RULES AND REGULATIONS

Title 10—BANKING AND SECURITIES

DEPARTMENT OF BANKING AND SECURITIES

[10 PA. CODE CHS. 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901 and 1001]

Securities Regulations Omnibus Amendments

The Department of Banking and Securities (Department) amends Chapters 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901 and 1001 to read as set forth in Annex A. This final-form rulemaking replaces terminology made obsolete by the 2012 merger of the former Securities Commission (Commission) with the former Department of Banking (2012 merger), corrects formatting and word choice issues, deletes statements of policy, reduces compliance requirements, permits electronic format submissions and electronic filings, and aligns the language of the regulations with the North American Securities Administrators Association (NASAA) model rules and the Securities and Exchange Commission (SEC) rules and regulations.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Scott A. Lane, Senior Deputy Chief Counsel, (717) 787-1471, slane@pa.gov, or Leo Pandeladis, Chief Counsel, (717) 787-1471, lepandelad@pa.gov.

C. *Statutory Authority*

This final-form rulemaking is authorized under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C), section 609(a) of the Pennsylvania Securities Act of 1972 (1972 Act) (70 P.S. § 1-609(a)) and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

D. *Background and Purpose*

Replace terminology

This final-form rulemaking replaces references to "Commission" relating to the former Commission with "Department" to reflect the 2012 merger. A definition of "Commission" has been added to § 1.1 (relating to definitions) consistent with the adjudicatory role of the Banking and Securities Commission for the entire Department. References to "by order of" provide discretion for the Department as to how to act, such as by letter, which is consistent with the other areas of the Department. Sections 601.010, 601.020, 602.060, 606.041, 610.010 and 901.011, which indirectly referenced a procedure of the former Commission, are rescinded.

The terminology in the former securities regulations was inaccurate because it referred to the former Commission and its policies and procedures. The regulated community as a whole will benefit from this final-form rulemaking reflecting the Department's incorporation of the former Commission and the changes to policies and procedures as a result of the incorporation.

Conform to the Pennsylvania Code & Bulletin Style Manual

The former securities regulations were not drafted in a manner consistent with the *Pennsylvania Code & Bulletin Style Manual*, likely because of numerous amendments at different time periods. Because amendments are needed to most of the sections to reflect the 2012 merger, the Department also updated the formatting and word choice to conform to the *Pennsylvania Code & Bulletin Style Manual*. For example, this final-form rulemaking: 1) rescinds § 602.022, regarding denial for abandonment, and divides the former regulation into §§ 208.010 and 303.016 (relating to denial for abandonment; and considered as abandoned); and 2) relocates the definitions formerly throughout Part VII (relating to securities) into § 102.021 (relating to definitions) for ease of reading and to adhere to Independent Regulatory Review Commission (IRRC) and Legislative Reference Bureau (LRB) standards.

Amendments to formatting and word choice issues make the regulations more user friendly for the regulated community as intended by the *Pennsylvania Code & Bulletin Style Manual*. In addition, this final-form rulemaking deletes formatting and phrasing that could be read two different ways by the regulated community.

Rescind Chapter 604

The Department reviewed the statements of policy (SOP) in Chapter 604 and determined that all of the SOPs needed to be deleted as obsolete because of the merger, could be better reflected in other sections or should be placed on the Department's web site as guidance rather than as SOPs. The former Commission adopted the SOPs. Upon review of the SOPs, the Department determined that the SOP format was not the best manner of disseminating the remaining relevant information to the regulated community. The regulated community will benefit from the Department consolidating information into either this final-form rulemaking or on the Department's web site where appropriate.

Sections 604.011, 604.017 and 604.022 are rescinded as obsolete. Rescinded §§ 604.010, 604.016, 604.019, 604.020, 604.021 and 604.023 may be included on the Department's web site or in a future rulemaking concerning rules of practice. Rescinded § 604.012 has been incorporated into § 504.060(e) (relating to rescission offers).

Reduce compliance requirements

This final-form rulemaking reduces compliance requirements on the regulated community by rescinding § 206.020, which removes the tax opinion requirement for limited partnership interests because the requirement only applied in narrow instances and was applied too broadly, and § 302.060, as this section is no longer applicable to the industry because since 1979 it applied to one individual. In addition, the Department amends §§ 210.010, 609.010 and 609.034 (relating to retroactive registration of certain investment company securities; use of prospective financial statements; and financial statements) to delete certain unnecessary filing requirements.

The Department and the regulated community will benefit from the reduction in compliance requirements.

The reduction will provide a minimal monetary benefit, reduce paperwork requirements and remove some compliance hurdles for the regulated community. The Department will benefit from the reduction in compliance checks that are no longer necessary.

Permit electronic format/filing

Sections 701.010a, 701.011 and 701.020 (relating to filing of registration forms; filing of exemption forms; and electronic filing) are added to permit the Department to handle filings in a manner better reflecting technology used by the regulated community.

The Department and the regulated community will benefit from the inclusion of sections regulating electronic format and electronic filing. At this time, the Department has the technology to accept forms filed in electronic format. This reduces mailing fees and filing time frames for the regulated community. It also reduces paperwork being housed by the Department. The Department does not currently have a dedicated electronic filing platform, but considers it to be a future option. Including the electronic filing section will permit the Department to make that technology available to the regulated community in the future without requiring an additional rulemaking.

Align language with NASAA and SEC

The Department works closely with NASAA and the SEC to develop consistent policies and procedures for the securities industry. Multiple amendments align the securities regulations with NASAA or the SEC, or both. This preamble details the NASAA or SEC rule after which the Department is modelling specific sections.

The regulated community will benefit from this final-form rulemaking. Consistency in regulatory treatment is important to the success of the industry as a whole because the securities industry frequently operates across states and countries.

E. *Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

Notice of proposed rulemaking was published at 46 Pa.B. 3420 (July 2, 2016), with a 30-day public comment period. The Department received comments from trade associations representing the interests of certified public accountants (Pennsylvania Institute of Certified Public Accountants) and certain members from the independent financial services industry (Financial Services Institute). Both trade associations expressed general support. The Department received extensive comments from G. Philip Rutledge, Esq. (Attorney Rutledge), an attorney with Bybel Rutledge and the former Chief Counsel of the Commission. IRRC submitted comments. The House Commerce Committee and the Senate Banking and Insurance Committee did not submit comments.

The comments received from Attorney Rutledge and IRRC and the Department's responses to the comments are set forth in detail in a separate comment and response document. A summary of the comments and responses follows.

Definitions

The final-form rulemaking relocated all definitions formerly throughout Part VII to § 102.021 for ease of reading and to adhere to IRRC and LRB standards. The majority of the comments to the existing definitions, and the changes made in response, clarify either the language of a definition or the specific regulation to which it applies. For example, in the definition of "advertisement," "refers to" is revised to "means." Definitions for terms that include multiple requirements (such as "independent party") are revised to make clear that the person shall meet all of those requirements.

Definitions that refer to terms used in different contexts have been revised to clarify the different contexts. For example, the definition of "principal place of business" refers to both § 203.187 (relating to small issuer exemption) and the place of business of an investment adviser. The definition has been revised to refer to both contexts.

Likewise, "beneficial ownership" is used in §§ 203.184, 302.070, 304.012, 305.019, 404.011 and 609.012. This definition has been revised to address these sections.

Attorney Rutledge suggested multiple additional defined terms. IRRC's comments recommended many, but not all, of Attorney Rutledge's suggested definitions. Accordingly, the Department adds the following definitions suggested by Attorney Rutledge and IRRC: "aggregate indebtedness," "auditor's report," "commission," "direct participation program," "EFD," "financial statements," "Nationally recognized statistical rating organization," "PCAOB" and "self-regulatory organization." The Department also adds definitions of "National securities association" and "National securities exchange," which were included in the definition of "exchange," which has been deleted. In §§ 303.042(d)(2), 304.041(b), 305.011(a)(1)(i) and (ii) and (c) and 603.031(e)(3), the capitalization of "National securities exchange" is corrected to be consistent with the capitalization of this term throughout the regulations.

The Department did not add the following terms suggested by Attorney Rutledge but not by IRRC: "Form ADV," "Form ADV-W," "Form BD," "Form BD-W," "Form D," "Form NF," "Form U-1," "Form U-4," "Form U-5," "Form U-SB," "generally accepted accounting principles," "limited partnership" and "Series 7, 24, 63, 65, and 66," which refer to specific examinations. The Department asserts that any benefit from defining these terms would be outweighed by the confusion of having a large number of defined terms, particularly when many of these terms refer to the multitude of forms used by the Department and exams available to the securities industry.

While the Department agrees with Attorney Rutledge's comment to include "direct participation program" (DPP) as a defined term, the Department adds "real estate investment trusts" (REIT) as an example of a DPP. Attorney Rutledge's suggested definition is based upon Financial Industry Regulatory Authority (FINRA) Rule 2310, which excludes REITs from the definition. FINRA rules, which are essentially conduct rules for its membership consisting of broker-dealers, address REITs separately from DPPs.

In contrast, the only reference to DPPs is in § 207.091 (relating to subscription contracts), which requires the filing of subscription contracts proposed to be used in an offering pursuant to the registration of the securities. The regulations do not address REITs separately from DPPs, and practitioners consistently file subscription contracts for REIT offerings with the Department in compliance with § 207.091.

In addition, NASAA members, including the Department, participate in a coordinated review program for the registration of DPPs. According to the NASAA guidelines on the coordinated review program, it includes the review of REITs. See http://www.coordinatedreview.org/cr-dpp/.

Clarification of substantive provisions

Most of the amendments to substantive provisions are either the inclusion of the additional defined terms or stylistic changes to add clarity. For example, several sections have been amended to include "all of the following conditions" or similar language to make clear that compliance with all criteria is required to satisfy the exemption, including §§ 202.094, 203.041, 203.161, 203.188 and 203.203.

Other amendments to substantive provisions include the deletion of the requirement for private fund advisers exempt from investment adviser registration to pay a fee, as section 602.1 of the 1972 Act (70 P.S. § 1-602.1) does not authorize the Department to impose a filing fee for persons exempt from registration under section 301 of the 1972 Act (70 P.S. § 1-301).

In addition, in response to comments from Attorney Rutledge and IRRC, § 305.019(b) (relating to dishonest and unethical practices) has been revised to include "within the previous 10 years" to be consistent with the 10-year limitations period in section 305 of the 1972 Act (70 P.S. § 1-305).

Section 609.034(h) (relating to financial statements) is added in this final-form rulemaking to clarify that financial statement requirements regarding offerings made in reliance to Tier 2 of SEC Regulation A do not apply if the issuer is relying on section 203(u) of the 1972 Act (70 P.S. § 1-203(u)). Under a recent SEC rulemaking, state securities registration requirements are pre-empted for offerings under Tier 2 of Regulation A (offerings up to $50 million).

Statements of policy

The Department reviewed the SOPs in Chapter 604 and determined that all of the SOPs needed to be deleted as obsolete because of the merger, could be better reflected in other sections or should be placed on the Department's web site as guidance rather than as SOPs. The former Commission adopted the SOPs. Upon review of the SOPs, the Department determined that the SOP format was not the best manner of disseminating the remaining relevant information to the regulated community.

Attorney Rutledge's comments included a general recommendation that the SOPs not be rescinded and specific comments regarding two SOPs.

SOP in former § 604.018

Former § 604.018 provided for the general policy of the original Commission to not impose monetary penalties when a respondent had already been assessed monetary penalties by FINRA or the SEC for the same conduct. This SOP did not preclude the Commission from issuing an order pursuant to a settlement that imposed a monetary penalty. The comment recommended that this SOP be retained, as it was originally raised by a senator when the Commission made its original request to be granted the authority to impose monetary penalties for violations of the 1972 Act.

The Department believes that this SOP is no longer relevant because the 2012 merger put new adjudicatory processes in place. Specifically, pre-merger Commission final orders were issued by the Commission comprised of the three Commissioners who acted as heads of the Commission. In the post-merger Department, final orders are issued by the Banking and Securities Commission, comprising of five individuals, four of whom are independent from the Department.

Additionally, while Department staff would take into consideration an SEC or FINRA penalty when recommending a sanction to the Hearing Officer and to the Banking and Securities Commission, the Department does not believe it is appropriate to limit the Department's authority, even by way of a guideline. The evidence of a particular case may indeed warrant an administrative assessment in addition to a monetary fine or penalty imposed by the SEC or FINRA, or both.

It should be noted that neither the SEC nor FINRA have similar limitations in their respective rules.

SOP in former § 604.022

Former § 604.022 related to the fact that neither the Department nor its staff have authority or responsibility for instituting, conducting, settling or otherwise disposing of a criminal proceeding, and that a settlement entered into by the Department may not address any of these proceedings. In the proposed rulemaking the Department asserted that sections 302 and 404 of the Department of Banking and Securities Code (71 P.S. §§ 733-302 and 733-404) address this issue. Attorney Rutledge's comment points out that the definition of "licensee" in section 2 of the Department of Banking and Securities Code (71 P.S. § 733-2) excludes persons licensed or registered under the 1972 Act.

While the Department agrees with the comment that sections 302 and 404 of the Department of Banking and Securities Code exclude persons licensed or registered under the 1972 Act, under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506) the Department does not have authority or responsibility to institute, conduct, settle or otherwise dispose of a criminal proceeding.

§ 211.010. Notice filings for Federally covered securities

Section 211.010 (relating to notice filings for Federally covered securities) relates to the notice filing of Federally covered securities. Federally covered securities are securities defined as "covered securities" under section 18(b) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)) for which state securities registration requirements are pre-empted. However, states are allowed to require short-form "notice" filings.

The Jumpstart Our Business Startups Act (JOBS Act) (Pub.L. No. 112-106) directed the SEC to issue a rule which exempts securities up to $50 million under section 3(b)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)(2)), under Regulation A. In anticipation of SEC rules regarding Regulation A, section 203(u) of the 1972 Act was added in 2014. Section 203(u) of the 1972 Act, which exempts an offer or sale which is in good faith reliance on section 3(b)(2) of the Securities Act of 1933 and the rules adopted thereunder, provides that the issuer files with the Department all documents filed with the SEC.

The SEC's final rule under Regulation A provided for a two-tier system. The SEC determined that sales to offerees under Tier 2 are deemed to be transactions involving qualified purchasers, which are covered securities under section 18(b)(3) of the Securities Act of 1933, thereby pre-empting state registration requirements.

In response, the Department proposed adding § 211.010(d), which read as follows:

> (d) *Department orders.* The Department may issue an order requiring the following with respect to a Federally covered security under section 18(b)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(3)):

(1) The filing of documents filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or any notice filing form that has been adopted by the Department.

(2) The payment of fees prescribed to section 602(b.1) of the act.

Attorney Rutledge raised two issues with proposed § 211.010(d). First, section 203(u) of the 1972 Act requires the filing of documents filed with the SEC. There is no specific authority for the Department to require a "notice" filing under section 211 of the 1972 Act (70 P.S. § 1-211). Second, section 602(b.1) of the 1972 Act (70 P.S. § 1-602(b.1)) does not address the payment of fees associated with 18(b)(3) covered securities.

The comment suggested the inclusion of an additional section in this final-form rulemaking which would waive the filing requirement under section 203(u) of the 1972 Act so long as the issuer files a notice with the Department. Attorney Rutledge's suggested section also waives the filing under section 203(u) of the 1972 Act for offers which meet SEC Rule 251(d)(1) (no offers until the offering materials have been filed with the SEC) and SEC Rule 255 (solicitation of interest), and also would allow issuers to file a notice in Tier 1 offerings similar to Tier II offerings.

The Department does not agree with the suggestion that it does not have the authority to issue an order requiring the filing of documents filed with the SEC or, in the alternative, the filing of a notice form adopted by the Department.

Section 203(u) of the 1972 Act requires the filing of documents filed with the SEC, which would include, among other things, the filing of audited financial statements. Proposed § 211.010(d) merely added the less burdensome option of filing a notice filing instead. Further, NASAA has already adopted a Uniform Notice of Regulation A—Tier 2 Offering, a two-page form which includes the following statement: "The documents filed with the SEC under the file number for this offering indicated above are hereby incorporated by reference with this notice."

The NASAA notice form does not request any information in addition to SEC requirements, and merely allows for an easier method of providing the information to the Department than that contemplated by section 203(u) of the 1972 Act. However, in response to this comment, the Department revised § 211.010(d) to reflect that the notice form, if ordered by the Department, may not request any information or documents in addition to SEC requirements.

The Department agrees with the comment with respect to the payment of fees under section 602(b)(1) of the 1972 Act.

The Department revised § 211.010(d) accordingly.

Additional IRRC comments

§ 102.201. Definitions

IRRC suggested that in the instances when proposed definitions referred to a term defined in section 102 of the 1972 Act (70 P.S. § 1-102) or Federal statutes or rules, those definitions be included in language added by the Department to assist a reader in understanding the full meaning of the definitions.

The Department appreciates this suggestion but believes that including the definition from the statute or Federal rule would not be appropriate for a number of reasons. First, statutory and rule definitions are subject to change. This is particularly true with respect to Federal securities statutes and SEC rules. For example, in the past 6 years two major laws have been passed by Congress (the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. No. 111-203) and the JOBS Act) that significantly impacted securities regulation and authorized (and in some cases mandated) SEC rulemaking. The Department's final-form rulemaking uses citations when referring to Federal statutes and rules; accordingly, in the event the language is amended, the Department would not need to amend the regulation. If the entire statutory or rule definition is used in a definition, the definition would need to be amended every time there is an amendment to the Federal or State statutory definitions and Federal regulatory definitions.

Second, securities regulation in general is comprised of coordinated layers of state and Federal laws and regulations and FINRA rules. State securities laws are intended to be construed to be uniform, and their interpretation to be coordinated with related Federal legislation. See section 703(a) of the 1972 Act (70 P.S. § 1-703(a)). In furtherance of uniformity, state securities laws are adopted from either the model Uniform Securities Act of 1956 or 2002.

Rulemaking, on the other hand, is often consistent with model rules adopted by the NASAA. NASAA model rules, like securities regulations in general, use citations to refer to statutory definitions. See the NASAA Model Rule on the definition of an investment adviser representative (http://www.nasaa.org/wp-content/uploads/2011/07/IA-Model-Rule-Definition-Under-2002-Act.pdf) and the NASAA Model Exemption for Investment Advisers to Private Funds (http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Registration-Exemption-for-Investment-Advisers-to-Private-Funds-Model-Rule-Amended-Oct.-8-2013.pdf).

Lastly, there are already over 100 definitions in § 102.201, some of which are voluminous. The inclusion of statutory or Federal rule definitions, which are often extensive, would likely create confusion to the reader.

Chapter 701. Service of process administrative provisions

Sections 701.010a, 701.011, 701.020 and 701.030, regarding the filing of registration forms, exemption forms, electronic filing and fees, are adopted in this final-form rulemaking. IRRC's comments included a concern with these sections because they do not include specific instructions for the filing of these forms. Instead, these sections refer to General Instructions included in forms available on the Department's web site. IRRC believes that this approach circumvents the regulatory review process because it does not provide interested parties the opportunity to comment on the General Instructions, which would be equivalent to a regulation. The Department would be able to amend the General Instructions at any time without initiating a rulemaking. IRRC recommended that the final-form rulemaking be revised to include specific details.

The Department appreciates IRRC's concern, but disagrees with the suggestion based on the nature and purpose of the General Instructions themselves. Securities offered and sold in this Commonwealth shall be registered with the Department, exempt from registration or Federally covered securities. The registration process can be by qualification, under section 205 of the 1972 Act (70 P.S. § 1-205), or by coordination with an SEC filing, under section 206 of the 1972 Act (70 P.S. § 1-206).

Exemptions from registration are numerous and include exemptions that must comply with Federal law. Offerings that are Federally covered securities must comply with specific Federal law. The Department's web site includes links to the numerous forms that are required for these types of offerings. The General Instructions section of each form includes standard filing procedures such as where to file, the number of copies to be filed and the filing fee specific to that form, and also includes references to other requirements in the 1972 Act and regulations, such as a requirement to attach a copy of the offering prospectus. The General Instructions do not include requirements that are not already in the 1972 Act and regulations, or under Federal law or regulations. No new forms are required under this final-form rulemaking and all of the Department's current forms are available at http://www.dobs.pa.gov/Businesses/Securities/Pages/Securities-Offerings.aspx.

Additionally, the inclusion of the General Instructions in the regulations would cause confusion given the large number of forms used by the Department and the length of the General Instructions for each. Further, similar to the discussion regarding definitions, including the General Instructions language in the regulations would necessitate an amendment to the regulations every time a Federal or State requirement changes for a particular offering.

Finally, it should be noted that § 2.12(a) of the *Pennsylvania Code & Bulletin Style Manual* (relating to forms) does not recommend the codification of forms.

F. *Fiscal Impact*

State government

This final-form rulemaking will have a de minimus impact on the Department, as this final-form rulemaking involves minor changes to a regulatory structure which already exists. This final-form rulemaking will not impact the Commonwealth and its political subdivisions.

Regulated community

This final-form rulemaking will have a de minimus impact on the regulated community. Some of the amendments will reduce costs to the regulated community through simplification of filing requirements.

Paperwork

The final-form rulemaking will have a de minimus impact on paperwork for the regulated community and the Department. The final-form rulemaking includes provisions which permit electronic filing and electronic recordkeeping instead of paper filing and paper records to reduce paperwork for the regulated community and the Department. This final-form rulemaking does not require the submission of new forms and all current forms are available at http://www.dobs.pa.gov/Businesses/Securities/Pages/Securities-Offerings.aspx.

G. *Sunset Review*

This final-form rulemaking does not have a sunset date because the Department will periodically review the effectiveness of the regulations.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 3420, to IRRC and the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 11, 2017, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 12, 2017, and approved the final-form rulemaking.

I. *Findings*

The Department finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments received during the public comment period were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 3420.

(4) This final-form rulemaking is necessary and appropriate for the administration and enforcement of the 1972 Act.

J. *Order*

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 10 Pa. Code Chapters 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901 and 1001, are amended in Annex A as follows:

Adding §§ 102.021, 208.010, 302.070, 302.071, 303.016, 304.071, 305.020, 404.014, 601.030, 701.010a, 701.011, 701.020 and 701.030.

Deleting §§ 102.031, 102.041, 102.050, 102.060, 102.111, 102.112, 102.201, 102.202, 102.241, 202.041, 202.052, 203.091, 203.131, 203.171, 206.020, 207.140, 302.060, 305.012, 404.013, 601.010, 601.020, 602.022, 602.060, 604.010—604.012, 604.016—604.023, 606.041, 609.032, 610.010 and 901.011.

Amending §§ 1.1, 202.010, 202.030, 202.091, 202.092, 202.093, 202.094, 202.095, 203.011, 203.041, 203.101, 203.141, 203.151, 203.161, 203.183, 203.184, 203.185, 203.186, 203.187, 203.188, 203.189, 203.190, 203.191, 203.192, 203.201, 203.202, 203.203, 204.010, 204.011, 204.012, 205.021, 205.040, 206.010, 207.050, 207.071, 207.072, 207.091, 207.101, 207.130, 209.010, 210.010, 211.010, 301.020, 302.061, 302.063, 302.064, 302.065, 303.011, 303.012, 303.013, 303.014, 303.015, 303.021, 303.031, 303.032, 303.041, 303.042, 303.051, 304.011, 304.012, 304.021, 304.022, 304.041, 304.051, 304.061, 305.011, 305.019, 305.061, 401.020, 404.010, 404.011, 404.012, 501.011, 504.060, 513.010, 603.011, 603.031, 603.040, 605.020, 606.011, 606.031, 609.010, 609.011, 609.012, 609.031, 609.033, 609.034, 609.036, 609.037 and 1001.010.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and

the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Secretary of the Department shall certify this order and Annex A and deposit them with the LRB as required by law.

(e) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBIN L. WIESSMANN,
Secretary

(*Editor's Note*: See 47 Pa.B. 6790 (October 28, 2017) for IRRC's approval order.)

Fiscal Note: Fiscal Note 3-54 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 10. BANKING AND SECURITIES

PART I. GENERAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 1.1. Definitions.

(a) The following words and terms, when used in this title, have the following meanings, unless the context clearly indicates otherwise:

Banking Code—The Banking Code of 1965 (7 P.S. §§ 101—2204).

Commission—The Banking and Securities Commission of the Commonwealth, as established under sections 1121-A and 1122-A of the Department of Banking and Securities Code (71 P.S. §§ 733-1121-A and 733-1122-A).

Department—The Department of Banking and Securities of the Commonwealth.

Secretary—The Secretary of the Department.

(b) Words and terms not otherwise defined in this title have the meanings specified in the Banking Code or the Department of Banking and Securities Code (71 P.S. §§ 733-1—733-1203).

PART VII. SECURITIES

Subpart A. DEFINITIONS

CHAPTER 102. DEFINITIONS

§ 102.021. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

3(c)(1) fund—A qualifying private fund that is eligible for exclusion from the definition of "investment company" in section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-3(c)(1)).

203(d) restricted securities—Securities purchased under section 203(d) of the act (70 P.S. § 1-203(d)) if the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

Accountant's report—A document prepared by an independent certified public accountant indicating the scope of the audit with either of the following:

(i) An opinion regarding the financial statements taken as a whole.

(ii) An assertion that an overall opinion cannot be expressed and the reason why.

Accredited investor—As defined in Rule 501 of Regulation D (17 CFR 230.501) (relating to definitions and terms used in Regulation D).

Act—The Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-703.1).

Advertisement—

(i) As defined in section 102(a) of the act (70 P.S. § 1-102(a)) wherein the term:

(A) Communication includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase, or an offer to sell or purchase a security.

(B) Publicly disseminated means communication directed to or communicated to more than 50 persons in this Commonwealth.

(ii) For purposes of § 404.010 (relating to advertisements by investment advisers and investment adviser representatives), any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

(A) An analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(B) A graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(C) Other investment advisory service with regard to securities.

Agent—As defined in section 102(c) of the act:

(i) Including a person considered an officer, director, partner or employee of an issuer, or an individual occupying a similar status or performing similar functions, if the designation is applied for the purpose of avoiding registration as an agent under the act.

(ii) Excluding persons acting as transfer agents and registrars on behalf of issuers or performing only ministerial duties in handling securities and maintaining lists of securityholders.

Aggregate indebtedness—As defined in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).

Agricultural cooperative association—

(i) An association which admits to membership only persons engaged in agriculture and is organized and operated to engage in a cooperative activity for persons engaged in agriculture in connection with:

(A) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products of agriculture.

(B) Manufacturing, processing, storing, transporting, delivering, handling, or buying for or furnishing supplies to its members and patrons.

(C) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes in this subparagraph and subparagraph (ii) on a cooperative basis.

(ii) A federation of individual agricultural cooperative associations if the federation does not possess greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

Agricultural cooperative association member—A patron, to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patron to be treated as a member.

Amount—A quantity, which for the purpose of:

(i) Evidence of indebtedness is the principal amount.

(ii) Shares is the number of shares.

(iii) Any other kind of security is the number of units.

Any credit union—An institution organized as a credit union under the applicable laws of the Commonwealth, the business of which is:

(i) Confined substantially to the credit union business (the receipt of deposits from and the making of loans to bona fide members of the credit union).

(ii) Supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over that institution.

Audit—The examination of historical financial statements by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Auditor's report—A written report by an independent certified public accountant which contains either an expression of opinion on an entity's financial statements, taken as a whole, or an assertion that an opinion cannot be expressed.

Bank—

(i) As defined in section 102(d) of the act.

(ii) The term does not include:

(A) A holding company for a bank.

(B) A bank-in-organization if the state or Federal regulator with primary authority over the bank-in-organization determines that it is not a bank under the law governing that bank-in-organization.

Bank holding company—A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Beneficial ownership—

(i) For purposes of §§ 203.184 and 609.012 (relating to offers and sales to principals; and computing the number of offerees, purchasers and clients) and section 203(s)(v) and (t)(v) of the act, as defined in 17 CFR 240.13d-3 (relating to determination of beneficial owner).

(ii) For purposes of § 302.070 (relating to registration exemption for investment advisers to private funds), as defined in 17 CFR 270.2a51-2 (relating to definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests).

(iii) For purposes of §§ 304.012, 305.019 and 404.011 (relating to investment adviser required records; dishonest and unethical practices; and investment adviser brochure disclosure), as defined in 17 CFR 275.204A-1 (relating to investment adviser codes of ethics).

Bona fide distribution—A distribution not made solely to avoid the registration provisions of section 201 of the act (70 P.S. § 1-201).

Bona fide pledgee—

(i) A secured party who takes securities in pledge to secure a bona fide debt.

(ii) The term does not include a secured party who takes securities in pledge under either of the following circumstances:

(A) Without any intention or expectation that they will be redeemed but merely as a step in the distribution to the public.

(B) Without having secured knowledge, in the exercise of reasonable diligence, before the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.

Bond—

(i) A debt obligation, including a note, debenture or other evidence of indebtedness.

(ii) For purposes of § 202.092 (relating to guaranties of certain debt securities exempt), an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(2)) when either of the following applies:

(A) The issuer of the security is located in this Commonwealth.

(B) The guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is considered to be a separate security under Securities and Exchange Commission Rule 131 (17 CFR 230.131) (relating to definition of security issued under governmental obligations).

Branch office—As defined in FINRA Rule 3110(e) or any successor rule.

Broker-dealer—

(i) As defined in section 102(e) of the act.

(ii) The term does not include persons:

(A) Acting as transfer agents and registrars on behalf of issuers.

(B) Performing only ministerial duties in handling securities and maintaining lists of securityholders.

CRD—The Central Registration Depository operated by FINRA, and any successor thereto.

Class of a series—Equity securities of an issuer of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

Client—

(i) A person to whom an investment adviser or investment adviser representative has provided investment advice for which the investment adviser or investment adviser representative received compensation.

(ii) For purposes of § 404.012 (relating to cash payment for client solicitation), the term includes a prospective client.

(iii) For purposes of § 404.011, the term includes each limited partner of a limited partnership, each member of

a limited liability company and each beneficiary of a trust if the investment adviser is the general partner of the limited partnership, manager of the limited liability company or trustee of the trust.

Commission—Any form of compensation received by any person for effecting the purchase or sale of a security.

Comparative financial statement—A document which includes financial statements for 2 years or more presented in adjacent columnar form.

Compensation—Receipt, directly or indirectly, of any payment or consideration, whether or not in the form of cash, or any economic benefit.

Confidential information—Records and other information in the Department's possession which are not available for public inspection and copying under the Right-to-Know Law (65 P.S. §§ 67.101—67.3104) or section 603(c) of the act (70 P.S. § 1-603(c)).

Control—

(i) As defined in section 102(g) of the act.

(ii) For purposes of § 304.012 and § 404.014 (relating to custody requirements for investment advisers), the term includes the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise, including the following presumptions:

(A) Each of the investment adviser's officers, partners or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser.

(B) A person is presumed to control a corporation if either of the following apply:

(I) The person directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities.

(II) The person has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities.

(C) A person is presumed to control a partnership if the person has the right to receive on dissolution, or has contributed, 25% or more of the capital of the partnership.

(D) A person is presumed to control a limited liability company if any of the following apply:

(I) The person directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company.

(II) The person has the right to receive on dissolution, or has contributed, 25% or more of the capital of the limited liability company.

(III) The person is an elected manager of the limited liability company.

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

Convicted—A verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not a sentence has been imposed.

Cooperative business association—A person organized exclusively as a retail or wholesale cooperative which admits to membership only persons that legitimately engage, in whole or in part, in the line of business for which the cooperative was organized.

Custody—

(i) For purposes of a person, directly or indirectly holding client funds or securities, with authority to obtain possession of them or the ability to appropriate them.

(ii) For purposes of an investment adviser, if a related person holds directly or indirectly, client funds or securities, or has authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(iii) For purposes of subparagraphs (i) and (ii), the term includes:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within 3 business days of receiving them.

(B) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian on the investment adviser's instruction to the custodian.

(C) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position or another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(iv) For purposes of subparagraphs (i) and (ii), the term does not include:

(A) An investment adviser that has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours, provided that the adviser keeps a ledger or other listing of all securities or funds held or obtained in this manner as required under § 304.012(a)(22).

(B) An investment adviser acting as a trustee for a beneficial trust in which the beneficial owners of the trust are a parent, step-parent, grandparent, step-grandparent, spouse, brother, step-brother, sister, step-sister, grandchild or step-grandchild of the investment adviser if the investment adviser maintains the records required under § 304.012(c)(8).

Customer—

(i) As defined in 17 CFR 240.15c3-3 (relating to customer protection—reserves and custody of securities).

(ii) For the purpose of §§ 303.041 and 304.061 (relating to broker-dealer capital requirements; and free credit balances), every person other than the broker-dealer.

Date of filing—The date on which an application, registration statement, notice filing, financial statements, reports, correspondence or other documents filed or required to be filed directly with the Department, or any material amendment thereto, are received in the Harrisburg office of the Department.

Development stage company—A company devoting substantially all of its efforts to establishing a new business if planned principal operations have not commenced, or have commenced, but there has not been significant revenue therefrom.

Direct participation program—A program which provides for flow-through tax consequences regardless of the

structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, real estate investment trusts, agricultural programs, cattle programs, condominium securities and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof, except tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. §§ 401 and 403(a)) and individual retirement plans under section 408 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 408), tax sheltered annuities under section 403(b) of the Internal Revenue Code of 1986, and any company including separate accounts, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

Discretionary power—Effecting a transaction or placing a trade order without specific authorization from the client, not including discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

EFD—The electronic filing depository operated by NASAA, and any successor thereto.

Engaged in agriculture—Farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations.

Entity—A corporation, partnership, association, joint stock company, limited liability company, trust, estate or unincorporated association.

Equity security—

(i) A stock or similar security (including interests in a limited liability company).

(ii) A security convertible, with or without consideration, into a stock or similar security, or carrying a warrant or right to subscribe to or purchase a security described in subparagraph (i); or a warrant or right.

(iii) For purposes of § 203.091, the term includes:

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

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

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

Equity securityholder—

(i) Persons who at the time of offers and sales under the exemption in section 203(n) of the act are holders of equity securities.

(ii) The term does not include persons who are holders of equity securities issued in violation of or without compliance with the act and the regulations adopted under the act.

Examination—When used in regard to financial information, the review or verification of financial and other information by an independent certified public accountant for the purpose of expressing an opinion thereon.

Executive officer—Each person serving as chief executive officer, chief operating officer or chief financial officer of a person.

Experienced private placement investor—An individual, or spouse purchasing as a joint tenant or tenant by the entireties, who purchased a minimum of $450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

FINRA—The Financial Industry Regulatory Authority, Inc., and any successor thereto.

Fair value—The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, as set forth and interpreted in Financial Accounting Standards Board Accounting Standards Codification Topic 820.

Feasibility study—An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast—A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

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

Financial projection—A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Financial statements—A balance sheet, statement of income, statement of stockholders' equity and statement of cash flow and accompanying notes.

Firm member—All partners and principals in the firm and all professional employees participating in an audit or located in an office of the firm participating in a significant part of an audit.

Fiscal year—

(i) The annual accounting period when a closing date is adopted.

(ii) The calendar year ending on December 31 when a closing date is not adopted.

Franchise—An agreement involving a continuing commercial relationship by which a person (franchisee) is permitted by another person (franchisor) the right to offer the goods manufactured, processed or distributed by the franchisor, or the right to offer services established, organized, directed or approved by the franchisor, under circumstances when the franchisor continues to exert any control over the method of operation of the franchisee, particularly, but not exclusively, through trademark, trade name or service mark licensing, or structural or physical layout of the business of the franchisee.

Going concern disclosure—The disclosure of substantial doubt in the auditor's report, based on the criteria in the

Statement on Auditing Standard 126 promulgated by the American Institute of Certified Public Accountants, regarding the ability of the issuer to continue as a going concern during the ensuing fiscal year.

Guarantor—A person who executes a guaranty.

Guaranty—A duly executed written agreement, which cannot be bought, sold or traded as a security or otherwise realized on by a bondholder separately from the bondholder's interest in the bonds, wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption before maturity or otherwise, and premium, if any, when and as the principal and interest shall become due.

Hypothetical assumption—An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

IARD—The Internet-based Investment Adviser Registration Depository operated by FINRA, and any successor thereto.

Impersonal investment advisory services—As defined in 17 CFR 275.206(4)-3(d)(3) (relating to cash payments for client solicitations).

Independent—As defined in Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accounts, Inc. or the interpretations adopted thereunder, regardless of whether the person is a certified public accountant or not.

Independent certified public accountant—As set forth in section 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)) (relating to qualifications of accountants).

Independent party—A person who meets all of the following:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement, within the preceding consecutive 12-month period.

Independent representative—A person who:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members or other beneficial owners.

(ii) Does not control, is not controlled by and is not under common control with investment adviser.

(iii) Does not have, and has not had within the past 2 years, a material business relationship with the investment adviser.

Individuals controlling—A general partner and, in the case of a corporation, the president and other officers responsible for making investment decisions with respect to the purchase of the securities described in subparagraph (iv) of the definition of "institutional investor," if the person is currently engaged in that capacity.

Industrial loan association—For purposes of section 202(d) of the act (70 P.S. § 1-202(d)), an institution organized as an industrial loan association under the applicable laws of the Commonwealth, the business of which is:

(i) Substantially confined to the industrial loan business.

(ii) Examined and supervised as an industrial loan association by the appropriate Commonwealth authorities having supervision over the institution.

Industrial loan business—The making and discounting of secured and unsecured loans to bona fide members of the association.

Insolvent or *insolvency*—Except in the case of entities required under law or regulation to submit an auditor's report if the auditor's report does not contain a going concern disclosure, the terms mean either of the following:

(i) The inability to pay debts as they fall due in the person's usual course of business.

(ii) Liabilities in excess of the fair value of the person's assets.

Institutional investor—As defined in section 102(k) of the act, including the following:

(i) A corporation, partnership, trust, estate or other entity (excluding individuals), or a wholly-owned subsidiary of the entity, which has been in existence for at least 18 months and which had a tangible net worth on a consolidated basis of $25 million or more.

(ii) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of $5 million or more according to its most recent audited financial statements; provided that the aggregate dollar amount of securities being sold to the person under the exemption in section 203(c) of the act and this title may not exceed 5% of the endowment or trust funds.

(iii) A wholly-owned subsidiary of a bank as defined in section 102(d) of the act.

(iv) A person, except an individual or an entity whose securityholders consist entirely of one individual or group of individuals who are related, which is organized primarily to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with one of the following:

(A) Has purchased $5 million or more of the securities excluding both of the following:

(I) A purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities, unless the purchase

occurred under a leveraged buyout financing in which the person does not intend to provide direct management to the issuer.

(II) A dollar amount of a purchase of securities of a corporation which investment represents more than 20% of the person's net worth.

(B) Is capitalized at $2.5 million or more and is controlled by a person which meets the criteria in clause (A).

(C) Is capitalized at $10 million or more and has purchased $500,000 or more of the securities, excluding a purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities.

(D) Is capitalized at $250,000 or more and is a side-by-side fund.

(v) A small business investment company as the term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C.A. § 662) which either:

(A) Has a total capital of $1 million or more.

(B) Is controlled by institutional investors as defined in section 102(k) of the act or this section.

(vi) A seed capital fund as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. §§ 395.2 and 395.6).

(vii) A business development credit corporation as authorized by the Business Development Credit Corporation Law (7 P.S. §§ 6040-1—6040-16).

(viii) A person whose securityholders consist solely of institutional investors or broker-dealers.

(ix) A person as to which the issuer reasonably believed qualified as an institutional investor under this section at the time of the offer or sale of the securities on the basis of written representations made to the issuer by the purchaser.

(x) A qualified institutional buyer as defined in 17 CFR 230.144A (relating to private resales of securities to institutions) or any successor rule.

(xi) A qualified pension and profit sharing and stock bonus plan under section 401 of the Internal Revenue Code of 1986 and all plans under section 408 of the Internal Revenue Code of 1986 if the plan has either of the following:

(A) Plan assets of $5 million or more.

(B) Investments of $500,000 or more in securities and retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P.S. § 1-301) or a Federally covered adviser to give professional investment management advice.

Insurance holding company—A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Investment adviser representative—

(i) As defined in section 102(j.1) of the act.

(ii) For purposes of § 304.012(a)(12), the term includes:

(A) A partner, officer or director of the investment adviser.

(B) An employee who participates in any way in the determination of which recommendations shall be made.

(C) An employee of the investment adviser who, in connection with assigned duties, obtains information concerning which securities are being recommended before the effective dissemination of the recommendations.

(D) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

(iii) For purposes of § 304.012(a)(13), when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients:

(A) A partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made.

(B) An employee who, in connection with assigned duties, obtains information concerning which securities are being recommended before the effective dissemination of the recommendations.

(C) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations as follows:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

Investment supervisory services—The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

Majority-owned subsidiary—A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent's other majority owned subsidiaries, or both.

Most recent audited financial statements—Audited financial statements dated not more than 16 months before the date of the transaction in which the person proposed to purchase securities in reliance on the exemption in section 203(c) of the act.

NASAA—The North American Securities Administrators Association, Inc.

National securities association—An association of brokers and dealers registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3).

National securities exchange—Any exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c) which is registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f).

Nationally recognized statistical rating organization—As defined in section 3(a)(62) of the Securities Exchange Act of 1934.

Net capital—As defined in 17 CFR 240.15c3-1, promulgated under the Securities Exchange Act of 1934.

Net worth—The excess of assets over liabilities as determined by generally accepted accounting principles reduced by:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other intangible assets.

(iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to:

(A) Stockholders and officers in the case of a corporation.

(B) Members and managers in the case of a limited liability company.

(C) Partners in the case of a partnership.

(vi) Receivables from any affiliate, unless enforceable by contract.

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

Nonbranch office—A location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

Note or *footnote*—A clear and concise disclosure of information, including information necessary to make an item or entry in the financial statement not misleading, cross-referenced specifically, if practicable, to an item or entry in a financial statement.

Office of supervisory jurisdiction—As defined in FINRA Rule 3110(e) or any successor thereto.

PCAOB—The Public Company Accounting Oversight Board, and any successor thereto.

Parent—An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Pooled investment vehicle—

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940.

Portfolio management—The process of determining or recommending securities transactions for any part of a client's portfolio.

Prime quality—A description for commercial paper rated in one of the top three rating categories by a Nationally recognized statistical rating organization.

Principal—

(i) The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions of one of the following:

(A) The issuer.

(B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(ii) A director, general partner or comparable person charged by law with the management of one of the following:

(A) The issuer.

(B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(iii) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

(A) The issuer.

(B) A corporation, partnership or other entity which serves as a general partner of the issuer.

(C) A promoter of the issuer as defined in section 102(o) of the act.

(D) A relative of a person specified in clauses (A)—(C), if "relative" means one of the following:

(I) A spouse.

(II) A parent.

(III) A grandparent.

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

Principal place of business—The executive office of the business from which the officers, partners or managers of the business direct, control and coordinate the activities of the business.

Private fund adviser—An investment adviser who provides advice solely to one or more qualifying private funds.

Private placement offering of securities—An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under section 3(b) of the Securities Act of 1933 or section 4(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77d(a)(2)).

Pro rata—

(i) An offering made in this Commonwealth proportionately on the basis of the number of shares owned by the existing equity securityholder or the equity securityholder's percentage ownership interest in the issuer.

(ii) The term includes the issuer offering:

(A) Its existing equity securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date.

(B) An existing equity securityholder owning 3% of the issuer's stock as of a record date the opportunity to purchase 3% of the issuer's current offering.

Professional corporation—

(i) The term includes either of the following:

(A) A corporation incorporated under the 15 Pa.C.S. Part II, Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of that act by virtue of 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).

(B) A professional association organized under the 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988), if "shares" includes the interest of an associate in a professional association.

(ii) The term does not include an entity which has as a principal purpose, object or activity, whether expressed in its articles of incorporation or other organic documents, that is other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.

Promotional securities—The term includes any of the following:

(i) Securities issued:

(A) Within the 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.

(B) In consideration for services.

(C) In consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(D) Within the 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.

(ii) Securities subject to an order by the Department finding that the securities are promotional securities.

Prospective financial statement—A financial forecast or financial projection, including the summaries of significant assumptions and accounting policies.

Publish—As defined in section 102(p) of the act, together with any form of electronic communication, including Internet and e-mail.

Purchase of securities by an experienced private placement investor—The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

Qualified custodian—The term includes:

(i) A bank as that term is defined in section 102(d) of the act.

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker-dealer registered with the Securities and Exchange Commission and the Department under section 301 of the act.

(iv) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C.A. § 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon.

(v) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

Qualifying private fund—A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(29)) that meets the definition of "qualifying private fund" in Securities and Exchange Commission Rule 203(m)-1 (17 CFR 275.203(m)-1) (relating to private fund adviser exemption).

Registrant—The issuer of the securities for which an application, a registration statement or a report is filed.

Related—A relative by marriage residing in the same household or a blood relative.

Related parties—

(i) The registrant and its affiliates, principal owners (the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity), management (a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued) and members of their immediate families.

(ii) Entities for which investments are accounted for by the equity method.

(iii) Any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

(iv) Another entity with the ability to significantly influence the management or operating policies of the transacting parties.

(v) Another entity with an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Related person—A person that is an affiliate of an investment adviser.

Rental pool arrangement—The term includes:

(i) A device by which a person, whether or not the seller, undertakes to rent the property on behalf of the owner during periods of time when the property is not in use by its owner, the rents received from all properties participating in the pool and the expenses attributable to the rents being combined with each property owner receiving a ratable share of the rental proceeds regardless of whether his particular property actually was rented.

(ii) Other devices having like attributes.

Review—An analysis of the financial statements by a certified public accountant in accordance with the Statements on Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

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

Securities and Exchange Commission—The United States Securities and Exchange Commission.

Securities issued by a credit union—For the purpose of section 202(d) of the act, securities issued by a credit union means only those securities which are issued by an entity directly engaged in the credit union business and may not include securities issued by a credit union holding company or other similar entity.

Securities issued by an industrial loan association—

(i) Securities issued by an entity directly engaged in the industrial loan business.

(ii) The term does not include securities issued by an industrial loan holding company or other similar entity.

Security or *securities*—

(i) As defined in section 102(t) of the act, including:

(A) The offer and sale of real property if any of the following exists:

(I) The purchaser of the property is required under the terms of the purchase or by reason of acquiring title to do either of the following:

(-a-) Use the seller to perform services in connection with a sale, lease or license of the property purchased.

(-b-) Hold the property available to persons other than the purchaser for the other person's lease, license or other use for a specified period of time or for a period of time when the property is not in use by the owner.

(II) The purchaser is required under the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

(B) A franchise where the arrangement between the franchisor and the franchisee:

(I) Is such that the right to engage in the business of offering, selling or distributing goods or services is exercised under a marketing plan or system prescribed in substantial part by the franchisor.

(II) Is such that the franchisee is not required to make significant managerial efforts in the operation of the business that may be expected to affect the success or failure of the franchisee's business.

(III) Arises as a result of an investment of money, notes or other things of value by or on behalf of the franchisee.

(ii) For purposes of § 203.183 (relating to agricultural cooperative associations), membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences either of the following:

(A) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(B) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(iii) For purposes of § 203.188 (relating to Cooperative Business Associations Exemption), an equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences either of the following:

(A) A member's interest in a fund, capital investment or other asset of a cooperative business association.

(B) The apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.

Self-regulatory organization—As defined in section 3(a)(26) of the Securities Exchange Act of 1934.

Share—Stock in a corporation or unit of interest in an unincorporated person.

Side-by-side fund—A person which is:

(i) Promoted and controlled by individuals controlling a person meeting the criteria in subparagraph (iv)(A), (B) or (C) of the definition of "institutional investor."

(ii) Formed exclusively to purchase securities of issuers in various amounts and on the same terms and conditions as the person described in subparagraph (i).

Significant subsidiary—A subsidiary, or a subsidiary and its subsidiaries meeting any of the conditions in subparagraphs (i)—(iii) based on the most recent annual financial statements including consolidated financial statements of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed.

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

(ii) The parent's and its other subsidiaries' proportionate share based on their equity interests of the total sales and revenues, after intercompany eliminations, of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries. If the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last 5 fiscal years, the average income may be substituted in the determination.

Solicitor—A person or entity who receives direct or indirect compensation for soliciting a client for, or referring a client to, an investment adviser.

Sponsor—An investment adviser that is compensated under a wrap fee program for either of the following:

(i) Administering, organizing or sponsoring the program.

(ii) Selecting or providing advice to clients regarding the selection of other investment advisers in the program.

Standby commission—The commission payable to a broker-dealer registered under the act for its firm com-

mitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

Subsidiary of a specified person—An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Supervised person—As defined in section 202(a)(25) of the Investment Advisers Act of 1940.

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

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

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

(iii) Deferred charges including debt issue costs.

(iv) Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principles.

(v) All other intangible assets including goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks and organization costs.

Tangible net worth—Net worth less the amount of all items of goodwill, preoperating, deferred or development expenses, patents, trademarks, licenses or other similar accounts.

Totally-held subsidiary—A subsidiary:

(i) Whose parent or the parent's other totally-held subsidiaries, or both, owns substantially all of the subsidiary's outstanding equity securities.

(ii) Not indebted to any person other than its parent or the parent's other totally-held subsidiaries, or both, in an amount which is material in relation to the particular subsidiary, excluding indebtedness:

(A) Incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by securities or not.

(B) Secured by its parent by guarantee, pledge, assignment or otherwise.

Trade or professional association—

(i) For purposes of section 202(e) of the act, an association of persons having some common business or professional interest, the purpose of which is to promote, on behalf of the association's members generally, the common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(ii) The term includes an association where the activities of the association are specifically directed to the improvement, on behalf of the association's members generally, of business or professional conditions of one or more lines of business or professions as distinguished from the performance of particular services for individuals or entities.

(iii) The term does not include an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining.

Trustee for the bondholders—The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.

Venture capital fund—A private fund meeting the definition of "venture capital fund" in Securities and Exchange Commission Rule 203(l)-1 (17 CFR 275.203(l)-1).

Voting shares—The sum of either of the following:

(i) All rights, other than as affected by events of default, to vote for election of directors of an incorporated person.

(ii) All interests in an unincorporated person.

Wholly-owned subsidiary—A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent's other wholly-owned subsidiaries, or both.

Wrap fee program—A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(b) Words and terms not otherwise defined in this part have the meanings specified in the act.

§ 102.031. (Reserved).

§ 102.041. (Reserved).

§ 102.050. (Reserved).

§ 102.060. (Reserved).

§ 102.111. (Reserved).

§ 102.112. (Reserved).

§ 102.201. (Reserved).

§ 102.202. (Reserved).

§ 102.241. (Reserved).

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.010. Securities issued by a governmental unit.

(a) The exemption contained in section 202(a) of the act (70 P.S. § 1-202(a)) is available for a security described in that section which is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(2)).

(b) The exemption in paragraph (a) does not apply to any part of an obligation evidenced by a bond, note, debenture or other evidence of indebtedness issued by a governmental unit specified in section 3(a)(2) of the Securities Act of 1933 that is considered to be a separate security under Securities and Exchange Commission Rule 131 (17 CFR 230.131) (relating to definition of security issued under governmental obligations).

§ 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P.S. § 1-202(c)) is available for any security which is a

Federally covered security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(3)) as interpreted by Release 33-4412 (26 FR 9158 (September 20, 1961)) issued by the Securities and Exchange Commission which provides that:

(1) The commercial paper is prime quality of a type not ordinarily purchased by the general public.

(2) The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.

(3) The commercial paper is not payable on demand and does not contain a provision for an automatic "roll-over."

(4) The commercial paper is issued to facilitate current operational business requirements.

(5) The commercial paper proceeds are not used to:

(i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.

(ii) Purchase or construct a plant facility.

(iii) Purchase durable machinery or equipment.

(iv) Fund commercial real estate development or financing.

(v) Purchase real estate mortgages or other securities.

(vi) Finance mobile homes or home improvements.

(vii) Purchase or establish a business enterprise.

(b) If commercial paper is being issued by a holding company for a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), the commercial paper must bear a prominent legend in bold face type of at least 12 points in size indicating that the commercial paper:

(1) Has not been issued by the bank for which the issuer is the holding company.

(2) Is not a deposit of the bank covered by Federal deposit insurance.

(c) General solicitation through public media advertisement, mass mailing, the Internet or other means in connection with soliciting offers or sales of commercial paper is prohibited; provided that this section does not limit mailings to institutional investors or broker-dealers, as those terms are defined in the act and this subpart.

§ 202.041. (Reserved).

§ 202.052. (Reserved).

§ 202.091. Shares of professional corporations.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of shares issued by a professional corporation.

(b) The exemption contained in this section may not apply to a transaction entered into primarily to avoid the provisions of section 201 of the act or made in violation of the antifraud provisions in sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.092. Guaranties of certain debt securities exempt.

(a) The exemption established by this section applies to a guaranty of a bond that is offered or sold in this Commonwealth.

(b) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of the guaranty of a bond if all of the following conditions are met:

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

(i) An audited balance sheet and statement of income of the guarantor dated within 120 days before the commencement of the offering in this Commonwealth.

(ii) Both of the following:

(A) An audited balance sheet and statement of income of the guarantor for either of the following:

(I) The most recent completed fiscal year.

(II) The previous most recent completed fiscal year if the fiscal year of the guarantor ended within 90 days before the commencement of the offering in this Commonwealth.

(B) A statement by a certified public accountant or the guarantor detailing any adverse material changes in the financial condition of the guarantor which occurred from the date of the audited balance sheet submitted in compliance with clause (A) within 5 days of the commencement of the offering in this Commonwealth.

(2) The proceeds from the sale of the bonds are to be used for the benefit of a facility which is owned or operated by either of the following:

(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) or has received an opinion of counsel that it is so exempt, and the combined net assets of the user and guarantor are not less than 25% of the amount of the securities being offered.

(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, and the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

(3) The guaranty requires the guarantor to do the following:

(i) File with the trustee for the bondholders a copy of its audited balance sheet and statement of income within 120 days after the completion of its fiscal year.

(ii) Be responsible for expenses incurred by the trustee for the bondholders in complying with paragraph (4)(ii) and (iii) unless there are specific provisions to the contrary in the relevant financing documents.

(iii) Notify the trustee for the bondholders within 24 hours after it becomes insolvent.

(4) The trust indenture, mortgage, deed of trust or other similar agreement requires the trustee for the bondholders to do all of the following:

(i) Maintain a current list of the names and addresses of all of the bondholders.

(ii) Provide, to a bondholder, within 30 days of receipt of a written request from a bondholder, a copy of the guarantor's most recent audited balance sheet and statement of income.

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

(A) The date the guarantor failed to comply with paragraph (3)(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure.

(C) The date on which the trustee is informed that the guarantor is insolvent. There is no independent duty by the trustee to determine the insolvency of the guarantor.

(c) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to audited balance sheets and statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in the Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants and accompanied by a Review Report.

§ 202.093. Charitable contributions to pooled income funds exempt.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any securities issued or created in connection with contributions or transfers of property to, or certificates of interest or participation in, pooled income funds if the following conditions are met:

(1) A pooled income fund (Fund) as defined in section 642(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 642(c)(5)) is established to permit donors to make irrevocable remainder interest gifts to the Fund.

(2) The Fund is afforded a tax deduction under section 642(c)(3) of the Internal Revenue Code of 1986.

(3) The Fund is in compliance with the Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1—162.23) and amendments and successor statutes.

(4) A prospective donor is provided written disclosure which fully and fairly describes:

(i) The consequences of a contribution or transfer of property to the Fund.

(ii) The nature, operation and financial condition of the Fund.

(5) A person responsible for solicitation of contributions to the Fund will not receive commissions or other special compensation based on the amount of property transferred except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Department under section 301 of the act as an agent of the broker-dealer.

(6) A person receiving compensation for advising the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise performing as an investment adviser is either of the following:

(i) An investment adviser registered with the Department under section 301 of the act.

(ii) A Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the Fund in connection with the solicitation of contributions 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).

§ 202.094. World class issuer exemption.

Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any security meeting all of the following conditions:

(1) The securities are one of the following:

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

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

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

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

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

(3) The issuer meets all of the following conditions:

(i) At the time an offer or sale is made in reliance on this section, the issuer has been a going concern engaged in continuous business operations for the immediate past 5 years.

(ii) During the 5-year period, the issuer has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding.

(iii) If an issuer otherwise meets the conditions of subparagraphs (i) and (ii), the issuer may, for purposes of this paragraph, use the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer toward the 5-year requirement.

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

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

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

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

(5) The market value of the issuer's equity shares, as defined in paragraph (4)(ii), at the time an offer or sale is made in reliance on this section, is $3 billion or more.

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

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or 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 (annuity) meets the terms and conditions of being exempt from the laws of the Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361—364).

(2) A 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.

(3) The persons responsible for solicitation of purchasers of annuities will not receive commissions or other special compensation based on the amount of the annuity purchased unless the person receiving the commissions or special compensation is registered with the Department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Department under section 301 of the act as an agent of the broker-dealer.

(4) A person receiving compensation for advising the qualified charity as to the advisability of investing in, purchasing or selling securities, including annuities, or otherwise performing as an investment adviser is either of the following:

(i) An investment adviser registered with the Department under section 301 of the act.

(ii) A Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031(a) (relating to advertising literature), advertising literature may be used by the qualified charity in connection with the solicitation of contributions 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

§ 203.011. Nonissuer transactions.

(a) The exemption contained in section 203(a) of the act (70 P.S. § 1-203(a)) is available for transactions in a security which are not directly or indirectly for the benefit of the issuer or an affiliate of the issuer of the subject security. By way of illustration, an offering of securities is indirectly for the benefit of the issuer or an affiliate if any part of the proceeds of the transaction will be received indirectly by the issuer or an affiliate.

(b) A transaction that is part of a single plan of distribution which involves a distribution by an issuer of its securities to the public will not be considered a nonissuer transaction for purposes of section 203(a) of the act.

§ 203.041. Limited offerings.

(a) The notice required under section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the Department within the time period specified on Form E in accordance with the General Instructions.

(b) The Department will not consider the requirement of section 203(d)(i) of the act to be met unless the issuer meets all of the following:

(1) Enters into a written agreement by which the purchaser agrees not to sell the securities purchased under the exemption within 12 months after the date of purchase, except in accordance with § 204.011 (relating to waivers of the 12-month holding period), and a copy of the agreement to be signed has been filed with the Department.

(2) Places a legend on the security restricting its transferability for 12 months after the date of purchase except in accordance with § 204.011.

(3) Instructs its transfer agent, if any, that no transfer of the securities is permitted except in accordance with section 203(d) of the act, § 204.011 and this section.

(c) Except if the promoters, as defined in section 102(o) of the act (70 P.S. § 1-102(o)), are registered under section 301 of the act (70 P.S. § 1-301), the condition contained in section 203(d)(iii) of the act is met only if a promoter does not receive an underwriting, selling or finder's fee or commission or other remuneration directly or indirectly for the sale of securities under the exemption.

(1) A promoter is considered to have received indirect remuneration if money or property is paid to an affiliate of a promoter as compensation for the sale of securities.

(2) The fact that the value of a promoter's investment in the issuer is increased as a result of the offering or that the promoter will receive remuneration from the issuer for services given to the issuer in the ordinary course of its business or for the sale of property to it does not, of itself, preclude the availability of the exemption.

(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 Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.091. (Reserved).

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption is available 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.

(2) The purchaser of the unit is not offered, as part of the offer of the unit or in connection therewith, a property interest that would itself be considered to be a security under section 102(t) of the act (70 P.S. § 1-102(t)) or under other regulations adopted under the act.

(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 value of the property at the time of the transaction.

(4) General solicitation through public media advertisement, mass mailing, the Internet or other means does not occur in connection with soliciting the transaction.

(5) Compensation is not 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.

(b) The exemption contained in section 203(j) of the act may not be available for a transaction entered into primarily to avoid the provisions of section 201 of the act (70 P.S. § 1-201) or made in violation of the antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409).

§ 203.131. (Reserved).

§ 203.141. Sales to existing equity securityholders.

(a) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) is only available for the offer and sale of equity securities when all of the following exist:

(1) The offer is made to existing equity securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer does not need to be made to all the classes or series.

(2) The offer is made pro rata to all the equity securityholders who are, of record, residents of this Commonwealth.

(3) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission.

(b) The exemption contained in section 203(n) of the act is only available for the offer and sale of debt securities when all of the following exists:

(1) The offer is made to existing equity securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer does not need to be made to all the classes or series.

(2) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission.

(c) For purposes of subsection (a)(2), an offer will be considered to have been made pro rata when all of the following exists:

(1) The initial offer is made pro rata.

(2) After the expiration of a reasonable period of time following the initial offer, an identified equity securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected equity securityholders.

§ 203.151. Proxy materials.

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the Department for review under section 203(o) of the act (70 P.S. § 1-203(o)), the materials must conform to Rule 14A, 17 CFR 240.14a-1—240.14b-2 (relating to solicitations of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).

(b) In a transaction subject to the filing requirements of section 203(o) of the act, 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 of the entities whose securityholders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the Department for a transaction requiring the filing of proxy materials with the Department under section 203(o) of the act by filing:

(1) Form 203-O in accordance with the General Instructions.

(2) The exemption filing fee specified in section 602(b.1)(v) of the act (70 P.S. § 1-602(b.1)(v)).

(d) Proxy materials filed under this section may not be distributed to securityholders until the Department determines that the materials are in compliance with this section and communicates that determination to the person who filed the proxy materials.

§ 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:

(1) Complete and file with the Department two copies of Form 203-P in accordance with the General Instructions.

(2) File Form 203-P no later than 5 business days before the earlier of either the issuer receiving from any person:

(i) An executed subscription agreement or other contract to purchase the securities being offered.

(ii) Consideration for the subscription agreement or other contract to purchase the securities being offered.

(b) Except if the delivery of an offering document is not required by the Department, every offering of debt securities under section 203(p) of the act shall be made by an offering document containing all material information about the securities being offered and the issuer.

(1) An offering document will be considered to meet the requirements of this section if it includes the information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by NASAA and any successor policy thereto (NASAA Guidelines) and is in the format set forth therein.

(2) A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) of the act shall be filed with the Department at the same time the notice required under subsection (a) shall be filed.

(c) The offering document required under subsection (b) must meet all of the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m)).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds $250,000.

(4) Include whatever data may be necessary to establish all of the following:

(i) The investors will receive a first lien on real estate of the issuer.

(ii) The issuer has not defaulted on prior obligations.

(iii) The total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

§ 203.171. (Reserved).

§ 203.183. Agricultural cooperative associations.

Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued by an agricultural cooperative association in transactions when all of the following conditions are met:

(1) The securities are issued by the agricultural cooperative association.

(2) The securities are offered and sold only to persons who are, at the time of an offer and sale, agricultural cooperative association members or to persons who, on sale of securities to them, thereby become members of the agricultural cooperative association.

(3) The transfer of the securities for value is restricted to agricultural cooperative association members.

(4) A person does not receive any commission or other compensation as a result of or based on the sale of the securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

§ 203.184. Offers and sales to principals.

(a) Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities offered and sold by an issuer to:

(1) A principal.

(2) A corporation, the outstanding voting stock of which is beneficially owned by one or more principals.

(3) A general partnership or a limited partnership, the interest in which is beneficially owned by one or more principals.

(4) A trust, the trustees of which are principals.

(5) Any other person, the interest in which is beneficially owned by one or more principals.

(b) The exemption set forth in this section does not apply to any offer or sale to a person who has been appointed or elected a principal primarily to obtain the exemption or to an offer or sale to a relative of this person.

(c) A person who is appointed or elected a principal in good faith for a purpose other than to obtain the exemption set forth in this section to whom, or to whose relative, securities are sold without registration following the designation or election in reliance on the exemption set forth in this section will not be considered to have been designated or elected a principal primarily to obtain the exemption set forth in this section.

§ 203.185. Offers before effectiveness of registration by qualification exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) for securities to be offered but not sold to an applicant filing a registration statement for its securities under section 206 of the act (70 P.S. § 1-206) before the effectiveness of the registration statement if all of the following criteria are met:

(1) The applicant has done all of the following:

(i) Filed a registration statement under section 206 of the act to register the securities for which offers will be made.

(ii) Filed a written opinion of management which states that all of the following conditions apply to the applicant:

(A) The business, including any predecessor, is an existing business which possesses a history of operations of 4 years or more.

(B) The business, including any predecessor, maintains and will continue to maintain a place of business in this Commonwealth which employs at least 25 persons.

(C) The business, including any predecessor, has averaged annual gross revenues of at least $500,000 for the past 2 years.

(D) The business, including any predecessor, possesses at least 4 years of historical financial information.

(iii) Filed an intention to comply with paragraph (3) and subsections (b)—(d).

(2) The minimum amount of the proceeds from the securities to be sold under the registration statement described in paragraph (1)(i) is $500,000.

(3) There is a withdrawal procedure as follows:

(i) Nonbinding subscription agreements received in connection with the offer but not sale of securities made under this section must contain withdrawal rights which permit the investor to withdraw moneys tendered under the nonbinding subscription agreements with accrued interest under one of the following circumstances:

(A) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest at any time before the effectiveness of the registration statement described in paragraph (1)(i).

(B) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest within 2 business days from the date of receipt of notification of effectiveness of the registration statement described in paragraph (1)(i), as set forth in subsection (d).

(ii) Investors are considered automatically to have withdrawn any moneys tendered under a nonbinding subscription agreement and the moneys with accrued interest shall be returned to the investors on the occurrence of any of the following:

(A) The registration statement described in paragraph (1)(i) does not become effective within 150 days from the date of filing with the Department, unless extended by the Department.

(B) The registration statement described in paragraph (1)(i) is withdrawn by the applicant.

(C) The Department denies the registration statement described in paragraph (1)(i), regardless of whether the denial was a result of a hearing or rehearing requested by the applicant unless the Department permits, in its Denial Order, that the moneys remain in escrow pending any request for a rehearing on the Denial Order.

(b) Moneys tendered under nonbinding subscription agreements as a result of offers made under this section shall be placed in interest-bearing escrow accounts in a bank and are subject to the investor withdrawal rights set forth in subsection (a)(3).

(1) If, before the effectiveness of the registration statement described in subsection (a)(1)(i), the nonbinding subscription agreement is withdrawn under subsection (a)(3), the deposit and accrued interest is payable to the investor.

(2) After the effectiveness of the registration statement described in subsection (a)(1)(i), the deposit plus accrued interest is payable to the applicant except if the investor withdraws under subsection (d), in which event the investor shall receive the deposit plus accrued interest.

(c) All offers for securities made under this section must be accompanied by the delivery of a preliminary prospectus which has been prepared and filed to satisfy the requirements of section 206(b) of the act and § 206.010(c) (relating to registration by qualification).

(d) All persons whose moneys have been placed in escrow as a result of the making of offers for the securities that are the subject of the registration statement described in subsection (a)(1)(i) shall:

(1) Be notified of the effectiveness of the registration statement either by certified mail or by direct delivery of the information.

(2) Receive a copy of the final prospectus concurrent with the notification of the effectiveness of the registration statement unless the Department permits a supplement to the preliminary prospectus setting forth all changes and modifications to be used for these purposes.

(e) The following do not constitute the sale of a security:

(1) Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provision of subsection (a)(3).

(2) Deposit of moneys under subsection (b).

(f) The exemption contained in this section may not be available for a transaction entered into primarily to avoid the provisions of section 201 of the act.

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or 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 if:

(1) The proceeds from the sale of the securities will be used to purchase assets and operations of the existing person.

(2) The employees will preserve their jobs through their employment with the newly created person.

(3) The employees' participation in the investment plan is not required as a condition of employment.

(4) The employees being solicited to purchase securities under the investment plan receive, at least 7 days before entering into a binding obligation to purchase or subscribe for the purchase of securities issued or to be issued under the investment plan:

(i) 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.

(ii) 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) The prospective financial statements used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(c) (relating to use of prospective financial statements).

(b) The exemption contained in this section may not be available for a transaction entered into primarily to avoid the provisions of section 201 of the act.

§ 203.187. Small issuer exemption.

(a) *General rule.* Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer if:

(1) The issuer has not sold securities in or out of this Commonwealth to more than ten persons.

(2) The issuer, in connection with offers made for the sale of securities under this section, has not made offers to sell securities to more than 90 persons in this Commonwealth in a period of 12 consecutive months.

(3) The issuer is either organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) The issuer or a promoter, officer or director of the issuer is not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) General solicitation through public media advertisement, mass mailing, the Internet or other means does not occur in connection with the offers and sales under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless:

(i) The compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P.S. § 1-301) or exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)).

(ii) The person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Integration*.

(1) Offers and sales made by the issuer under this section are counted as offers and sales under applicable numerical limitations set forth in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur 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 are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act if offers and sales under section 203(s) of the act occur within a period of 6 consecutive months of an offer or sale made under this section.

(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.

§ 203.188. Cooperative Business Associations Exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require registration of securities transactions under section 201 of the act (70 P.S. § 1-201) if all of the following conditions are met:

(1) The issuance, offer and sale of securities of a cooperative business association is made only to persons who are members of the cooperative business association or, on the purchase of the security offered, will become members of a cooperative business association.

(2) The transfer of the securities for value is restricted to the cooperative business association, members of the cooperative business association or a successor in interest of a transferor who qualifies for membership, as may be further limited by the articles of incorporation of the cooperative business association, if certificates evidencing the securities bear a legend setting forth the restrictions.

(3) A person does not receive a commission or other compensation directly or indirectly as a result of or based on the sale of securities of a cooperative business association other than in connection with the solicitation of nonmembers for membership.

(b) Section 209.010(b) (relating to required records; report on sales of securities and use of proceeds) does not apply to the offer and sale of securities without registration under this section.

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of 12 consecutive months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of 12 consecutive months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) The issuer or a promoter, officer or director of the issuer are not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) General solicitation through public media advertisement, mass mailing, the Internet or other means does not occur in connection with offers and sales made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless:

(i) The compensation is given or paid in connection with a sale made by a broker-dealer who is either:

(A) Registered under section 301 of the act (70 P.S. § 1-301).

(B) Exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)).

(ii) A person receiving compensation is either the broker-dealer or an agent of the broker-dealer who is either:

(A) Registered under section 301 of the act.

(B) Exempt from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsection (a)(2), (3) and (5) does not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § 77c(b)).

(ii) The issuer has complied with section 203(h) of the act.

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 or 230.506) (relating to exemption for limited offers and sales of securities not exceeding $5,000,000; and exemption for limited offers and sales without regard to dollar amount of offering) promulgated under section 3(b) of the 1933 Act and section 4(a)(2) of the 1933 Act (15 U.S.C.A. § 77d(a)(2)).

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as

that term is defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission (17 CFR 230.501(a)).

(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 on section 203(d), (f) or (s) of the act, § 203.187 (relating to small issuer exemption), § 204.010(a)(1) and (2), Rule 506 (17 CFR 230.506) or this section are counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section are counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act if offers and sales under section 203(s) of the act occur within 6 consecutive months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.190. Certain Internet offers exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds it not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for offers of securities by an issuer which are communicated electronically by means of a proprietary or common carrier electronic delivery system, the Internet, the World Wide Web or similar media (Internet Offer) if the issuer does not intend to offer and sell the securities in this Commonwealth and meets the following conditions:

(1) The Internet Offer indicates, directly or indirectly, that the securities are not to be offered to persons in this Commonwealth.

(2) An offer is not otherwise specifically directed to any person in this Commonwealth, by or on behalf of the issuer.

(3) The issuer's securities are not sold in this Commonwealth as a result of the Internet Offer.

(b) This section does not prohibit, in connection with an Internet Offer, the availability of another exemption which otherwise does not prohibit general solicitation.

§ 203.191. Rule 505 offerings.

(a) *Filing requirement.* The notice required under section 203(s)(i) of the act (70 P.S. § 1-203(s)(i)) shall be filed with the Department within the time period specified on Form E as set forth in § 203.041 (relating to limited offerings).

(b) *Integration.* Offers and sales made under this section are counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act and § 204.010 (relating to increasing the number of purchasers and offerees).

(c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to ensure 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 Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.192. Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds it not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer and sale of securities by an issuer which are exempt from registration under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) under Rule 801 or 802 promulgated by the Securities and Exchange Commission (17 CFR 230.801 or 230.802) (relating to exemption in connection with a rights offering; and exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers).

§ 203.201. Accredited investor exemption.

(a) *Filing requirement*. The notice required under section 203(t)(ii) of the act (70 P.S. § 1-203(t)(ii)) shall be filed with the Department within the time period specified on 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) of the act will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § 1-606(c)) and § 606.031 (relating to advertising literature) but will be subject to the antifraud provisions in sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

(c) *Amendments*. During the period of the offering, the issuer shall take steps necessary to ensure 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 Department in accordance with § 609.011 (relating to amendments to filings with Department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds it not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security if the following requirements are met:

(1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).

(2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

§ 203.203. Certain Rule 144A exchange transactions exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not necessary or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security in a transaction if all of the following requirements are met:

(1) A person who owns outstanding debt securities, and related guarantees, exchanges those securities for debt securities, and related guarantees of the same issuer which are the subject of an effective registration statement filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) (exchange transaction).

(2) The outstanding debt securities, and related guarantees, are restricted securities as that term is defined in 17 CFR 230.144(a)(3) (relating to persons deemed not to be engaged in a distribution and therefore not underwriters).

(3) The owner of the outstanding debt securities, and related guarantees, does not pay consideration in connection with the exchange transaction.

(4) There are no material differences in the terms of the outstanding debt securities, and related guarantees, which are the subject of the exchange transaction.

CHAPTER 204. EXEMPTION PROCEEDINGS

§ 204.010. Increasing the number of purchasers and offerees.

(a) *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 (70 P.S. § 1-203(d) and (e)), respectively, are 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 12 consecutive months under section 203(e) of the act is 90 persons, except that offers made to experienced private placement investors 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 12 consecutive months under section 203(d) of the act is 35 persons, except that sales made to experienced private placement investors are not included in the numerical limitation established by this paragraph.

(b) *Conditions*.

(1) *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 this disqualification is registered under section 301 of the act (70 P.S. § 1-301).

(2) *Exemption notice filing*. With respect to reliance on subsection (a)(2), the issuer files with the Department the notice required under section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee required under section 602(b.1)(viii) of the act (70 P.S. § 1-602(b.1)(viii)).

(3) *Broker-dealer requirement*.

(i) 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.

(ii) Subparagraph (i) 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 all conditions imposed by section 203(d) and (e) of the act, respectively.

(c) *Exceptions*.

(1) Subsection (b)(1) does not apply if either of the following conditions exist:

(i) 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.

(ii) The broker-dealer employing the person is licensed or registered in this Commonwealth and disclosed the order, conviction, judgment or decree relating to the person in the Form BD filed with the Department.

(2) Paragraph (1) does not allow a person disqualified under subsection (b)(1) to act in a capacity other than that for which the person is registered.

(3) 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 on a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Due diligence obligation*.

(1) A broker-dealer registered under section 301 of the act that sells a security to an experienced private placement investor in reliance on subsection (a) meets the due diligence obligation if the broker-dealer:

(i) Obtains from the purchaser a written representation that the purchaser meets the definition of "experienced private placement investor" in § 102.021 (relating to definitions).

(ii) Has reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer 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) meets the due diligence obligation if the issuer:

(i) Obtains from the purchaser a written representation that the purchaser meets the definition of "experienced private placement investor" in § 102.021.

(ii) Has reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(e) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are considered 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 apply to offers and sales to persons permitted by this section.

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

(a) *Automatic waiver.* 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 203(d) restricted securities 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—78qq) after a notice is filed with the Department under section 203(d) of the act and § 203.041 (relating to limited offerings).

(2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.

(3) The purchaser undergoes liquidation or dissolution if the action is not undertaken to avoid registration.

(4) The purchaser becomes insolvent.

(5) The issuer is merged into another entity and new securities are exchanged for the 203(d) restricted securities, if the merger is not undertaken to avoid registration of the 203(d) restricted security.

(6) The 203(d) restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer's securities.

(7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

(8) The 203(d) restricted securities are subject to repurchase under a buy-sell agreement that is conditioned with terms of employment or other commercial, as opposed to, mere investment relationship.

(9) The 203(d) restricted securities are to be exchanged for other securities of the issuer in a transaction exempt from registration under section 202 of the act (70 P.S. § 1-202) or section 203 of the act, if the exchange is not undertaken to avoid registration.

(b) *Resale agreement.* For transactions undertaken in reliance on waivers provided in subsection (a)(3) and (4), the person acquiring the restricted securities and the issuer shall agree in writing at the time of sale not to resell the restricted securities before the expiration of the original 12-month holding period.

(c) *Discretionary waiver.*

(1) In addition to the automatic waivers set forth in subsection (a), persons may make application to the Department under section 204(a) of the act for a discretionary order to waive the 12-month holding period for a restricted security in a proposed specified transaction.

(2) The applicant shall demonstrate in the application that the sale of the restricted security is not being undertaken to avoid registration or otherwise to distribute in violation of the act.

§ 204.012. Waivers for pre-effective offers under section 203(h).

Under section 204(a) of the act (70 P.S. § 1-204(a)), the Department 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 Department 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) of the act has filed a registration statement with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) before the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

CHAPTER 205. REGISTRATION BY COORDINATION

§ 205.021. Registration by coordination.

(a) Except as specified in subsection (b), registration by coordination may be initiated by filing with the Department within the specified time period:

(1) A registration statement and other materials required under section 205 of the act (70 P.S. § 1-205).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits thereto.

(3) Additional information the Department may by regulation or order require under section 205(b)(iii) of the act.

(b) In addition to filing the information and form required under subsection (a), issuers in offerings being made in reliance on Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) shall execute and file with the Department within the specified time Form R in accordance with the General Instructions.

(c) The 10-day registration statement filing requirement in section 205(c) of the act is reduced to 5 days for all of the following:

(1) An offering for which a registration statement has been filed with the Department designated as Form S-2 or S-3 by the Securities and Exchange Commission.

(2) An offering for which a registration statement has been filed with the Department designated as Form F-7, F-8, F-9 or F-10, or otherwise equivalent form, by the Securities and Exchange Commission.

(3) An offering for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the top three rating categories by one or more Nationally recognized statistical rating organizations.

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

§ 205.040. Series of unit investment trusts as separate issuers.

To comply 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 make a separate filing with the Department under section 211(a) of the act.

CHAPTER 206. REGISTRATION BY QUALIFICATION

§ 206.010. Registration by qualification.

(a) Except as specified in subsection (b), registration by qualification shall be initiated by filing all of the following with the Department:

(1) A registration statement and other materials required under section 206(b)(1)—(16) of the act (70 P.S. § 1-206(b)(1)—(16)).

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits.

(3) Additional information the Department may by regulation or order require under section 206(b)(17) of the act.

(b) In addition to the information and form required under subsection (a), issuers in the following offerings shall execute and file with the Department Form R as set forth in § 205.021 (relating to registration by coordination):

(1) Offerings made in reliance on section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(4)).

(2) Offerings made in reliance on section 3(a)(11) of the Securities Act of 1933.

(3) Offerings made in reliance on Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on Regulation A promulgated under section 3(b) of the Securities Act of 1933.

(c) Financial statements used in connection with an offering under section 206 of the act must meet the requirements of section 609(c) of the act (70 P.S. § 1-609(c)) and Chapter 609 (relating to regulations, forms and orders) or as the Department requires.

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

§ 206.020. (Reserved).

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

§ 207.050. Reports by engineers, appraisers and others.

(a) The Department may, under section 207(e) of the act (70 P.S. § 1-207(e)), require as a condition of registration that the issuer or other person seeking to register securities for sale submit a technical report.

(1) The report must be prepared and certified by an engineer, appraiser, accountant or other professional person with respect to the value of an asset held by the issuer or other material matter considered by the Department to be reasonably related to the conduct of the issuer's business.

(2) The cost of preparation of the report will be borne by the applicant for registration.

(b) The Department may require that an employee of the Commonwealth prepare the report referred to in subsection (a). If this report is required, the Department will:

(1) Notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses.

(2) Require the applicant to deposit with the Department funds sufficient to cover costs with instructions authorizing disbursement of the funds as expenses are incurred before the commencement of preparation of the report.

(3) Notify the applicant if it appears additional costs will be incurred in the preparation of the report and require the applicant to deposit with the Department the additional moneys necessary to permit completion of the work.

(c) A person who prepares for submission or submits a technical report to the Department in response to the Department request, and a person who prepares for submission or submits a technical report intended to be included or referred to in any part of the registration statement, shall attach to the report:

(1) A statement as to the person's qualifications and experience.

(2) A statement as to a material relationship or other factor which would bear on the person's independence with respect to the subject matter to which or the person to whom the report relates.

§ 207.071. Escrow of promotional securities.

(a) The Department will, if it considers necessary for the protection of investors, or in the public interest, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), require as a condition to the registration of securities, whether to be sold by the issuer or another person, that promotional securities be placed in escrow.

(b) The escrow depository shall be a bank or trust company approved by the Department.

(c) If the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the Department an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

(d) The escrow of promotional securities must be covered by an agreement which is subject to the approval of the Department.

(e) The issuer shall file one manually signed copy of the agreement with the Department before the effectiveness of a registration of the issuer's securities.

§ 207.072. Escrow of proceeds.

(a) The Department, if it considers it 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:

(1) 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.

(2) From the sale of the registered security be escrowed for a specific use as set forth in the prospectus.

(b) The escrow depository shall be a bank or trust company approved by the Department.

(c) The escrow of proceeds must be covered by an agreement approved by the Department which, at a minimum, meets all of 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 (6).

(2) The escrow depository is not 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 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 under the terms of the agreement.

(4) An authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository sign the agreement.

(5) A summary of the principal terms of the agreement are included in the prospectus.

(6) 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.

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

§ 207.091. Subscription contracts.

With respect to securities proposed to be sold under one of the following registration statements, a copy of a subscription or sale contract proposed to be used shall be filed with the Department, as an exhibit, before its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P.S. § 1-206) if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under section 3(a)(4) or (11) of the Securities Act of 1933, Regulation A promulgated under section 3(b) of the Securities Act of 1933 or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act if the securities to be sold are interests in a direct public participation program.

§ 207.101. Effective period of registration statement.

(a) A registration statement that is effective under section 205(c) of the act (70 P.S. § 1-205(c)) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act, except as provided in subsection (d).

(2) Securities included in the registration statement have been sold or the distribution ended in this Commonwealth, or both.

(3) The Department issues an order under section 208 of the act (70 P.S. § 1-208) denying, suspending or revoking effectiveness of the registration statement.

(b) A registration statement that is effective by order of the Department under section 206 of the act (70 P.S. § 1-206) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act.

(2) Securities included in the registration statement are sold or the distribution ended in this Commonwealth, or both.

(3) The Department issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the Department has required more than one filing for a registration statement, a separate Form 207-J is required for each filing.

(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 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 form designated as Form 207-J in accordance with the General Instructions thereto with the Department before the expiration of the currently effective period of registration.

(e) The provisions of subsection (d) 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.

§ 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 section 203(d) and (p) of the act (70 P.S. § 1-203(d) and (p)) and, if required under rule of the Department, section 203(r) of the act.

(b) The notice to purchasers required under section 207(m)(1) of the act (70 P.S. § 1-207(m)(1)) is in compliance with the act if the notice meets all of the following requirements:

(1) The notice is in writing.

(2) The cover page of the prospectus used in connection with the offer and sale of the securities references the notice.

(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, is in the text of the prospectus.

(4) A subscription agreement used references the right of withdrawal.

(5) The reference to the right of withdrawal described in paragraph (3) is conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers required under section 207(m)(2) of the act is in compliance with the act if the notice meets all of the following requirements:

(1) The notice is in writing.

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

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

(d) A purchaser's notice of withdrawal from the purchase will be considered timely given within the 2-business day period set forth in section 207(m) of the act if, during the 2-business day period:

(1) The purchaser drafts a written notice of withdrawal from the purchase.

(2) One of the following applies to the written notice, the notice is:

(i) Actually received by the issuer or its affiliate.

(ii) Sent electronically, including by e-mail or facsimile.

(iii) Deposited in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

(iv) Delivered to a messenger or courier service for delivery with applicable fees paid by the sender.

(e) The following language illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act.

"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 under section 207(m) of the Pennsylvania Securities Act of 1972, 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 moneys paid by you. Your withdrawal 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 underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw."

(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 under 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 moneys 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. (Reserved).

CHAPTER 208. DENIAL FOR ABANDONMENT

§ 208.010. Denial for abandonment.

(a) *General rule.* The Department may deny as abandoned an application for registration of securities which has been on file with the Department for a minimum of 12 consecutive months if the applicant failed to do any of the following:

(1) Respond to the Department's notice of abandonment sent by first class mail to the applicant's last known address in the Department's files within 60 calendar days after the date the notification was mailed by the Department.

(2) Respond to a request for additional information required under the act.

(3) Otherwise complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may withdraw an application at any time with the consent of the Department.

(c) *No refund of fee.* On denial for abandonment, the Department will not refund any filing fees paid before the date of abandonment or withdrawal.

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

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

(a) An issuer who sells securities for his own account, directly or through an underwriter, in an offering registered or required to be registered under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) or in an offering exempt from registration under section 202(e) or 203(d), (p) or (r) of the act (70 P.S. §§ 1-202(e) and 1-203(d), (p) and (r)) shall preserve all of the following records during the period of the offering and for a period of 3 years following the last sale of securities in this Commonwealth or 1 year after the disposition of all proceeds, whichever is longer:

(1) Ledgers, journals or other records showing payments received from the sale of securities, including date of receipt, amount and from whom received; and disbursements of the payments, including date paid, purpose, amount and to whom made.

(2) A record showing money borrowed and money loaned together with a record of the collateral for both.

(3) Checkbooks, bank statements, copies of deposit slips, cancelled checks and bank record reconciliations.

(4) Minute books and stock ledgers, including stock transfer records.

(5) A copy of filings with the Department, and related correspondence and exhibits.

(6) Copies of communications sent or originated by the issuer pertaining to the offer, sale or transfer of securities, including subscription agreements, purchase contracts and confirmations.

(7) A list of the names and addresses of persons to whom the securities were offered or sold with all of the following information included:

(i) The type and amount of securities sold to each.

(ii) The consideration paid or promised by each.

(iii) The method of payment, that is, cash, check, property, services, note or other.

(iv) The name of the broker-dealer or other persons who represented the issuer in effecting each sale.

(b) Except as set forth in paragraph (3), report on sales of securities filing requirements are as follows:

(1) An issuer which has an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), shall file a report on sales of securities with the Department by completing Parts I and II of

Form 209 within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

(2) An issuer which is an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940, shall file with the Department an annual report on sales of securities in this Commonwealth on Form NF adopted by NASAA, or successor form, within the following time periods:

(i) 120 days after an open-end or closed-end investment company's or face amount certificate company's fiscal year end.

(ii) 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the Securities and Exchange Commission with respect to a unit investment trust.

(3) The following issuers are not required to file Form 209 or Form NF, or successor form:

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

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

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

CHAPTER 210. RETROACTIVE REGISTRATION

§ 210.010. Retroactive registration.

(a) Either of the following may apply to the Department on Form 210 in accordance with the General Instructions to register the securities retroactive to the date of the initial registration or to amend the notice filing retroactive to the date of the initial notice filing:

(1) An issuer that has an effective registration statement under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) and has an effective registration statement on file with the Securities and Exchange Commission for the same securities sold in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206 of the act.

(2) An open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in sections 1—21 of the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-21), which, during the effective period of registration under section 205 or 206 of the act or the effective period of a notice filing sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206 of the act or covered by the notice filing.

(b) The Department will not grant an application filed on Form 210 if, at the time the application is filed with the Department, either of the following conditions exist:

(1) A civil, criminal or administrative proceeding is pending alleging violations of section 201 of the act (70 P.S. § 1-201) for the sale of securities in this Commonwealth.

(2) The securities were sold more than 24 months before the date Form 210 was filed with the Department.

(c) An application filed on Form 210 shall be accompanied by a check made payable to the "Commonwealth of Pennsylvania" in an amount which equals the applicable oversale assessment in section 602.1(d) of the act (70 P.S. § 1-602.1(d)).

CHAPTER 211. FEDERALLY COVERED SECURITIES

§ 211.010. Notice filings for Federally covered securities.

(a) *211(a) notice.* 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) must be:

(1) Completed by using the Uniform Investment Company Notice Filing Form (Form NF).

(2) 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) *Exceptions.*

(1) The documents filed by an investment company with the Securities and Exchange Commission do not need to be filed with the notice described in subsection (a) except for those documents filed with the Securities and Exchange Commission relating to mergers, acquisitions or reorganizations.

(2) If paragraph (1) requires the filing of documents, then an investment company shall file copies of the registration statements, prospectuses or posteffective amendments filed with the Securities and Exchange Commission with the Department at the time the notice required under subsection (a) is filed.

(c) *211(b) notice*. The notice required under section 211(b) of the act must be:

(1) Filed with the Department on Form D promulgated by the Securities and Exchange Commission.

(2) Filed not later than 15 calendar days after the first sale of the Federally covered security in this Commonwealth.

(3) Accompanied by the filing fee in section 602(b.1)(vii) of the act.

(d) *Department orders.* With respect to a Federally covered security under section 18(b)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(3)), the Department may issue an order requiring the filing of documents filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or any notice filing form that has been adopted by the Department that does not require any information or documents in addition to that required by the Securities and Exchange Commission.

Subpart C. REGISTRATION OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY COVERED ADVISERS

CHAPTER 301. REGISTRATION REQUIREMENT

§ 301.020. Agent transfers.

An agent who wishes to end employment with one registered broker-dealer and thereafter begin employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the Department if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of FINRA.

(2) The transfer is effected in accordance with the terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

CHAPTER 302. EXEMPTIONS

§ 302.060. (Reserved).

§ 302.061. Auctioneers exemption from broker-dealer and agent registration.

(a) Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if all of the following conditions are met:

(1) The person meets one of the following conditions:

(i) Is licensed as an auctioneer, apprentice auctioneer, auction company or auction house under the Auctioneer Licensing and Trading Assistant Registration Act (ALTARA) (63 P.S. §§ 734.1—734.34).

(ii) Is exempt from registration under section 3(h) of the ALTARA (63 P.S. § 734.3(h)).

(iii) Holds a special license to conduct an auction under section 3(i) of the ALTARA.

(2) The person effects transactions in securities solely at an "auction" or at a "sale at auction" as these terms are defined in the ALTARA.

(3) The person engages only in effecting transactions in securities at an auction or for sale at auction which constitute a "nonissuer transaction" as that term is defined in section 102(m) of the act (70 P.S. § 1-102(m)).

(4) The person does not effect transactions in securities at an auction or for sale at auction more than three times in any consecutive period of 24 months.

(5) The person and any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(i) An order described in section 305(a)(iv) of the act (70 P.S. § 1-305(a)(iv)).

(ii) An injunction described in section 305(a)(iii) of the act.

(iii) A criminal conviction described in section 305(a)(ii) of the act.

(iv) An order of the Department issued under section 512 of the act (70 P.S. § 1-512).

(v) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(vi) An order of the Department imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(b) For the purposes of subsection (a)(3), a transaction is considered a nonissuer transaction if a bank does the following:

(1) Acts as a fiduciary under a trust agreement, estate administration or other similar relationship.

(2) Causes the bank's securities to be offered and sold at action from the accounts described in paragraph (1).

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt financial institutions and individuals representing financial institutions from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if the activities of the financial institution and individuals representing the financial institutions are conducted under a networking arrangement or brokerage affiliate arrangement.

§ 302.064. Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P.S. § 1-301), if all the following requirements are met:

(1) The agent is representing a broker-dealer which is:

(i) Registered under section 301 of the act.

(ii) A member of a National securities exchange.

(2) The agent's only customers are broker-dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) or section 301 of the act.

(3) The agent is not subject to either of the following:

(i) A currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration.

(ii) A currently effective order of the Department issued under section 512 of the act (70 P.S. § 1-512).

§ 302.065. Canadian broker-dealer exempt.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) when effecting transactions in securities in this Commonwealth with persons described in paragraph (1) if the broker-dealer meets the conditions of paragraph (2).

(1) The customer is one of the following:

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

(ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.

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

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

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

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

§ 302.070. Registration exemption for investment advisers to private funds.

(a) *Exemption for private fund advisers*. Subject to the additional requirements of subsection (b), a private fund adviser is exempt from the registration requirements of section 301(c) of the act (70 P.S. § 1-301(c)) if the private fund adviser satisfies the following conditions:

(1) The private fund adviser and any of its advisory affiliates are not subject to a disqualification as described in Rule 262 of Securities and Exchange Commission Regulation A (17 CFR 230.262) (relating to disqualification provisions).

(2) The private fund adviser files with the Department each report and amendment that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Securities and Exchange Commission Rule 204-4 (17 CFR 275.204-4) (relating to reporting by exempt reporting advisers).

(b) *Additional requirements for private fund advisers to certain 3(c)(1) funds.* To qualify for the exemption described in subsection (a), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall also:

(1) Advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities other than short-term paper are beneficially owned entirely by persons who would each meet the definition of "qualified client" in Securities and Exchange Commission Rule 205-3 (17 CFR 275.205-3) (relating to exemption from the compensation prohibition of section 205(a)(1) for investment advisers) at the time the securities are purchased from the issuer.

(2) Disclose, at the time of purchase, the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(i) Services, if any, to be provided to individual beneficial owners.

(ii) Duties, if any, the investment adviser owes to the beneficial owners.

(iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) Obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and deliver a copy of the audited financial statements to each beneficial owner of the fund.

(c) *Federally covered investment advisers*. If a private fund adviser is registered with the Securities and Exchange Commission, the adviser is not eligible for this exemption and shall comply with the State notice filing requirements applicable to Federally covered investment advisers in section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)).

(d) *Investment adviser representatives*. A person is exempt from the registration requirements of section 301(c) of the act if the person:

(1) Is employed by or associated with an investment adviser that is exempt from registration in this Commonwealth under this section.

(2) Does not otherwise act as an investment adviser representative.

(e) *Electronic filing*.

(1) A private fund adviser shall file the report filings described in subsection (a)(2) electronically through the IARD.

(2) The Department will consider a report filed when the report is filed and accepted by the IARD on the Department's behalf.

(f) *Transition*. If an investment adviser becomes ineligible for the exemption provided in this section, the investment adviser shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser's eligibility for this exemption ceases.

(g) *Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients*. An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has one or more beneficial owners who are not qualified clients as described in subsection (b)(1) is eligible for the exemption contained in subsection (a) if all of the following conditions are satisfied:

(1) The subject fund existed before January 13, 2018.

(2) The subject fund ceases to accept beneficial owners who are not qualified clients, as described in subsection (b)(1), as of January 13, 2018.

(3) The investment adviser discloses in writing the information described in subsection (b)(2) to all beneficial owners of the fund.

(4) The investment adviser delivers audited financial statements as required under subsection (b)(3) as of January 13, 2018.

(h) *Scope*. This section does not supersede an applicable exclusion from the definition of investment adviser or exemption from registration for an investment adviser in the act.

§ 302.071. Registration exemption for solicitors.

A solicitor does not need to register as an investment adviser or investment adviser representative if the solicitor:

(1) Is in compliance with all requirements of § 404.012 (relating to cash payment for client solicitation).

(2) Provides impersonal investment advisory services.

(3) Is not subject to any order, judgment or decree described in section 305(a)(ii)—(vi) of the act (70 P.S. § 1-305(a)(ii)—(vi)).

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.011. Broker-dealer registration procedures.

(a) An applicant for initial registration as a broker-dealer shall complete a Uniform Application for Broker-Dealer Registration (Form BD), or a successor form.

(b) An applicant which is not a member of FINRA or a member of a National securities exchange shall complete and file with the Department:

(1) A copy of Form BD.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)).

(4) Financial statements in the form required under subsections (e), (f) and (g).

(c) An applicant which is not a member of FINRA but is a member of a National securities exchange shall complete and file with the Department:

(1) A copy of Form BD.

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(3) of the act.

(d) An applicant which is a member of FINRA shall file with the Department:

(1) Form BD in the manner set forth in § 603.011(f) (relating to filing requirements).

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(3) of the act.

(e) Except for applicants described in subsections (c) and (d), applicants shall file a statement of the financial condition of the applicant which meets all of the following conditions:

(1) The statement is prepared in accordance with generally accepted accounting principles.

(2) The statement is accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant, which is as of either of the following:

(i) The end of the applicant's most recent fiscal year.

(ii) The preceding fiscal year if:

(A) The statement of financial condition for the most recently ended fiscal year is unavailable.

(B) The application is filed within 14 months of the end of the preceding fiscal year.

(f) Except for applicants described in subsections (c) and (d), if the date of the most recent audited statement of financial condition is more than 45 days before the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing which the Department may require include the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(g) Except for applicants described in subsections (c) and (d), if an applicant has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income which is as of either of the following:

(1) The end of the applicant's most recent fiscal year.

(2) The preceding fiscal year if:

(i) The statement of income for the most recently ended fiscal year is unavailable.

(ii) The application is filed within 14 months of the end of the preceding fiscal year.

(h) An applicant described in subsections (c) and (d) shall provide to the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required under the Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(i) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Department an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.012. Investment adviser registration procedure.

(a) An applicant for initial registration as an investment adviser shall complete a Uniform Application for Investment Adviser Registration (Form ADV), or a successor form.

(b) The applicant shall complete and file with the Department or with IARD:

(1) Form ADV.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment in section 602.1(a)(4) of the act (70 P.S. § 1-602.1(a)(4)).

(4) Any exhibits required under this section.

(c) Except as set forth in subsection (j), an applicant having custody of client funds or securities or requiring payment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file all of the following:

(1) An audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.

(2) An audit report containing an unqualified opinion of an independent certified public accountant within which the accountant shall submit, as a supplementary opinion, comments based on the audit as to the:

(i) Material inadequacies found to exist in the accounting system.

(ii) Internal accounting controls.

(iii) Procedures for safeguarding securities and funds with an indication of corrective action taken or proposed.

(3) A subsequent balance sheet, if the balance sheet required under paragraph (1) is of a date more than 45 days before the filing date of the application:

(i) The subsequent balance sheet must be:

(A) Prepared in accordance with generally accepted accounting principles.

(B) Dated as of a date within 45 days of the filing date of the application.

(ii) The subsequent balance sheet may be unaudited and prepared by management of the applicant.

(d) The balance sheet required under subsection (c) does not need to be filed if the investment adviser has custody of client funds or securities solely as a result of either of the following:

(1) The investment adviser receives fees directly deducted from clients' funds or securities in compliance with § 303.042(a)(3)(i) (relating to investment adviser capital requirements).

(2) The investment adviser serves as a general partner, manager of a limited liability company or occupies a similar status or performs a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities, if the investment adviser is in compliance with § 303.042(a)(3)(ii).

(e) Except as set forth in subsection (j), an applicant that has discretionary authority over client funds or securities, but not custody, shall file all of the following:

(1) A balance sheet prepared in accordance with generally accepted accounting principles which is as of the end of the applicant's most recent fiscal year.

(2) A subsequent balance sheet prepared in accordance with generally accepted accounting principles and dated within 45 days of the filing date if the balance sheet required under paragraph (1) is dated more than 45 days before the filing date of the application.

(f) The balance sheets required under subsection (e)(1) and (2):

(1) May be unaudited and prepared by management of the applicant.

(2) Must contain a representation by the applicant that the balance sheet is true and accurate.

(g) Except as set forth in subsection (j), an applicant whose proposed activities do not come within subsection (c) or (e) does not need to file a statement of financial condition.

(h) As part of the requirements relating to the statements of financial condition set forth in subsections (c) and (e), the Department may require the following:

(1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.

(2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) An affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business if the applicant is a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business.

(i) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

(j) An applicant that maintains its principal place of business in a state other than this Commonwealth does not need to comply with subsections (c) and (e) if the applicant:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

§ 303.013. Agent registration procedures.

(a) An applicant for initial registration as an agent of a broker-dealer or issuer shall complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form.

(b) Except as provided in subsection (c), the agent and the broker-dealer or issuer shall complete and file with the Department:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) Evidence of passage of the examinations required under § 303.031 (relating to examination requirement for agents).

(c) An applicant for registration as an agent of a broker-dealer which is a member firm of FINRA shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

(1) A completed and executed Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act.

(3) The compliance assessment required under section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required under § 303.031.

(d) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.014. Investment adviser representative registration procedures.

(a) An applicant for initial registration as an investment adviser representative of an investment adviser or Federally covered adviser shall complete a Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form.

(b) The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the Department or with IARD:

(1) Form U-4 and exhibits.

(2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).

(3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) The results evidencing passage of the examinations required under § 303.032 (relating to examination requirements for investment advisers and investment adviser representatives).

(c) An investment adviser representative and an investment adviser or Federally covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or Federally covered adviser shall file with the Department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.015. Notice filing for Federally covered advisers.

(a) *Format.* Federally covered advisers required to file notice under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall file the uniform application for investment adviser registration, Form ADV or successor form as filed with the Securities and Exchange Commission.

(b) *Initial filing.* Before the Federally covered adviser conducts advisory business in this Commonwealth, the Federally covered adviser shall file a completed Form ADV accompanied by the notice filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)) with the Department or with IARD.

(c) *Renewals.* Every Federally covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in section 602(d.1) of the act to the Department or to IARD.

§ 303.016. Considered as abandoned.

(a) *General rule.* The Department may consider as abandoned an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative which has been on file with the Department for a minimum of 6 consecutive months if the applicant failed to do any of the following:

(1) Respond within 60 days after written notice sent by first class mail to the applicant's last known address in the Department's files warning the applicant that the application will be considered abandoned.

(2) Respond to any request for additional information required under the act.

(3) Complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may, with the consent of the Department, withdraw an application at any time.

(c) *No refund of fee.* On abandonment or voluntary withdrawal, there will not be a refund for any filing fee paid before the date of the abandonment or withdrawal.

§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally covered adviser.

(a) If a broker-dealer is formed or proposed to be formed to succeed to, and continue the business of, a broker-dealer registered under section 301 of the act (70 P.S. § 1-301) and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o(b)) (successor broker-dealer), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(a) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq), except that the successor broker-dealer shall file the amendments to Form BD with the Department.

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of Rule 15b1-3(b) promulgated under the Securities Exchange Act of 1934, except that the successor shall file Form BD with the Department.

(b) If an investment adviser is formed or proposed to be formed to succeed to, and continue the business of, an investment adviser registered under section 301 of the act (successor investment adviser), and the decision is for either of the following reasons:

(1) Based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File an initial application for registration by amending Form ADV of the predecessor.

(ii) Succeed to the unexpired part of the predecessor's term of registration under section 303(b) of the act (70 P.S. § 1-303(b)).

(2) For reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall:

(i) File Form ADV with the Department.

(ii) Succeed to the unexpired part of the predecessor's term of registration, after registration under section 303(b) of the act.

(c) If a Federally covered adviser is formed or proposed to be formed to succeed to, and continue the business of, a registered investment adviser or of another Federally covered adviser, the successor Federally covered adviser shall:

(1) File with the Department either Form ADV or an amendment to Form ADV as required under Securities and Exchange Commission Release No. IA-1357 (December 28, 1992) and under section 303(b) of the act.

(2) Succeed to the unexpired part of the predecessor's notice period.

§ 303.031. Examination requirement for agents.

(a) An individual may not be registered as an agent under the act unless the individual meets the requirements of subsections (b) and (c).

(b) The applicant receives a passing grade on the securities examination for principals or registered representatives administered by FINRA or the Securities and Exchange Commission within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

(1) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(2) The applicant has received a waiver of the examination requirement by FINRA.

(3) The applicant has received notice from the Department waiving the examination requirement.

(c) The applicant receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by FINRA within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

(1) The applicant previously has passed the Series 63 or the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(2) The applicant has received notice from the Department waiving the requirement to take the Series 63 or the Series 66 and Series 7.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

(a) *Examination requirements.* To be registered as an investment adviser or investment adviser representative under the act, an individual shall meet one of the following examination requirements:

(1) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

(2) The individual, on or after January 1, 2000, and within 2 years immediately before the date of filing an application with the Department, received a passing grade on the:

(i) General Securities Representative Examination (Series 7) administered by FINRA.

(ii) Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) The individual, on or after January 1, 2000:

(i) Received a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations.

(ii) Has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately before the date of filing an application with the Department.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) The individual, before January 1, 2000, received a passing grade on the Series 2, 7, 8 or 24 examination for registered representatives or supervisors administered by FINRA and the Series 65 or Series 66 examinations.

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative, or principal or agent of a broker-dealer for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Department.

(2) Compliance with subsection (a) is waived if the individual meets the following conditions:

(i) The individual, before January 1, 2000, was registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives.

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding 2 years immediately preceding the date of filing an application with the Department.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following conditions:

(i) The individual does not have a disciplinary history which requires an affirmative response to Items 23A—E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

(ii) The individual has been awarded any of the following designations which, at the time of filing of the application with the Department, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.

(B) Chartered Financial Consultant (ChFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and does not have a disciplinary history that requires an affirmative response to Items 14A—E or Item 14H of Form U-4 or successor items thereto, and has notified the Department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and does not have a disciplinary history that requires an affirmative response to Items 14A—E or Item 14H of Form U-4 or successor items thereto, and has notified the Department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received a waiver from the Department regarding compliance with subsection (a).

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in subsection (e), every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of $25,000 with an aggregate indebtedness not exceeding 1500% of its net capital.

(b) As a condition of the right to continue to transact business, every broker-dealer registered under the act that is not registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) immediately shall notify the Department if the broker-dealer's

aggregate indebtedness exceeds 1500% of its net capital or if its total net capital is less than the minimum required.

(c) Within 24 hours after transmitting the notice required under subsection (b), the broker-dealer shall file a report of its financial condition with the Department including the following:

(1) A proof of money balances of ledger accounts in the form of a trial balance.

(2) A computation of net capital and aggregate indebtedness as those terms are used in this section and a computation of the ratio of aggregate indebtedness to net capital.

(3) An analysis of the aggregate market value of fully paid securities in customers' security accounts which are not segregated.

(4) A proof of ledger net credit balances of moneys borrowed from banks, trust companies and from other financial institutions, and from others, which are fully or partially secured by securities carried for the account of a customer.

(5) A computation of the aggregate amount of customers' ledger debit balances.

(6) A computation of the aggregate amount of customers' ledger credit balances.

(7) A statement as to the approximate number of customer accounts.

(d) The Department may permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the Securities and Exchange Commission to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).

(e) A broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the Securities and Exchange Commission shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers or dealers) promulgated under the Securities Exchange Act of 1934.

§ 303.042. Investment adviser capital requirements.

(a) *Net worth requirements*.

(1) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) with its principal place of business in a state other than this Commonwealth shall meet all of the following net worth requirements:

(i) The same as imposed by that state if the investment adviser is:

(A) Currently licensed as an investment adviser in the state in which it maintains its principal place of business.

(B) In compliance with that state's net worth requirements.

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth required under this section is the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection (d), an investment adviser registered as a broker-dealer under section 301 of the act that has its principal place of business in this Commonwealth shall maintain a minimum net capital required under Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers or dealers).

(3) An investment adviser registered under section 301 of the act that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain a minimum net worth of $35,000 unless the investment adviser has custody solely as the result of one of the following:

(i) Has the authority to make withdrawals from client accounts maintained by a qualified custodian to pay its advisory fee and the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(D) Notifies the Department in writing on Form ADV that the investment adviser intends to use the safeguards provided in clauses (A)—(C).

(ii) Serves as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party describing:

(-a-) The amount of the fees, including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based.

(-b-) The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(III) Notifies the Department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subclauses (I) and (II).

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain a minimum net worth of $10,000, unless the investment

adviser places trade orders with a broker-dealer under a third-party trading agreement and the following conditions are met:

(i) The investment adviser executes a separate investment adviser contract exclusively with its clients that acknowledges that a third-party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account.

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(iii) The investment adviser, the client and the broker-dealer execute a third-party trading agreement which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than $1,200 per client shall maintain a positive net worth.

(b) *Notice to the Department.*

(1) As a condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify the Department by the close of business on the next business day if the investment adviser's total net worth is less than the minimum required net worth.

(2) Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including all of the following:

(i) A proof of money balances of ledger accounts in the form of a trial balance.

(ii) A computation of net worth.

(iii) An analysis of clients' securities and funds which are not segregated.

(iv) A computation of the aggregate amount of clients' ledger debit balances.

(v) A computation of the aggregate amount of clients' ledger credit balances.

(vi) A statement as to the number of client accounts.

(c) *Appraisals.* For investment advisers registered or required to be registered under the act, the Department may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(d) *Exception.* The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, Rule 15c3-1.

(2) A member of a National securities exchange whose members are exempt from Rule 15c3-1 under subsection (b)(2) and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

§ 303.051. Surety bonds.

(a) A surety bond shall be:

(1) Filed with the Department on Uniform Surety Bond Form (Form U-SB) or successor form.

(2) Subject to the claims of all clients regardless of the client's state of residence.

(3) Issued by a person licensed to issue surety bonds in this Commonwealth.

(b) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with subsection (a) unless the investment adviser is:

(1) Registered as an investment adviser in that state.

(2) In compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(c) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) shall, if required by the Department, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest $5,000.

(d) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) shall, as required by the Department, be permitted to have and maintain for the registration period a surety bond in the amount of the net capital deficiency rounded up to the nearest $5,000.

(e) On request of the Department, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

CHAPTER 304. POSTREGISTRATION PROVISIONS

§ 304.011. Broker-dealer required records.

(a) *Books and records.*

(1) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).

(2) If a broker-dealer registered under the act and not registered as a broker or dealer with the Securities and Exchange Commission fails to make and keep current the books and records required under this section, the broker-dealer shall:

(i) Notify the Department immediately.

(ii) File a report with the Department, within 24 hours after filing the notice with the Department, stating what steps have been taken and are being taken to fully comply with this section.

(b) *Records of complaints.*

(1) Every broker-dealer registered under the act shall make, keep and preserve one of the following:

(i) A separate file of written complaints of customers and actions taken by the broker-dealer in response.

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer.

(2) For purposes of this section, a complaint includes a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction, or the disposition of securities or funds of the customer.

(3) A registered broker-dealer that also is registered as a broker or dealer with the Securities and Exchange Commission is considered in compliance with the requirements of this subsection if it maintains records of customer complaints as required under applicable Securities and Exchange Commission rules.

(c) *Retention.* The records required to be maintained under this section:

(1) Shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934.

(2) Shall be made easily accessible for inspection by the Department or its representatives.

(3) May be retained and preserved as:

(i) Microfilm, microfiche or any similar medium.

(ii) Electronic or digital storage medium.

(iii) Computer disks or tapes, or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly on reasonable request of the Department or its representatives.

§ 304.012. Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep true, accurate and current all of the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of the order or instruction. The memorandum must:

(i) Show the terms and conditions of the order, instruction, modification or cancellation.

(ii) Identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order.

(iii) Show the account for which entered, the date of entry and the bank, broker-dealer by or through whom executed, if appropriate.

(iv) Designate orders entered under the exercise of discretionary power.

(4) Check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) Bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) Trial balances, financial statements, net worth computation and internal audit working papers relating to the investment adviser's business as an investment adviser.

(7) Originals of written communications received and copies of written communications sent by the investment adviser relating to one or more of the following:

(i) A recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) A receipt, disbursement or delivery of funds or securities.

(iii) The placing or execution of an order to purchase or sell any security, except that an investment adviser:

(A) Is not required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(B) With respect to a notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than ten persons (including transmission by electronic means), the following apply:

(I) The investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent.

(II) If the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing:

(i) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(ii) A memorandum of the investment adviser indicating the reasons for the recommendation if the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) Transactions in securities which are direct obligations of the United States. The record must state:

(I) The title and amount of the security involved, and the date and nature of the transaction (that is, purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions:

(A) Effected in an account over which the investment adviser or an investment adviser representative of the investment adviser does not have direct or indirect influence or control.

(B) In securities which are direct obligations of the United States. The record must state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (that is, purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(14) A copy of the written statement and the amendment or revision, given or sent to a client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure disclosure), and a record of the dates that the written statement, and the amendment or revision, was given, or offered to be given, to a client or prospective client who subsequently becomes a client.

(15) If the adviser obtained a client by means of a solicitor to whom the adviser paid a cash fee:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of the fee.

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor.

(iii) A copy of the solicitor's written disclosure statement if required under § 404.012 (relating to cash payment for client solicitation).

(16) Accounts, books, internal working papers, and any other records or documents to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication:

(i) Includes electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons, other than persons connected with the investment adviser.

(ii) Except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts will be considered to satisfy the requirements of this paragraph.

(17) A file containing a copy of the written communications received or sent regarding any litigation involving the investment adviser or an investment adviser representative or employee, and regarding the written customer or client complaint.

(18) Written information about an investment advisory client that is the basis for making a recommendation or providing investment advice to the client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of the documents, other than notices of general dissemination, that were filed with or received from a state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in § 102.021(a) (relating to definitions), which file may include all applications, amendments, renewal filings and correspondence.

(21) A copy, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of the initial Form U-4 and the amendment to Disclosure Reporting Pages (DRPs U-4) shall be retained by the investment adviser filing on behalf of the investment adviser representative and made available for inspection on regulatory request.

(22) A ledger or other listing of all securities or funds held or obtained in this manner if the adviser has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours under the definition of "custody" in § 102.021(a), which ledger or other listing includes all of the following information:

(i) The issuer.

(ii) The type of security and series.

(iii) The date of issue.

(iv) The denomination, interest rate and maturity date for debt instruments.

(v) The certificate number, including alphabetical prefix or suffix.

(vi) The name in which the security is registered.

(vii) The date given to the adviser.

(viii) The date sent to client or sender.

(ix) The form of delivery to client or sender, or copy of the form of delivery to client or sender.

(x) The mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) Written acknowledgements of receipts obtained from clients under § 404.012(b)(5) and copies of the disclosure documents provided to clients by solicitors under § 404.012(b)(4).

(24) Written procedures relating to the business and continuity plan required under § 304.071 (relating to business continuity and succession planning).

(b) For purposes of subsection (a)(12) and (13):

(1) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(2) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50% of the following from other business or businesses:

(i) Total sales and revenues.

(ii) Income, or loss, before income taxes and extraordinary items.

(3) An investment adviser shall implement adequate procedures and use reasonable diligence to promptly obtain reports of all transactions required to be recorded.

(c) If an investment adviser subject to subsection (a) has custody, the records required to be made and kept under subsection (a) also include all of the following:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) A copy of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(5) A copy of documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian on the adviser's instruction to the qualified custodian.

(6) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of the statements along with the date the statements were sent to the clients.

(7) If an investment adviser has custody because it advises a pooled investment vehicle and is relying on the exception from the minimum net worth requirement in § 303.042(a)(3)(ii) (relating to investment adviser capital requirements), the adviser shall also keep:

(i) True, accurate and current account statements.

(ii) Documentation of the date of the audit.

(iii) A copy of the audited financial statements.

(iv) Evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(8) Records relating to the adviser's appointment as trustee and the identities of the beneficial owners of the trust if an investment adviser acts as trustee for a beneficial trust under § 102.021(a).

(d) An investment adviser subject to subsection (a) that gives investment supervisory or management service to a client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) A separate record for each client showing the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

(e) Books or records required under this section may be maintained by the investment adviser so that the identity of a client to whom the investment adviser gives investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(f) An investment adviser subject to subsection (a) shall maintain all of the following:

(1) Books and records required to be made under subsections (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and (16)) in an easily accessible place for at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, in the principal office of the investment adviser for at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (16) in an easily accessible place for at least 5 years, the first 2 years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication including by electronic media.

(4) Notwithstanding other record preservation requirements of this section, the following records or copies at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (a)(3), (7)—(10), (14), (15), (17)—(19) and (22)—(24), (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, e-mail address or telephone number.

(g) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall:

(1) Arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section.

(2) Notify the Department in writing of the exact address where the books and records will be maintained during the period.

(h) Record storage requirements are as follows:

(1) Records required to be maintained and preserved for the required time by this section shall:

(i) Be able to be immediately produced or reproduced.

(ii) Be maintained and preserved in at least one of the following manners:

(A) Paper or hard copy form, as those records are kept in their original form.

(B) Micrographic media, including microfilm, microfiche or any similar medium.

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser shall:

(i) Arrange and index the records in a way that permits easy location, access and retrieval of any particular record.

(ii) Provide promptly any of the following which the Department by its examiners or other representatives may request:

(A) A legible, true and complete copy of the record in the medium and format in which it is stored.

(B) A legible, true and complete printout of the record.

(C) A means to access, view and print the records.

(iii) Store separately from the original a copy of the record for the time required for preservation of the original record.

(3) For records created or maintained on electronic storage media, the investment advisor shall establish and maintain procedures to:

(i) Maintain and preserve the records to reasonably safeguard them from loss, alteration or destruction.

(ii) Limit access to the records to properly authorized personnel and the Department, including its examiners and other representatives.

(iii) Reasonably ensure that any reproduction of a nonelectronic original record on electronic storage media is complete, true and legible when retrieved.

(i) A book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, is considered to be made, kept, maintained and preserved in compliance with this section.

(j) The requirements of this section do not apply to an investment adviser registered under section 301 of the act (70 P.S. § 1-301) that meets all of the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 304.021. Broker-dealer required financial reports.

(a) A broker-dealer registered under the act but not registered as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) shall file annually with the Department a report which includes a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) The annual report of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The accountant shall submit as a supplementary opinion comments, based on the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) A broker-dealer registered under the act and registered as a broker or dealer with the Securities and Exchange Commission shall provide the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required under Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(d) The report required under subsection (a) shall be filed within 120 days following the end of the broker-dealer's fiscal year.

§ 304.022. Investment adviser required financial reports.

(a) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file with the Department an audited balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant.

(2) The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(b) An investment adviser registered under section 301 of the act that has discretionary authority over client funds or securities, but not custody, shall file with the Department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet must contain a representation by the investment adviser that it is true and accurate.

(c) A sole proprietor registered under section 301 of the act required to file an affirmative statement under § 303.012(c)(3) (relating to investment adviser registration procedure) shall file with the Department an affirmative statement as of the end of its fiscal year.

(d) Except as provided in subsections (e) and (f), investment advisers required to file the reports of financial condition set forth in subsections (a)—(c) shall file the reports with the Department within 120 days of the investment adviser's fiscal year end.

(e) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12-month period.

(f) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act who:

(1) Has custody of client funds or securities solely as a result of activities set forth in § 303.042(a)(3) (relating to investment adviser capital requirements).

(2) Is in compliance with the requirements set forth in § 303.042(a)(3).

§ 304.041. Examinations of broker-dealers and investment advisers.

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act:

(1) Shall honor all requests by representatives of the Department to have physical access to all areas of the office which is the subject of the examination.

(2) Shall permit the Department to review and examine the files in the physical place where the files routinely are maintained on request.

(3) May accompany the representatives of the Department themselves or through a representative of the broker-dealer or investment adviser.

(b) Files referred to in subsection (a) include books, ledgers, accounts, records and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the Securities and Exchange Commission and rules of a National securities exchange or National securities association, and any document reasonably related to these required records.

§ 304.051. Broker-dealer compensation.

(a) A broker-dealer registered under the act may not charge or receive commissions or other compensation in connection with the purchase or sale of securities.

(b) The prohibition contained in subsection (a) does not apply if the compensation is:

(1) Fair and reasonable.

(2) Determined on an equitable basis.

(3) Adequately disclosed to each customer in writing at or before final confirmation.

(c) Compensation which complies with the Conduct Rules of FINRA will be considered fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, does not need to be disclosed in writing.

§ 304.061. Free credit balances.

(a) A broker-dealer registered or required to register under the act may not use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer.

(b) The prohibition contained in subsection (a) does not apply if the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent a written statement which:

(1) Informs the customer of the amount due to the customer by the broker-dealer on the date of the statement.

(2) Contains a written notice that:

(i) Funds are not segregated and may be used in the business of the broker-dealer.

(ii) Funds are payable on the demand of the customer.

(iii) Is sent no less than once every 3 months together with or as a part of the customer's statement of account.

§ 304.071. Business continuity and succession planning.

(a) An investment adviser registered or required to be registered with the Department shall establish, implement and maintain written procedures relating to a business continuity and succession plan.

(b) The investment adviser shall base the business continuity and succession plan on the facts and circumstances of the investment adviser's business model includ-

ing the size of the firm, type of services provided and the number of locations of the investment adviser.

(c) The business continuity and succession plan must provide for at least the following:

(1) Protection, backup and recovery of books and records.

(2) Alternate means of communicating notice to customers, key personnel, employees, vendors, regulators and service providers, including third-party custodians, about issues such as:

(i) A significant business interruption.

(ii) The death or unavailability of key personnel.

(iii) Other disruptions or cessation of business activities.

(3) Office relocation if a temporary or permanent loss of a principal place of business occurs.

(4) Assignment of duties to a qualified responsible person if the death or unavailability of key personnel occurs.

(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

CHAPTER 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING OF REGISTRATION

§ 305.011. Supervision of agents, investment adviser representatives and employees.

(a) Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees by:

(1) Establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to:

(i) Achieve compliance with the act and this title.

(ii) Detect and prevent any violations of statutes, rules, regulations or orders described in any of the following:

(A) Section 305(a)(v) and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix)).

(B) The Conduct Rules of FINRA.

(C) An applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a National securities exchange.

(2) Accepting final responsibility for proper supervision.

(b) Every issuer who employs agents registered under section 301 of the act shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, a broker-dealer or investment adviser shall:

(1) Implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business.

(2) Establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a).

(d) The written procedures required under subsection (c), at a minimum, must address all of the following:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) The methods to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) The methods to be used to determine the good character, business repute, qualifications and experience of any person before making application for registration of that person with the Department and hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced.

(e) The periodic inspections referenced in subsection (d)(10) shall occur according to the following time frames:

(1) At least annually for an office of supervisory jurisdiction of a broker-dealer.

(2) In accordance with an inspection cycle established in the broker-dealer's written supervisory procedures for branch offices and nonbranch locations of a broker-dealer.

(i) In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location.

(ii) The obligation of diligent supervision required under this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced.

(f) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each

location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(g) Written records shall be maintained reflecting each inspection conducted.

(h) In acquitting their obligations under this section, registrants are to consult FINRA Notice to Members 98-38 (May 1998) and Securities and Exchange Commission Release No. 34-38174 (January 15, 1997).

(i) In accordance with FINRA Notice to Members 98-38, unannounced visits may be appropriate if there are indicators of misconduct including any of the following:

(1) Significant customer complaints.

(2) Personnel with disciplinary records.

(3) Excessive trade corrections, extensions, liquidations or variable contract replacements.

(j) Records required under this section:

(1) Shall be maintained for 5 years.

(2) Shall be maintained in an easily accessible place for the first 2 years.

(3) May be retained and preserved on microfilm, computer disks or tapes, or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(k) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act, the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the recordkeeping requirements of the state in which it has its principal place of business.

§ 305.012. (Reserved).

§ 305.019. Dishonest and unethical practices.

(a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and shall:

(1) Act primarily for the benefit of its customers.

(2) Observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

(b) Under section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)), the Department may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer within the previous 10 years.

(c) The Department, for purposes of section 305(a)(ix) of the act, will consider actions such as those in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer.

(1) *Broker-dealers.* Includes the following actions:

(i) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment on request of free credit balances reflecting completed transactions of any of its customers.

(ii) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based on reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the broker-dealer.

(iv) Executing a transaction on behalf of a customer without authorization to do so.

(v) Exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.

(vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(vii) Failing to segregate customers' free securities or securities held in safekeeping.

(viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.

(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership.

(B) Entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties to create a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. This subsection does not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, to induce the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in a fashion as to be deceptive or misleading. An example of this practice would be a distribution of nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of a prospectus or disclosure.

(xviii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(xix) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member.

(xx) Failing or refusing to furnish a customer, on reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents.* Includes the following actions:

(i) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(ii) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer before execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information to execute transactions which would otherwise be prohibited.

(iv) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents.

(v) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(vi) Engaging in conduct specified in paragraph (1)(ii)—(vi), (ix), (x), (xiv)—(xvii), (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives.* Includes the following actions:

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(iii) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(iv) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(v) Placing an order to purchase or sell a security for the account of a client on instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employee of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation when the investment adviser or investment adviser representative uses published research reports or statistical analyses to give advice or when an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

(x) Charging a client an unreasonable advisory fee.

(xi) Failing to disclose to a client in writing, before advice is given, a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the giving of unbiased and objective advice including:

(A) A compensation arrangement connected with advisory services to a client which is in addition to compensation from the client for the services.

(B) An advisory fee charged to a client for giving advice when a commission for executing securities transactions under the advice will be received by the investment adviser, the investment adviser representative or an employee or affiliated person of the investment adviser.

(xii) Guaranteeing a client that a specific result will be achieved, either a gain or no loss, with advice which will be given.

(xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(xiv) Disclosing the identity, investments or other financial information of a client unless required under law to do so, or unless consented to by the client.

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, when the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of § 404.014 (relating to custody requirements for investment advisers).

(xvi) Entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract.

(xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-4a) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3(b)).

(xix) Indicating, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the act or any rule, regulation or order issued thereunder.

(d) In addition to the conduct described in paragraphs (1)—(3), the Department may deny, suspend, condition or revoke a registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative for conduct inconsistent with the standards in subsection (a), including any of the following:

(1) Forgery.

(2) Embezzlement.

(3) Nondisclosure, incomplete disclosure or misstatement of material facts.

(4) Manipulative or deceptive practices.

(5) Taking unfair advantage of a customer or former customer in any aspect of a tender offer.

(e) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. §§ 1-401(a) and (c) and 1-404).

§ 305.020. Use of senior specific certifications and professional designations.

(a) *General rule*. The use of a senior specific certification or designation by a person in connection with the offer, sale or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has

special certification or training in advising or servicing senior citizens or retirees, in a way as to mislead any person is a dishonest and unethical practice in the securities business within the meaning of section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)).

(b) *Prohibitions*. The prohibited use of senior specific certification or professional designation includes the use of:

(1) A certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(2) A nonexistent or self-conferred certification or professional designation.

(3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the person using the certification or professional designation does not have.

(4) A certification or professional designation that was obtained from a designating or certifying organization to which any of the following applies:

(i) Is primarily engaged in the business of instruction in sales or marketing, or both.

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.

(iv) Does not have reasonable continuing education requirements for its designees or certificants to maintain the designation or certificate.

(c) *Rebuttable presumption*. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (b)(4) when the organization has been accredited by any of the following:

(1) The American National Standards Institute.

(2) The National Commission for Certifying Agencies.

(3) An organization that is on the United States Department of Education's "Accrediting Agencies Recognized for Title IV Purposes" list and the designation or credential issued therefrom does not primarily apply to sales or marketing, or both.

(d) *Factors to be considered*. In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the Department will consider the following factors:

(1) Use of one or more words such as "senior," "retirement," "elder" or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner" or like words, in the name of the certification or professional designation.

(2) How those words are combined.

(e) *Exception*. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or Federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers or investment companies as defined under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), when that job title does either of the following:

(1) Indicates seniority or standing within the organization.

(2) Specifies an individual's area of specialization within the organization.

(f) *No limitation on Department enforcement*. This section does not limit the Department's authority to enforce existing provisions of law.

§ 305.061. Withdrawal of registration or notice filing.

(a) *Investment adviser*. To withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301) because the investment adviser has:

(1) Become a Federally covered adviser subject to exclusive registration with the Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the Department or with IARD.

(2) Stopped transacting business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W) or a successor form with the Department or with IARD.

(b) *Broker-dealer*. To withdraw from registration as a broker-dealer, the broker-dealer shall file a completed Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form with the Department.

(c) *Investment adviser representative*. To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form with the Department or with IARD within 30 days from the date of termination.

(d) *Agent of a broker-dealer or an issuer*. To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall file Form U-5 or successor form with the Department within 30 days from the date of termination.

(e) *Federally covered adviser*. To withdraw a notice filing, a Federally covered adviser shall file a notice with the Department or with IARD.

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 401. SALES AND PURCHASES

§ 401.020. Professional responsibility.

For the purposes of any action or proceeding initiated by the Department, under 2 Pa.C.S. § 503 (relating to discipline), 1 Pa. Code § 31.28 (relating to suspension and disbarment) or under any other applicable rules of practice adopted by the Department, the phrase "act, practice or course of business" as used in this chapter shall include a statement, opinion, report or service by an attorney, accountant, engineer, appraiser or other professional person who examines, gives or produces a statement, opinion, report or service if the professional person knew or in the exercise of reasonable care should have

known that the statement, opinion, report or service materially aided or abetted a violation of the act or the regulations adopted thereunder.

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

§ 404.010. Advertisements by investment advisers and investment adviser representatives.

(a) The Department will consider the direct or indirect publication, circulation or distribution of an advertisement by an investment adviser or investment adviser representative to be a fraudulent, deceptive or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P.S. § 1-404) if the advertisement:

(1) Refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service given to the customer by the investment adviser or investment adviser representative.

(2) Refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person except that an advertisement setting forth or offering to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the 12-month period immediately preceding the date of the publication of the advertisement is not prohibited if the advertisement:

(i) Includes the name of each security recommended, the date and nature of each recommendation including whether to buy sell or hold, the market price at the time, the price at which the recommendation was to be acted on, and the current market price of each security.

(ii) Contains the following cautionary legend prominently displayed on the first page in print or type as large as the largest print or type used in the body or text stating: "IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST."

(3) Represents, directly or indirectly, that any graph, chart, formula or other device being offered:

(i) Can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them.

(ii) Will assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations and the difficulties with respect to its use.

(4) Contains any statement that any report, analysis or other service will be furnished free or without charge, unless the report, analysis or other service actually is or will be furnished absolutely without condition or obligation.

(5) Contains any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation, including free or discounted securities, received directly or indirectly in connection with making a recommendation concerning a specific security.

(6) Recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person on request a tabular presentation of:

(i) The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for clients.

(ii) The price or price range at which the securities listed in subparagraph (i) were purchased.

(iii) The date or range of dates during which the securities listed in response to subparagraph (i) were purchased.

(b) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) of the act (70 P.S. § 1-401(a) and (c)) or section 404 of the act.

§ 404.011. Investment adviser brochure disclosure.

(a) An investment adviser's failure to provide an advisory client or prospective advisory client with the disclosure required under this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as required under this section which must contain the information required under Part 2 of Form ADV (17 CFR 279.1) (relating to Form ADV, for application for registration of investment adviser and for amendments to such registration statement).

(c) An investment adviser shall deliver to each client and prospective client all of the following:

(1) A current firm brochure.

(2) The current brochure supplements for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements required under this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours before entering into any investment advisory contract with the client or prospective client.

(2) At the time of entering into a contract, if the advisory client has a right to end the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall:

(1) Deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required under subsection (b) without charge at least once a year.

(2) Send to a client that accepts a written offer the current brochure and supplements within 7 days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's members or the trust's beneficial owners as a

client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser gives substantially different types of investment advisory services to different clients, the investment adviser may do the following:

(1) Provide the clients with different brochures, so long as each client receives all applicable information about services and fees.

(2) Omit from the brochure delivered to a client any information required under Part 2A of Form ADV if the information applies only to a type of investment advisory service or fee which is not given or charged, or proposed to be given or charged, to that client or prospective client.

(h) Except as provided in paragraph (1), if the investment adviser is a sponsor of a wrap fee program, the brochure required to be delivered by subsection (b) to a client or prospective client of the wrap fee program must be a wrap fee brochure containing all the information required under Form ADV.

(1) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information specified in Part 2A, Appendix 1 to Form ADV.

(2) A wrap fee brochure does not take the place of any brochure supplements that the investment adviser is required to deliver under this section.

(3) Additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(i) In accordance with Part 2 of Form ADV, if information contained in the brochure or brochure supplement becomes materially inaccurate, the investment adviser shall:

(1) Amend its brochure and any brochure supplement.

(2) Deliver the amendments to clients promptly.

(3) Promptly file the amendments with the Department or with IARD.

(j) Delivering a brochure or supplement in compliance with this section does not relieve the investment adviser of any other disclosure obligations which the investment adviser may have to its clients or prospective clients under the act or this title.

(k) The delivery requirement set forth in subsection (d) does not apply to the extension or renewal of an investment advisory contract without material changes of the contract which is in effect immediately prior to the extension or renewal.

§ 404.012. Cash payment for client solicitation.

(a) An investment adviser's failure to comply with the requirements of this section concerning cash payments for client solicitation constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404).

(b) An investment adviser may not pay a cash fee or other economic benefit, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) The investment adviser is registered under the act.

(2) The solicitor is registered as an investment adviser representative or is exempt from registration under § 302.071 (relating to registration exemption for solicitors) or qualifies for another exemption under the act.

(3) The cash fee or other economic benefit is paid under a written agreement to which the investment adviser is a party.

(4) The written agreement required under paragraph (3):

(i) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor.

(ii) Contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the rules thereunder.

(iii) Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the prospective client with a current copy of the following:

(A) The investment adviser's written disclosure statement required under § 404.011 (relating to investment adviser brochure disclosure).

(B) A separate written disclosure document which contains all of the following:

(I) The name of the solicitor.

(II) The name of the investment adviser.

(III) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser.

(IV) A statement that the solicitor will be compensated for the solicitation services by the investment adviser.

(V) The terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor.

(VI) The amount, if any, for the cost of obtaining his account the prospective client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of the advisory fees charged by the investment adviser if the differential is attributable to the existence of any arrangement under which the investment adviser has agreed to compensate the solicitor for soliciting prospective clients for, or referring prospective clients to, the investment adviser.

(5) The investment adviser receives from the prospective client before, or at the time of, entering into any written or oral investment advisory contract with the prospective client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement required under § 404.011 and the solicitor's written disclosure document required under paragraph (4)(iii)(B).

(c) For purposes of subsection (b)(5), this section does not apply to an investment adviser as follows:

(1) If the cash fee is paid to a solicitor with respect to solicitation activities for the provision of impersonal investment advisory services only.

(2) If the cash fee is paid to a solicitor who is either of the following:

(i) A partner, officer, director or employee of the investment adviser.

(ii) A partner, officer, director or employee of a person which controls, is controlled by, or is under common control with the investment adviser if the status of the

solicitor as a partner, officer, director or employee of the investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) This section does not relieve a person of a fiduciary or other obligation to which the person may be subject under the law.

§ 404.013. (Reserved).

§ 404.014. Custody requirements for investment advisers.

(a) *Safekeeping required*. It is unlawful and considered to be a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. § 1-404), for an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless:

(1) The investment adviser notifies the Department promptly in writing on Form ADV that the investment adviser has or may have custody.

(2) A qualified custodian maintains those funds and securities in one of the following:

(i) A separate account for each client under that client's name.

(ii) Accounts that contain only the investment adviser's clients' funds and securities under the investment adviser's name as agent or trustee for the clients or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) The investment adviser meets the following conditions:

(i) If the investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent or under the name of a pooled investment vehicle, the investment adviser shall notify the client in writing of the qualified custodian's name, address and how the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(ii) If the investment adviser sends account statements to a client to which the investment adviser is required to provide the notice in subparagraph (i), the investment adviser shall include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) The investment adviser meets the following conditions:

(i) The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities and the account statement:

(A) Identifies the amount of funds in the account.

(B) Identifies the amount of each security in the account at the end of the period.

(C) Sets forth all transactions in the account during that period.

(ii) If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (3) shall be sent to each limited partner (or member or other beneficial owner).

(5) The investment adviser meets the following conditions:

(i) The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, under a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without previous notice or announcement to the investment adviser and that is irregular from year to year.

(ii) The written agreement provides for the first examination to occur within 6 months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities under this section as a qualified custodian, the agreement must provide for the first examination to occur no later than 6 months after obtaining the internal control report.

(iii) The written agreement must require the independent certified public accountant to:

(A) File a certificate on Form ADV-E with the Department within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) Notify the Department within 1 business day of the finding, by means of a facsimile transmission or e-mail, followed by first class mail, directed to the attention of the Department on finding any material discrepancies during the course of the examination.

(C) File Form ADV-E within 4 business days of the resignation or dismissal from, or other termination of, the engagement or removing itself or being removed from consideration for being reappointed, accompanied by a statement that includes:

(I) The date of resignation, dismissal, removal or other termination, and the name, address and contact information of the independent certified public accountant.

(II) An explanation of any problems relating to examination scope or procedure that contributed to resignation, dismissal, removal or other termination.

(6) If the investment adviser has custody because a related person maintains client funds or securities under this section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the investment adviser shall obtain, or receive from its related person, within 6 months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant that performs the independent verification required under paragraph (5) that complies with the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year.

(ii) The independent certified public accountant shall verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person.

(7) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (3) and (4).

(b) *Exceptions*.

(1) *Shares of mutual funds*. With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-5(a)(1)) (mutual fund), the investment adviser may use the mutual fund's transfer agent instead of a qualified custodian to comply with subsection (a).

(2) *Certain privately offered securities*.

(i) The investment adviser does not need to comply with subsection (a)(2) with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering.

(B) Uncertificated and ownership is recorded only on the books of the issuer or its transfer agent in the name of the client.

(C) Transferable only with previous consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding subparagraph (i), the provisions of this paragraph are available with respect to securities held for the account of a pooled investment vehicle only if the pooled investment vehicle is audited, and the audited financial statements are distributed, in accordance with § 303.042(a)(3)(ii) (relating to investment adviser capital requirements) and the investment adviser notifies the Department in writing on Form ADV that the investment adviser intends to provide audited financial statements, as described in this subparagraph.

(3) *Fee deduction*. Notwithstanding subsection (a)(5), an investment adviser does not need to obtain an independent verification of client funds and securities maintained by a qualified custodian if the investment adviser is in compliance with § 303.042(a)(3)(i).

(4) *Limited partnerships subject to annual audit*. An investment adviser does not need to comply with subsection (a)(3) and (4) and will be considered to have complied with subsection (a)(5) with respect to the account of a pooled investment vehicle that is subject to audit and is in compliance with § 303.042(a)(3)(ii).

(5) *Registered investment companies*. The investment adviser does not need to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(c) *Delivery to related persons*. Sending an account statement under subsection (a)(4) or distributing audited financial statements under subsection (b)(4) does not satisfy the requirements of this section if the account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) *Department authority*. An investment adviser who cannot comply with one or more of the specific provisions in this section may request that the Department waive the specific provisions if the investment adviser can establish that undue hardship would be placed on the investment adviser and that investment adviser can establish sufficient alternative safeguards.

Subpart E. ENFORCEMENT

CHAPTER 501. CIVIL LIABILITIES

§ 501.011. Criminal referrals.

(a) The Department may:

(1) Take action as it considers necessary to institute a prosecution or obtain a conviction for offenses as set forth in section 511 of the act (70 P.S. § 1-511).

(2) Refer the evidence as is available concerning any violation of the act or of any rule or order thereunder or any other applicable statute to the appropriate authorities, Federal and State, who may, with or without the reference, institute appropriate criminal proceedings.

(b) The act, and this part, do not limit the power of the Commonwealth to punish a person for conduct which constitutes a crime under any other statute.

CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

§ 504.060. Rescission offers.

(a) A person proposing to make an offer under section 504(d) or (e) of the act (70 P.S. § 1-504(d) and (e)) shall follow the procedure for the registration of securities by qualification, as described in sections 206 and 207 of the act (70 P.S. §§ 1-206 and 1-207).

(1) The forms required to be filed and time periods for Department action are those applicable to registration by qualification and a person shall note at the top of Form R that the offer is a rescission offer.

(2) The Department may, on petition by the proposed offeror, waive or modify any requirement for the registration if it finds the requirement burdensome and not necessary for the protection of investors.

(b) The Department may waive compliance with the procedures in subsection (a) for a person making a rescission offer for possible violations of the act if the securities which are the subject of the rescission offer were sold to and purchased by no more than 35 persons in this Commonwealth during 12 consecutive months and all of the following conditions are met:

(1) The person making the rescission offer files the form designated by the Department as Form RO in accordance with the General Instructions requesting waiver of the procedures in subsection (a) accompanied by disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)).

(2) The person making the rescission offer gives the documents specified in paragraph (1) to each rescission offeree.

(3) The Department does not deny the waiver request within either of the following time periods:

(i) Five business days from the date a complete filing is made with the Department if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P.S. § 1-201) and the issuer or a promoter, general partner of a limited partnership, managing general partner of a limited partnership, executive officer or director of the issuer are not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(ii) Ten business days from the date a complete filing is made with the Department for all other rescission offers made under this subparagraph.

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

(c) The Department may waive compliance with the procedures in subsection (a) for a person making a rescission offer for possible violations of section 301 or sections 401—409 of the act (70 P.S. §§ 1-301 and 1-401—1-409) if the following apply:

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

(2) The rescission offer is not being made to more than five investors in this Commonwealth, exclusive of investors which purchased under section 203(c) of the act.

(3) The person making the rescission offer, and if the person is the issuer, a general partner of a limited partnership, managing general partner of a limited partnership, promoter, executive officer or director of the issuer are not subject to the disqualifications in § 204.010(b).

(4) The rescission offer is being made under section 504(d) of the act or if a rescission offer is being made under section 504(e) of the act, the offeror complies with section 201 of the act in that section 102(r)(vi) of the act states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

(5) Public media advertising or general solicitation were not used in connection with the offer or sale of the securities subject to the rescission offer.

(6) Mass mailings were not used in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of Regulation D.

(7) The person making the rescission offer provides to each offeree disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act.

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

(d) The Department may waive compliance with the procedures in subsection (a) for an issuer which, after offering rescission for possible violations of section 201 of the act under this subsection, 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:

(1) A person did not receive commissions directly or indirectly for the sale of the securities subject to the rescission offer.

(2) The issuer or a promoter, general partner, executive officer or director of the issuer is not subject to the disqualifications in § 204.010(b).

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

(4) The issuer provides to each offeree disclosure materials prepared to satisfy the antifraud provisions of section 401(b) of the act.

(5) Public media advertising or general solicitation were not used in connection with the offer or sale of the securities subject to the rescission offer.

(6) Mass mailings were not used in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of Regulation D.

(e) If an offer is made under section 504(d) or (e) of the act and this section, an offeree's right to remedy under the act is terminated by either of the following:

(1) A nonresponse to the offer within 30 days of receipt of the offer.

(2) An affirmative rejection of the offer within 30 days of receipt of the offer.

(f) A person making a rescission offer under this section shall:

(1) Advise the Department of the results of the rescission offer within 15 calendar days after the expiration of the rescission offer period.

(2) Keep and maintain for 3 years following the expiration of each rescission offer period a complete set of books, records and accounts of the rescission offers made including:

(i) Copies of the rescission offers given or mailed to rescission offerees in this Commonwealth.

(ii) Records of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer.

(3) Promptly furnish to the Department on request records concerning a rescission offer made in this Commonwealth under this section.

(g) The requirements of this section also apply if the following rescission offers are made:

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

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

CHAPTER 513. RESCISSION ORDERS

§ 513.010. Rescission orders.

When the Department, 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 Department, by order, otherwise requires.

Subpart F. ADMINISTRATION

CHAPTER 601. ADMINISTRATION

§ 601.010. (Reserved).

§ 601.020. (Reserved).

§ 601.030. Access to confidential information.

(a) *General rule*. The Department may, on a showing that the information is needed, provide confidential information in its possession to any of the following persons if the person receiving the confidential information provides assurances of confidentiality as the Department considers appropriate:

(1) A Federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of the government.

(2) A self-regulatory organization.

(3) A foreign financial regulatory authority as defined in section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c(a)(52)).

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed under section 5(b) of the Securities Investor Protection Act of 1970 (15 U.S.C.A. § 78eee(b)).

(5) A trustee in bankruptcy.

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the act, if the trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Department of the act.

(7) A duly authorized agent, employee or representative of any of the persons listed in this subsection.

(b) *Nonapplicability*. This section does not affect the Department's authority or discretion to provide access to, or copies of, nonpublic information in its possession in accordance with the other authority or discretion as the Department possesses by statute, regulation or statement of policy.

CHAPTER 602. (Reserved)

§ 602.022. (Reserved).

§ 602.060. (Reserved).

CHAPTER 603. ADMINISTRATIVE FILES

§ 603.011. Filing requirements.

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

(b) If mailed, all documents and communications shall be sent registered or certified mail, postage prepaid, return receipt requested.

(c) The Department will consider a completed and properly executed document or communication to be filed on receipt.

(d) Unless the filings and request are accompanied by the required fees or charges as provided by the act and this section, the Department will not:

(1) Accept for filing a notice, statement, form or other document.

(2) Grant a request for copies of documents.

(3) Take action.

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be:

(1) Made payable to the order of "Commonwealth of Pennsylvania."

(2) Delivered or mailed to the Department of Banking and Securities, 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101, or other address as the Department may designate.

(f) Required documents shall be filed in the following manner:

(1) *Broker-dealer*. The Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Request for Withdrawal from Registration as a Broker-Dealer (Form BDW), or successor forms, and amendments thereto required to be filed with the Department by a member firm of FINRA with respect to an initial registration, renewal, amendment or withdrawal from registration as a broker-dealer shall be:

(i) Made solely with the CRD maintained by FINRA under an agreement and guidelines established by NASAA.

(ii) Mailed to NASAA/FINRA Central Registration Depository, Post Office Box 9401, Gaithersburg, Maryland 20898-9401 or any successor address.

(2) *Agent*.

(i) Documents and other communications required to be filed with the Department by a member firm of FINRA with respect to the initial registration, renewal, transfer or withdrawal from registration as an agent shall be made solely with the CRD to the address in paragraph (1)(ii).

(ii) Checks for payment of fees required under sections 602(d) and 602.1(a) of the act (70 P.S. §§ 1-602(d) and 1-602.1(a)) for the filing of a document described in this subsection shall be made payable to the order of "FINRA" and mailed with the documents to the address listed in paragraph (1)(ii).

(g) The Department will consider filings made with the CRD under subsection (f) as filed with the Department.

(h) Required forms will be available on the Department's web site at www.dobs.pa.gov and in paper format from the Department.

§ 603.031. Public inspection of records.

(a) During the regular business hours of the Department, members of the public may, on written request to do so, inspect at the Department's Harrisburg office documents which are public records. The written request required under this subsection must set forth the public records to be inspected.

(b) The Department may withhold from public inspection those records which it determines are excluded from the definition of "public records" in section 102 of the Right-to-Know Law (65 P.S. § 67.102), and any successor statute.

(c) A request for the confidential treatment of information contained in a statement, application, notice or report submitted to the Department may accompany the statement, application, notice or report and specify the reasons for the request.

(1) Material which is the subject of the request should be separated from other parts of the filing.

(2) On proper showing, the Department will treat as confidential the material which is the subject of the request.

(d) This section does not make available for public inspection the following:

(1) Books, papers, correspondence, memoranda, agreements or other documents or records contained in an investigative or examination file maintained by the Department.

(2) Minutes, documents or other memoranda of the Department or of the staff which deal with or concern the institution, maintenance or termination of an investigation.

(e) Except as set forth in paragraphs (1) and (2), financial statements required to be filed under §§ 303.011, 303.012, 304.021 and 304.022 are public.

(1) Statements of income required to be filed under §§ 303.011 and 304.021 (relating to broker-dealer registration procedures; and broker-dealer required financial reports) and nonrequired statements of income filed under §§ 303.011, 303.012, 304.021 and 304.022 are confidential if the income statements are bound separately from the accountant's report, the statement of financial condition and the accompanying notes.

(2) Financial statements which are considered confidential under paragraph (1) are available for official use by persons described in § 601.030(a) (relating to access to confidential information).

(3) This section is not in derogation of the rules of a National securities exchange or National securities association which give customers of a member broker or dealer the right, on request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The Department will treat all of the following information as confidential and not be available for public inspection under any provision of the act and considers the information excluded from the definition of "public records" in section 102 of the Right-to-Know Law:

(1) The Social Security number and date of birth of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the uniform application for securities industry registration or transfer, Form U-4 or successor form, filed with the Department under § 303.013 (relating to agent registration procedures) or with IARD under § 303.014 (relating to investment adviser representative registration procedures).

(2) The Social Security number and date of birth of an individual registered or applying for registration as an investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for investment adviser registration, Form ADV or successor form (Form ADV), filed with the Department or with IARD under § 303.012 or § 303.015 (relating to investment adviser registration procedure; and notice filing for Federally covered advisers).

(3) The Social Security number and date of birth of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for broker-dealer registration, Form BD or successor form (Form BD) or Form ADV.

§ 603.040. Charges for Department services.

The following fees will be charged by the Department and remitted to the General Fund of the Commonwealth:

(1) Photocopies of documents on file with the Department—50¢ per page.

(2) Certification of documents on file with the Department—$5 per certification.

(3) Facsimile transmission of copies of documents on file with the Department—$2 per page.

CHAPTER 604. (Reserved)

§§ 604.010—604.012. (Reserved).

§§ 604.016—604.023. (Reserved).

CHAPTER 605. DEPARTMENT EMPLOYEES; RELATIONSHIP WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS

§ 605.020. Conflict of interest.

(a) To protect the public interest and avoid conflicts of interest, the Department has determined, under section 605(b) of the act (70 P.S. § 1-605(b)), that the provisions of section 605(a) of the act do not prohibit the holding or purchasing of any securities by any employee of the Department if one of the following applies:

(1) The employee did not perform a principal review of the application for the registration of the securities or any other securities of the same issuer registered with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) or was not involved in an investigation, audit or examination of the registration.

(2) The securities to be held or purchased are those of an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those terms are defined in section 2 of the Investment Company Act of 1940 (15 U.S.C.A. § 80a-2) for which the issuer is registered or has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64).

(3) The employee did not perform a principal review of the application for licensure or registration of a broker-dealer, agent, investment adviser or investment adviser representative filed with the Department under section 303 of the act (70 P.S. § 1-303) or was not involved in an investigation, audit or examination of the licensee or registrant.

(b) If, under section 605(a) and (b) of the act, there may be a conflict of interest with an employee of the Department which is not permitted by subsection (a), the employee may present a formal request to the Department for permission to hold or purchase the securities.

(1) The request must set forth the type and amount of securities to be held or purchased, the issuer of the securities, any other relationship between the employee and the issuer, the functions which the employee performed relative to the registration of the issuer and all other pertinent reasons as to why the employee feels the Department should grant the employee's request.

(2) The Department may grant the employee's request if it finds that in doing so it would be protecting the public interest and avoiding conflicts of interest.

(c) An employee of the Department may not hold or purchase a security which would otherwise be permitted by subsections (a) and (b) if the holding and purchasing of the security would violate any other applicable conflict of interest statute or regulation.

CHAPTER 606. MISCELLANEOUS POWERS OF THE DEPARTMENT

§ 606.011. Financial reports to securityholders.

(a) In the case of securities issued under section 203(d) or (p) of the act (70 P.S. § 1-203(d) and (p)), or registered under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements must comply with section 609(c) of the act (70 P.S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securities were issued in a transaction subject to this section wherein the financial statements delivered to offerees were not required to be audited or if the financial statements were not required to be given to the offerees, the financial statements do not need to be audited.

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

§ 606.031. Advertising literature.

(a) *Advertisements*. Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish an advertisement concerning a security in this Commonwealth unless all of the following are met:

(1) The advertisement is either of the following:

(i) Permitted by this section and complies with any requirements imposed by this section.

(ii) Specifically excluded from application of this section by subsection (f).

(2) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, including financial projections or forecasts.

(3) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) *Registered offerings: permitted advertisements after filing but before effectiveness*. The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has been filed with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Department under section 205 or 206 of the act for the sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), a person may publish any of the following in this Commonwealth before effectiveness of the registration statement under the act:

(i) Advertisements which comply with section 2(a)(10)(b) of the Securities Act of 1933 (15 U.S.C.A. § 77b(a)(10)(b)).

(ii) Advertisements which comply with Rule 134 (17 CFR 230.134) (relating to communications not deemed a prospectus) promulgated by the Securities and Exchange Commission.

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 and complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the Securities and Exchange Commission.

(iv) A summary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 and complies with Rule 431 (17 CFR 230.431) (relating to summary prospectuses) promulgated by the Securities and Exchange Commission.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the Securities and Exchange Commission under Regulation A (17 CFR 230.251—230.263) (relating to conditional small issues exemption), promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and with the Department under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth that complies with Rule 251(d)(1)(ii)(C) (17 CFR 230.251(d)(1)(ii)(C)) (relating to scope of exemption) promulgated by the Securities and Exchange Commission before effectiveness of the offering circular under the act if all of the following conditions are met:

(i) The advertisement is filed with the Department 10 days before publication in this Commonwealth.

(ii) The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.

(3) In connection with a registration statement filed with the Department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the Securities and Exchange Commission in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) (relating to exemption for limited offerings and sales of securities not exceeding $5,000,000) promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth before effectiveness of the registration statement under the act if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement providing the name and address of the underwriter or where a prospectus may be obtained.

(F) A statement in the following form: "A registration statement has been filed with the Pennsylvania Department of Banking and Securities but has not yet become effective. These securities may not be sold nor may offers to buy be accepted before the time the registration statement becomes effective. This advertisement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in the Commonwealth of Pennsylvania before registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Department 10 days before publication in this Commonwealth.

(iii) The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.

(c) *Registered offerings: permitted advertisements after effectiveness*. The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has become effective under section 205 or 206 of the act.

(1) In connection with a registration statement filed with the Department under section 205 or 206 of the act for the offer and sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 which has become effective, a person may publish an advertisement in this Commonwealth if it is preceded or accompanied by a copy of the final prospectus.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth that has been filed with the Securities and Exchange Commission under Regulation A (17 CFR 230.251—230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the Department under section 205 or 206 of the act and has been qualified by the Securities and Exchange Commission under Regulation A and has become effective under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth if the advertisement is accompanied or preceded by a copy of the final offering circular.

(3) In connection with a registration statement filed with the Department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the Securities and Exchange Commission in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 that has become effective under the act, a person may publish in this Commonwealth an advertisement if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement, if applicable, that funds accompanying the subscription agreement are subject to escrow and the terms of the escrow.

(F) The name and address where the final prospectus may be obtained if delivery of the final prospectus does not precede or accompany the advertisement.

(G) A statement in the following form: "This advertisement does not constitute an offer to sell nor a solicitation of an offer to buy any of the securities. The offering is made only by the prospectus."

(ii) The advertisement is filed with the Department 5 days before publication in this Commonwealth.

(iii) The Department does not issue a letter disallowing publication in this Commonwealth before the expiration of the 5-day period.

(4) A person may not publish an advertisement in this Commonwealth in connection with the offer and sale of any security registered under section 205 or 206 of the act at any time after the expiration of the effective period of the registration statement relating to that security as determined by section 207 of the act (70 P.S. § 1-207).

(d) *Exempt securities*. The following apply:

(1) *Exempt securities other than sections 202(a) and (i) of the act*. Except as provided in paragraphs (2) and (3), a person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202 of the act (70 P.S. § 1-202).

(2) *Section 202(a) of the act*. In connection with the offer or sale of any security in this Commonwealth made in reliance on section 202(a) of the act which is issued by the Commonwealth, any political subdivision, or any agency or corporate or instrumentality of the Commonwealth and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation must appear prominently in bold face type of at least 12 points in size on the face page of any preliminary offering statement, official offering statement or advertisement published in this Commonwealth.

(3) *Section 202(i) of the act*. A person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202(i) of the act except if the Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions*. All of the following apply:

(1) *Advertisements permitted*. Except as provided in paragraph (2), a person may publish any advertisement in this Commonwealth in connection with a securities transaction in this Commonwealth which is exempt from registration under section 203 of the act (70 P.S. § 1-203).

(2) *Advertisements prohibited*. A person may not publish any advertisement in this Commonwealth in connection with the following securities transactions which are effected in this Commonwealth:

(i) A sale of a security made in reliance on section 203(d) of the act.

(ii) An offer of a security made in reliance on section 203(e) of the act which results in a sale under section 203(d) of the act.

(iii) An offer or sale of a security made in reliance on section 203(j) of the act.

(iv) An offer or sale of a security made in reliance on section 203(s) of the act.

(v) An offer or sale of a security made in reliance on § 203.187 (relating to small issuer exemption).

(vi) An offer or sale of a security made in reliance on § 203.189 (relating to isolated transaction exemption).

(vii) An offer or sale of a security which is exempt under section 203(r) of the act when the Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements*. All of the following apply:

(1) This section does not apply to advertisements described in paragraph (2) if all of the following are met:

(i) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, including financial projections or forecasts.

(ii) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The following advertisements are excluded from the provisions of this section if the requirements of paragraph (1) have been met:

(i) General solicitation in connection with the offer or sale of a security in reliance on section 203(t) of the act.

(ii) Advertisements which comply with Rule 135 promulgated by the Securities and Exchange Commission (17 CFR 230.135) (relating to notice of proposed registered offerings).

(iii) Advertisements which comply with Rule 135c promulgated by the Securities and Exchange Commission (17 CFR 230.135c) (relating to notice of certain proposed unregistered offerings).

(iv) Advertisements in connection with an offer of a security in reliance on § 203.190 (relating to certain Internet offers exempt) which comply with the legend requirement of § 203.190(a)(1).

(v) Advertisements in connection with the offer or sale of Federally covered securities under section 18(b)(4)(C) and (E) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(4)(C) and (E)) when the issuer relies upon and is in compliance with Rule 506(c) of Regulation D (17 CFR 230.506) (relating to exemption for limited offers and sales without regard to dollar amount of offering) or regulation crowdfunding.

(g) *Securities and Exchange Commission interpretive advice on use of electronic media*. A person who uses electronic media to publish an advertisement in this Commonwealth in connection with a security which is the subject of a registration statement filed with the Department under section 205 or 206 of the act and with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 may rely on the interpretive advice of the Securities and Exchange Commission in Release No. 33-7856 (April 28, 2000) and subsequent advice given under that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Department will not take any enforcement action if the person complies with the interpretive advice.

§ 606.041. (Reserved).

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

§ 609.010. Use of prospective financial statements.

(a) Except as set forth in subsection (b), the use of prospective financial statements, including those contained in feasibility studies, is prohibited in connection with offerings registered under sections 205 and 206 of the act (70 P.S. §§ 1-205 and 1-206) or in offerings exempt from registration under section 202(a) or 203(d) of the act (70 P.S. §§ 1-202(a) and 1-203(d)), unless the prospective financial statements used or distributed comply with the act and this section.

(b) The use or distribution of prospective financial statements in connection with the following securities offerings is permissible if it complies with section 401 of the act (70 P.S. § 1-401):

(1) Offers or sales of securities of reporting companies as the term is defined in section 102(q) of the act (70 P.S. § 1-102(q)).

(2) Offers and sales of securities made under an exemption not set forth in subsection (b).

(3) Offers and sales of securities made to experienced private placement investors.

(4) Offers and sales of securities to an individual, and spouse when purchasing as joint tenants or as tenants by the entireties, if the minimum amount of securities to be purchased in the offering by the individual is $500,000 or more and the purchase of the securities is for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities.

(5) Offers and sales of securities to a person which is organized primarily to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and one of the following exists:

(i) The person has purchased $450,000 or more of the securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities, excluding a purchase of securities of a corporation in which the affiliates of the person directly or beneficially own more than 50% of the corporation's voting securities.

(ii) The person is purchasing $500,000 or more of the securities being offered for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities being purchased.

(6) Offers and sales of securities made to accredited investors as that term is defined in Rule 501(a) (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D) in Regulation D of the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(c) Except as set forth in subsection (d), prospective financial statements used or distributed in connection with the securities offerings described in subsection (a) must comply with the following requirements:

(1) *Assumptions*. Assumptions include:

(i) Prospective financial statements must be based on reasonable assumptions and clearly set forth the assumptions made with respect to all material features of the presentation.

(ii) With respect to financial projections, the hypothetical assumptions used must be clearly identified and be consistent with the purpose of the presentation. With respect to multiple presentations there must be a preponderance of information to suitably support the amount presented being within the range of the hypothetical assumptions.

(2) *Preparation*. Preparation includes:

(i) Prospective financial statements shall either be prepared by an independent qualified person-preparer or reviewed by an independent qualified person reviewer. The preparer or reviewer may rely on another preparer or reviewer for the preparation or review of the underlying assumptions or other aspects of the prospective financial statement if the report complies with paragraph (3).

(ii) The Department will not recognize a person as a qualified independent reviewer or preparer unless that person can demonstrate adequate knowledge of the industry and the accounting principles and practices of the industry portrayed in the prospective financial statements.

(3) *Report*. The report must include:

(i) Prospective financial statements accompanied by a report of each preparer or reviewer of the following:

(A) The prospective financial statements.

(B) The underlying assumptions.

(C) Other material aspects of the prospective financial statements.

(ii) With respect to prospective financial statements, the preparer or reviewer's report:

(A) Must include a statement of the work performed, including a review of the assumptions.

(B) May not contain a disclaimer with respect to the reasonableness of the assumptions or the reasonableness of the prospective financial statements.

(C) May not contain language that suggests or implies that the preparer or reviewer vouches for the achievability of the prospective financial statements.

(iii) A report on the preparation or review of the financial projections explicitly describing the hypothetical assumptions on which the projection is based, for example, "assuming the granting of the requested loan to expand the Company's plant as described in the summary of significant assumption(s)."

(4) *Contents of reports with more than one preparer or reviewer*. Collectively, the reports described in paragraph (3) must include a statement of the work performed by each preparer or reviewer and the degree of responsibility each is taking.

(5) *Professional responsibility*. A preparer or reviewer of a prospective financial statement or of the underlying assumptions shall follow the requirements of § 401.020 (relating to professional responsibility).

(6) *Fair presentation*. Prospective financial statements must include material information necessary for a fair presentation including, if applicable:

(i) Sales or gross revenue by sources for each period presented.

(ii) Expenses by classifications for each period presented.

(iii) Provision for income taxes for each period presented.

(iv) Net income for each period presented.

(v) Primary and fully diluted earnings per share of common stock for each period presented.

(vi) A cash flow analysis or a statement of significant changes in financial position for each period presented, including the sources and uses of cash.

(vii) Balance sheets at the beginning and end of the entire period for which prospective financial statements are presented.

(viii) Forecasted or projected annual taxable income or loss with a discussion of the assumptions affecting tax benefits and, if appropriate, alternative forecasted or projected results based on alternative tax treatment.

(ix) Significant accounting principles and policies followed.

(7) *Minimum period*. Prospective financial statements shall cover a minimum period of 3 years. The period must be extended if appropriate to evaluate properly the investment consequences.

(8) *Explanatory notes*. Prospective financial statements must be accompanied by explanatory notes describing significant assumptions made and, if appropriate, referenced to tabular and numerical data and risk factors.

(9) *Conspicuous statement*. Prospective financial statements must be clearly distinguished from historical financial statements and contain a conspicuous statement indicating that it is based on assumptions of the future.

(d) The Department will consider prospective financial statements examined in accordance with the Statement of Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants, Inc. (SSAE Statement) to comply with this section if a standard report on an examination prepared in accordance with the SSAE Statement is issued by an independent person.

(e) The primary responsibility for prospective financial statements used or distributed under this section rests with management.

§ 609.011. Amendments to filings with Department.

A person wishing to amend or otherwise ensure that a previously filed application, notice, statement, report or any other document is current and accurate in all material respects shall file with the Department an amendment which meets all of the following conditions:

(1) The amendment must identify the previously filed document being amended.

(2) If amending a form promulgated by the Department, the amendment must identify the:

(i) Name of the form.

(ii) Date the form originally was filed with the Department.

(iii) Items or schedules of the form which are being amended.

§ 609.012. Computing the number of offerees, purchasers and clients.

(a) Under section 609(a) of the act (70 P.S. § 1-609(a)), the Department, to provide a consistent method of computing the number of offerees, purchasers and clients under relevant provisions of the act and regulations promulgated thereunder, has determined that all of the following apply:

(1) A person who is offered or purchases securities or becomes a client is counted as a separate offeree, purchaser or client, unless the person is otherwise specifically excluded under this section.

(2) If more than one person, related by blood or marriage, are offerees, purchasers or clients, the persons are counted as one offeree, purchaser or client if they either:

(i) Reside in the same household.

(ii) Are under 18 years of age.

(3) An entity is counted as one person, and a direct or beneficial owner of equity interests or equity securities in the entity is not counted as an offeree, purchaser or client, unless one of the following applies:

(i) With respect to computing offerees and purchasers, the entity was organized to specifically acquire the securities being offered or purchased.

(ii) With respect to computing clients, if the services provided by the person effecting transactions in securities for the account of the entity or providing investment advice to the entity are based on the investment decisions of the direct or beneficial owners rather than on the investment objectives of the entity.

(4) Notwithstanding the provisions of paragraph (3)(i):

(i) In the case of a trust, if the settlor and the beneficiaries are related by blood or marriage, the trust and the trustee, when acting on behalf of the trust or simultaneously on his own behalf, is counted only as one offeree, purchaser or client.

(ii) Multiple trusts are counted as one offeree, purchaser or client if all of the beneficiaries are related by blood or marriage.

(5) Notwithstanding the provisions of paragraph (3)(i) in an entity in which all owners of equity interests or equity securities, excluding contingent interests and director's qualifying shares, are persons related by blood or marriage residing in the same household, the following apply:

(i) The entity is counted as one person.

(ii) The owners of the interests or securities in the entity are not counted as offerees, purchasers and clients.

(b) This section does not apply if a section of the act or a regulation promulgated thereunder sets forth another method of computing offerees, purchasers or clients.

§ 609.031. Application.

(a) This chapter, and constructions and interpretations issued by the Department, set forth the minimum requirements for financial statements included, under the act, as part of the following:

(1) Registration Statements under section 206 of the act (70 P.S. § 1-206).

(2) Registration Statements under section 205 of the act (70 P.S. § 1-205) which are exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

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

(4) Reports distributed to securityholders under section 606(a) of the act (70 P.S. § 1-606(a)).

(5) Financial reports of broker-dealers or investment advisers required under Subpart C (relating to registration of broker-dealers, agents, investment advisers and investment adviser representatives and notice filings by Federally covered advisers).

(6) Exempt transactions under section 203(p) of the act.

(b) Offerings of securities registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or filings of proxy materials under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) which meet the requirements of Reg. S-X, 17 CFR 210.8-01—210.8-03 (relating to preliminary notes to Article 8; annual financial statements; and interim financial statements), adopted by the Securities and Exchange Commission or broker-dealer reports filed under the Securities Exchange Act of 1934 under regulations adopted thereunder are exempted from this chapter, except if otherwise indicated.

(c) References to "registration" under the Securities Act of 1933 are to be construed strictly. By way of illustration the procedure of "notification" under the Regulation A (17 CFR 230.251—230.263) (relating to conditional small issues exemption) will not be recognized as "registration."

§ 609.032. (Reserved).

§ 609.033. Accountants.

(a) *Qualification of accountants.*

(1) The Department will not recognize a person:

(i) As a certified public accountant who is not registered and in good standing under the laws of the place of the person's residence or principal office.

(ii) As a public accountant who is not in good standing and entitled to practice under the laws of the place of the individual's residence or principal office.

(2) The Department will not recognize a certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to a person, or any of its parents, its subsidiaries or other affiliates in which either of the following applies:

(i) During the period of the accountant's professional engagement to examine the financial statements being reported on or at the date of his report, the accountant or accountant's firm or a firm member had, or was committed to acquire, a direct financial interest or a material indirect financial interest.

(ii) During the period of the accountant's professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, the accountant or accountant's firm or a firm member was connected as a promoter, underwriter, voting trustee, director, officer or employee.

(3) A firm will be considered independent in regard to a particular person if a former officer or employee of the person is employed by the firm and the individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of the individual's employment by the person.

(4) In determining whether an accountant is in fact independent with respect to a particular registrant, the Department will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and the registrant or any affiliate of the registrant, and will not confine itself to the relationships existing in connection with the filing of reports with the Department.

(b) *Accountant's reports*.

(1) *Auditor's report format*. The format of the auditor's report must be in accordance with the reporting standards established by generally accepted auditing standards including Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants or the auditing standards promulgated by the Public Company Accounting Oversight Board as required under law.

(2) *Accountant's review report format*. The format of the accountant's review report must be in accordance with the reporting standards established by Statements on Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(3) *Accountant's compilation report format*. The format of the accountant's compilation report must be in accordance with the reporting standards established by Statements on Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(4) *Certain accountant's reports*. Auditor's reports, accountant's review reports or accountant's compilation reports issued by public accountants are not permitted for reports required under § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

(a) If an issuer proposes to register its securities for sale under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), and for which securities a registration statement has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall:

(1) Comply with the financial statement requirements as set forth in the rules and regulations of the Securities and Exchange Commission (17 CFR 210.1-01—210.12-29) (relating to form and content of and requirements for financial statements, Securities Act of 1933, Securities Exchange Act of 1934, Investment Company Act of 1940, Investment Advisers Act of 1940, and Energy Policy and Conservation Act of 1975).

(2) Prepare the financial statements in accordance with generally accepted accounting principles.

(3) Present the financial statements in comparative form.

(b) Except as provided in subsection (d), an issuer shall file the financial statements listed in subsection (c) if one of the following conditions apply:

(1) The issuer proposes to register its securities for sale under section 206 of the act.

(2) The 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.

(3) The issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P.S. § 1-203(p)).

(4) The issuer is required to file proxy materials under section 203(o) of the act.

(c) If required under subsection (b), the issuer shall file the following financial statements, prepared in accordance with generally accepted accounting principles and presented in comparative form:

(1) A balance sheet of the issuer, dated within 120 days of the date of filing with the Department and comply with either of the following requirements if the balance sheet is not audited:

(i) The issuer shall also file an audited balance sheet as of the issuer's last fiscal year.

(ii) The issuer shall also file an audited balance sheet as of the end of the issuer's next preceding fiscal year if the issuer's last fiscal year ended within 90 days of the date of filing.

(2) Statements of income, stockholders' equity and cash flows for each of 2 fiscal years or less, if the issuer and its predecessors have been in existence for less than 2 years preceding the date of the latest balance sheet filed, and for the period, if any, between the close of the latest of the fiscal years and the date of the latest balance sheet filed.

(i) These statements shall be audited up to the date of the latest audited balance sheet filed.

(ii) If changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of stockholders' equity does not need to be filed.

(3) Consolidated balance sheets, statements of income, stockholders' equity and cash flows complying with the audit requirements in paragraphs (1) and (2) must be filed for the issuer and its subsidiaries in accordance with this section.

(4) A balance sheet of the issuer before the reorganization, a column showing the changes to be effected in the reorganization, and a pro forma balance sheet after the reorganization if the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities or capital accounts.

(i) The issuer shall explain in a footnote the adjustments made.

(ii) If a reorganization has taken place at any time covered by the statements of income filed, the issuer shall explain in a footnote the effect of the reorganization.

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

(6) Financial statements for the business as would be required if it were an issuer if the issuer has acquired any business (or the securities of any person giving the issuer control over the person) after the date of its latest balance sheet filed under paragraph (1), or if the issuer proposes to acquire those types of business or securities.

(i) The issuer shall also file pro forma statements of income in columnar form.

(ii) The acquisition of securities which will extend the issuer's control over another person is considered the acquisition of a business if the securities being registered under section 206 of the act are to be offered for the securities to be acquired, or if the purpose of the proxy statement is to effectuate the acquisition.

(iii) Financial statements do not need to be filed under this paragraph for any acquisition from a totally-held subsidiary.

(iv) Statements of businesses may be omitted if, considered in the aggregate as a single subsidiary, they would not constitute a significant subsidiary, except that the statements may not be omitted when the securities being registered under section 206 of the act are to be offered in exchange for the securities to be acquired, or if the purpose of the proxy statement is to effectuate the acquisition.

(7) The registration statement with summary statements for each of the 3 most recent fiscal years and for the period from the date of the end of the latest fiscal year to the date of the latest balance sheet filed if an issuer proposes to register its securities under section 206 of the act. The summary statements of income required in this paragraph are in addition to the financial statements required under paragraph (2).

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

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

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

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

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

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

(f) For purposes of this subsection, the Department used the corporate form of financial statement title, but because financial statement title terminology may differ for other types of accounting entities, including nonprofit organizations, those entities shall include the analogous financial statements.

(g) If consistent with the protection of investors, the Department may:

(1) Permit the omission of one or more of the financial statements required under this section or the filing in substitution of appropriate statements of comparable character.

(2) Require the filing of other financial statements in addition to, or in substitution for, the financial statements required under this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

(h) Subsections (b)(2) and (c) do not apply when an issuer offers or sells a security in an offering exempt from registration with the Securities and Exchange Commission under Tier 2 of regulation a adopted under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) in good faith reliance on section 203(u) of the act.

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) If an issuer is required under the act and this title to distribute financial information to securityholders, it must include all of the following financial statements:

(i) Balance sheets, statements of income, stockholders' equity and cash flows all in comparative form, for the issuer's last 2 fiscal years.

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

(2) The financial statements shall be audited and prepared in conformity with generally accepted accounting principles applied consistently with past periods or noting any changes, except that the financial statements do not need to be audited if the issuer is permitted by this title or by the Department to distribute unaudited financial information to securityholders.

(b) *Form of financial statement*. For purposes of this section, the Department used the corporate form of financial statement title, but because financial statement title terminology may differ for other types of accounting entities, including nonprofit organizations, those entities shall include the analogous financial statements.

§ 609.037. Foreign financial statements.

(a) Under section 609(c) of the act (70 P.S. § 1-609(c)), financial statements and financial information prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be distributed to the public if a registration statement designated as Form F-7, F-8, F-9 or F-10 by the Securities and Exchange Commission has been filed with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) and all of the following apply:

(1) The securities which are the subject of the registration statement designated as Form F-9 by the Securities and Exchange Commission are either nonconvertible preferred stock or nonconvertible debt which are to be rated in one of the four highest rating categories by one or more Nationally recognized statistical rating organizations.

(2) The securities which are the subject of a registration statement designated as Form F-7 by the Securities and Exchange Commission are offered for cash on the exercise of rights granted to existing securityholders.

(3) The securities which are the subject of a registration statement designated as Form F-8 by the Securities and Exchange Commission are securities to be issued in an exchange offer.

(4) The securities which are the subject of a registration statement designated as Form F-10 by the Securities and Exchange Commission are offered and sold pursuant to a prospectus in which the Securities and Exchange Commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(b) For purposes of this section, preferred stock and debt securities which are not convertible for at least 1 year from the date of effectiveness of the registration statement will be considered to meet the requirement of subsection (a)(1).

CHAPTER 610. (Reserved)

§ 610.010. (Reserved).

Subpart G. GENERAL PROVISIONS

CHAPTER 701. ADMINISTRATIVE PROVISIONS

§ 701.010a. Filing of registration forms.

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) Forms filed with the Department must be in the format prescribed by the Department in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Department or the Securities and Exchange Commission, NASAA or successors.

(d) The use of an electronic signature has the same force and effect as a manual signature.

§ 701.011. Filing of exemption forms.

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) All forms and accompanying documents filed with the Department must be in the format prescribed by the Department in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Department or the Securities and Exchange Commission or successors.

(d) The use of an electronic signature has the same force and effect as a manual signature.

§ 701.020. Electronic filing.

Unless the Department orders otherwise, all documents shall be filed with the Department in the manner prescribed in the accompanying General Instructions.

§ 701.030. Fees.

Issuers filing registration or exemption forms by electronic means shall include the payment of fees or assessments required under section 602 or 602.1 of the act (70 P.S. §§ 1-602 and 1-602.1) by one of the following means:

(1) Automated Clearing House transfer of funds to the Department's designated depository.

(2) As otherwise required by the Department in the General Instructions.

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 901. (Reserved)

§ 901.011. (Reserved).

Subpart I. TAKEOVER OFFERORS

CHAPTER 1001. TAKEOVER DISCLOSURES

§ 1001.010. Takeover offeror report regarding participating broker-dealers.

The Department has determined that, to carry out the purposes of the Takeover Disclosure Law (law) (70 P.S. §§ 71—85), it is necessary to require the offeror to file, as an exhibit to the registration statement filed under section 4 of the law (70 P.S. § 74), Department Form TDL-1 in accordance with the General Instructions thereto.

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