

STATEMENTS OF POLICY

Title 64—SECURITIES

SECURITIES COMMISSION

[64 PA. CODE CH. 604]

No-Action Letters

The Securities Commission (Commission) has adopted § 604.023 (relating to no-action letters—statement of policy) to read as set forth in Annex A. The section concerns procedures governing the issuance of no-action letters by Commission staff.

Effective Date

The statement of policy shall be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Reference

Section 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-609(a)) (act) gives the Commission broad authority to take actions as are necessary to carry out the provisions of the act. Section 604 of the act (70 P. S. § 1-604) speaks specifically to issuing advice to the public concerning provisions of the act.

Summary and Purpose

Periodically, the Commission receives written requests from entities and individuals for Commission staff to provide written confirmation that, based on the facts presented and accompanying legal opinion, staff will not recommend enforcement action to be taken by the Commission against the individual or entity for engaging in the activities outlined in the request. In the securities industry, this is commonly known as a staff "no-action" letter.

A no-action letter is limited to the facts described in the request. If those facts change, the requestor may not be able to rely on the initial no-action letter as the change of facts may precipitate a different legal conclusion. Commission staff is not obligated to respond to each request, particularly when the matter in question is well-settled law.

A no-action letter expresses only the position of Commission staff with respect to recommendation of initiation of an administrative enforcement proceeding. It does not bind the Commission or third parties.

The United States Securities and Exchange Commission (SEC) as well as several other states have published similar statements of policy describing procedures that must be followed by persons seeking informal advice in the form of a no-action letter (see *Rendering Informal Advice*, Securities Act Release No. 33-6253, Fed. Sec. L. Rep. (CCH) ¶373, at 1253 (October 28, 1980); and *Request for No-Action and Interpretive Letters*, Securities Act Release No. 33-6269, Fed. Sec. L. Rep. (CCH) ¶375, at 1257 (December 5, 1980). This statement of policy parallels similar expressions adopted by the SEC and securities regulatory agencies in other states.

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(Editor's Note: The regulations of the Commission, 64 Pa. Code, are amended by adding a statement of policy in

§ 604.023 (relating to no-action letters) to read as set forth in Annex A.)

Fiscal Note: 50-117. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart F. ADMINISTRATION

CHAPTER 604. INTERPRETIVE OPINIONS OF THE COMMISSION—STATEMENT OF POLICY

§ 604.023. No-action letters—statement of policy.

(a) A person may request in writing a no-action letter from Commission staff that, based on the facts stated in the written request, staff will not recommend enforcement action against certain specified persons engaging in the activities described in the request. Commission staff is not obligated to respond to each request, particularly when the matter in question is well-settled law.

(b) Each request for a no-action letter shall be in writing and shall be filed with the Office of Chief Counsel at the Commission's Harrisburg Office address. Each request shall include the following:

(1) The particular statutory provision or rule upon which the request is based.

(2) The names of all persons involved. Letters relating to unnamed persons or to hypothetical situations will not be answered.

(3) A detailed statement of the facts necessary to reach a legal conclusion in the matter. Letters should be concise and to the point and should not attempt to include every possible type of situation which may arise in the future so that the request is overly broad or calls for a speculative response.

(4) A detailed discussion and analysis of the law as it relates to the facts. The writer must indicate why the writer believes a problem exists and must give or provide a legal opinion in the matter, including the basis for the opinion.

(5) A statement of the reasons why a no-action letter is appropriate.

(6) A representation that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth in the no-action letter request.

(7) A representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.

(c) If issued, a no-action letter expresses only the current position of Commission staff with respect to recommendation of administrative enforcement action against specific persons engaging in specific transactions; may be relied upon only by the requesting party; and does not bind the Commission or third parties.

(d) There is no fee required for issuance of a no-action letter.

[Pa.B. Doc. No. 01-1458. Filed for public inspection August 10, 2001, 9:00 a.m.]