in lieu thereof and under the time limitations in section 203(n) of the act (70 P. S. § 1-203(n)), a copy of a registration statement designated by the SEC as Form F-7.] The power exercisable under section 211(c) of the act (70 P. S. § 1-211(c)) to:

(i) Issue a stop order suspending the offer or sale of any security described in section 211(b) or (c).

(ii) Modify or vacate a stop order.

(13) The power exercisable under section 207(l)(1) of the act (70 P. S. § 1-207(l)(1)) to declare effective an amendment to any currently effective registration statement relating to [an] the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the filing fee required by section 602(b.1) of the act (70 P. S. § 1-602(b.1)) has been paid.

(14) [The power exercisable under section 204(a) of the act to waive the 2 business day time requirement of section 203(i) of the act for the mailing to the Commission of a copy of the final prospectus or final offering circular utilized or proposed to be utilized in connection with a sale under section 203(i) of the act which was filed with the SEC for one of the following:

(i) Sales of stock under a dividend reinvestment and stock purchase plan for which a registration statement has been filed with the SEC and declared effective.

(ii) Sales of stock underlying warrants or as part of an exchange offer for which a registration statement has been filed with the SEC and declared effective.

(15)] * * *

* * * * *

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

§ 609.031. Application.

(a) This chapter, together with the constructions and interpretations hereof as the Commission may issue from time to time, sets forth the minimum requirements for financial statements included, under the act, as part of the following:

* * * * *

(3) Proxy [Statements] materials under section 203(o)[(ii)] of the act (70 P. S. § 1-203(o)[(ii)]).

* * * * *

§ 609.034. Financial statements.

* * * * *

(b) Except as provided in subsection (c), when an issuer proposes to register its securities for sale under section 206 of the act, when an issuer proposes to sell its securities 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, or when an issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P. S. § 203(p)), or when an issuer is required to file [a] proxy [statement] materials under section 203(o)[(ii)] of the act (70 P. S. § 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:

* * * * *

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