

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 183]

Income

The Department of Public Welfare (Department), under the authority of sections 201(2) and 403(b) of the Public Welfare Code (code) (62 P.S. §§ 201(2) and 403(b)), intends to amend the regulations to read as set forth in Annex A. Section 201(2) of the code gives the Department the authority to promulgate regulations. Section 403(b) of the code provides that the Department will establish rules, regulations and standards consistent with the code, and whenever possible, establish rules, regulations and standards for General Assistance (GA) consistent with those established for Aid to Families with Dependent Children (AFDC), now replaced by Temporary Assistance for Needy Families (TANF). The incorporation of this proposed rulemaking is predicated upon provisions in the act of May 16, 1996 (P.L. 175, No. 35) (Act 35), which govern eligibility for cash benefits and provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104-193), which permit states to design their own TANF programs consistent with Federal requirements. The proposed rulemaking affects the TANF program and the Commonwealth's GA program.

Purpose

The purpose of this proposed rulemaking is to promulgate the provision in section VI(A)(6) in the TANF State Plan as published at 27 Pa.B. 342 (January 18, 1997) and at section VI(A)(7) in the current TANF State Plan as published at 29 Pa.B. 5658 (October 30, 1999). This provision counts lump sum payments as income in the month of receipt and as a resource in subsequent months.

Background

Act 35 provided the framework for the Commonwealth's welfare reform plan which included changes to both the State-funded GA program and the Federal AFDC program. On August 22, 1996, the President signed into law PRWORA, which eliminated the open-ended entitlement program known as AFDC and created a block grant program, TANF, that allows states to provide time-limited cash assistance to needy families under programs that are state-designed. While PRWORA sets forth specific requirements for states to follow, such as establishing work requirements and time limits on the receipt of cash assistance, states have the unprecedented opportunity to design and operate cash assistance programs that are tailored to meet the needs of the people they serve.

The incorporation of this proposed rulemaking is predicated upon provisions in Act 35 which govern eligibility for cash benefits and provisions in PRWORA, which permit states to design their own TANF programs consistent with Federal requirements. The flexibility provided by PRWORA allows the Department to proceed with the lump sum change in this proposed rulemaking.

Need for Proposed Rulemaking

This proposed rulemaking is needed to incorporate into Chapter 183 (relating to income) the provision in section

VI(A)(6) in the TANF State Plan as published at 27 Pa.B. 342 and at section VI(A)(7) in the current TANF State Plan as published at 29 Pa.B. 5658. The proposed rulemaking is being prepared for promulgation as proposed rulemaking to ensure sufficient opportunity for public review and comment prior to implementation.

Summary of Requirements

The proposed amendment to § 183.105(4) (relating to increases in income) specifies that lump sum payments are counted as income only in the month of receipt and as a resource in subsequent months. Under current policy, the effects of lump sum payments on cash assistance benefits are calculated using a formula that often results in ineligibility for cash assistance for entire budget groups over an extended period of time. The formula assumes that the lump sum will be available to meet basic living needs and does not take into account that a family, that is, budget group, may need to use the funds for other valid purposes. For example, a family may need to purchase a vehicle for employment or move into better housing. Allowing for the expenditure permits a family to strengthen its financial situation and improve its general standard of living, which can help propel the family to greater self-sufficiency. To this extent, the proposed change in lump sum policy is consistent with the Department's overall goal of welfare reform, which is to design programs that promote and encourage self-sufficiency.

Affected Individuals and Organizations

This proposed rulemaking affects applicants/recipients of TANF and GA cash benefits who receive lump sum payments such as insurance settlements, delayed wages, lottery winnings and the like. Lump sum payments are no longer calculated in a manner that establishes a defined period of ineligibility. Lump sum payments are considered income in the month of receipt. If the lump sum income (after allowable deductions) exceeds the monthly assistance grant, the budget group is ineligible for assistance in that month. The budget group must verify that any funds remaining in subsequent months do not exceed the appropriate resource level for the category of assistance.

Fiscal Impact

Commonwealth: The State will incur an estimated annual cost of \$346,000. This estimate represents an additional 12 months of eligibility for 136 GA clients at an average monthly cost of \$205 per client. The estimate assumes that clients will spend down the resource limit in 1 month.

Public Sector: No other government entity will incur any costs or realize any savings.

Private Sector: No private sector entity will incur any costs or realize any savings.

Paperwork Requirements

This proposed rulemaking will moderately decrease the paperwork requirements associated with the eligibility process. Eligibility calculations associated with the receipt of lump sum payments will no longer require the determination of a defined period of ineligibility.

Effective Date

The proposed rulemaking is effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

Sunset Date

There is no sunset date. The Department conducts periodic reviews of the GA program in accordance with section 403(e) of the code. TANF regulations are also reviewed through the Department's Quality Control and Corrective Action review process.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Edward Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081 within 30 days after the date of publication of this proposed rulemaking in the Pennsylvania Bulletin. All comments received within 30 calendar days will be reviewed and considered in the preparation of the final-form rulemaking. Comments received after the 30-day comment period will be considered for any subsequent revisions of this proposed rulemaking.

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 23, 2001, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed rulemaking. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

FEATHER O. HOUSTOUN, Secretary

Fiscal Note: 14-471. (1) General Fund; (2) Implementing Year 2000-01 is \$346,000; (3) 1st Succeeding Year 2001-02 is \$346,000; 2nd Succeeding Year 2002-03 is \$346,000; 3rd Succeeding Year 2003-04 is \$346,000; 4th Succeeding Year 2004-05 is \$346,000; 5th Succeeding Year 2005-06 is \$346,000; (4) 1999-00 Program—\$311,394,000; 1998-99 Program—\$259,688,000; 1997-98—\$323,388,000; (7) Cash Grants; (8) recommends adoption. Funds are included in the budget for this purpose.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D: DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 183. INCOME

* * * * *

MONTHLY ASSISTANCE PAYMENT DETERMINATION

§ 183.105. Increases in income.

An increase in actual, deemed or estimated income of the budget group in a calendar month affects eligibility and the amount of the monthly assistance payment as follows:

* * * * *

(4) If the increase in income is due to receipt of a lump sum [income], the following applies:

(i) [If the increase in lump sum income of the budget group or LRR other than the parent of an AFDC minor parent living with the budget group results in ineligibility, assistance is terminated no later than the payment month corresponding with the budget month in which the income was received. The budget group is ineligible for the number of full months for which the lump sum and other countable net income will meet the needs of the budget group and LRR whose lump sum income is counted. The standard of need—Appendix B, Table 1—used to determine the period of ineligibility is the one applicable to the county in which the budget group resides and is based on the number of persons in the budget group plus the LRR whose lump sum income is counted.] The amount of lump sum is counted as income in the month of receipt, if received by a member of the budget group or certain other household members such as an LRR, a parent of a TANF minor parent, a stepparent or a sponsor of an alien. The lump sum income deductions are applied, as specified in §§ 183.91, 183.93, 183.94, 183.95 and 183.98(1)—(3).

[(A) If the income calculated as remaining after the period of ineligibility is less than the monthly assistance payment, it is considered income only in the first month following the period of ineligibility.

(B) If the income calculated as remaining after the period of ineligibility is equal to or exceeds the monthly assistance payment, the budget group is ineligible for 1 additional month. The remainder is a resource, if available, in the month of reapplication.

(C) The period of ineligibility applies to an individual whose lump sum income is counted and those individuals who were receiving or applied for assistance during the month the lump sum income was received. Other individuals who did not receive or apply for assistance during the month the lump sum income was received and who subsequently apply may be eligible for a monthly assistance benefit.

(D) Advance notification of ineligibility includes the computation upon which the period of ineligibility is based. If the exact amount of the lump sum income received is unknown due to the refusal to provide this information, the budget group is determined to be ineligible due to failure to cooperate.]

(ii) [Recalculation of the period of ineligibility following the initial application of this subparagraph is required under certain circumstances. The recalculation may only shorten the period of ineligibility, not lengthen it. The grant may be restored at the end of the recalculated period of ineligibility upon reapplication, if the budget group is other-

wise eligible for a grant. No retroactive benefits may be granted for any period of time prior to the date of the reapplication. Recalculations are made only under the following conditions:] If the lump sum income does not result in ineligibility, the increase in actual or deemed lump sum income in the month of receipt affects the assistance payment in the corresponding payment month.

[(A) When a member of the budget group leaves the family taking the remaining funds from the lump sum income and refuses to make the lump sum available to the rest of the family. The period of ineligibility for the remaining members is recalculated beginning with the month of the loss of these funds by the remaining members as follows:

(I) If funds which should be remaining are removed, the remaining members are eligible. If only part of those funds which should be remaining from the initial lump sum calculation are removed, the period of ineligibility is recalculated by dividing the funds which should be remaining, less the amount of funds removed, by the standard of need for the number of persons covered under the original lump sum calculation remaining in the household. The amount remaining is considered income under subparagraphs (i) and (iii).

(II) The original period of ineligibility is applied to the persons who left the household. The amount remaining is considered income under subparagraphs (i) and (iii). The period of ineligibility is applied whether or not the members later return to the household.

(B) When a natural disaster or other life or health threatening event over which the budget group has no control necessitates expenditure of the balance of the lump sum income. This clause applies only when, prior to the event, the budget group was using the lump sum income to meet 2 essential needs and there are no other income or resources sufficient to meet the needs resulting from the event.

(C) When medical expenses are incurred and paid for a member of the budget group, which are for medically necessary surgery or medical care to treat a congenital condition, serious illness or traumatic injury, if medical needs were not taken into account in determining the initial period of ineligibility; the needs cannot be met by other income or resources; and, the lump sum income was being used to meet the essential needs of the budget group.

(D) If the budget group is unable to verify the cost of essential needs, such as shelter, clothing and food, allow for basic living needs under the standard of need levels for the size of the budget group in recalculating the period of ineligibility.]

(iii) [The amount of lump sum income received by the nonassistance stepparent, parent of an AFDC minor parent or sponsor of an alien remaining after disregards as defined in §§ 183.91, 183.93 and 183.98(1)—(3) (relating to LRR, parent of an AFDC minor parent and stepparent deductions; sponsor deductions; and unearned income and lump sum income deductions) is considered only in the month of receipt under § 183.71(b) (relating to gross income test) and paragraphs (2) and (3). A portion

retained by the stepparent or parent of an AFDC minor parent subsequent to the month of receipt is a resource to that person and is not to be considered in determining eligibility for a budget group unless actually made available to them. A portion retained by the sponsor subsequent to the month of receipt is a resource to the alien in subsequent months.] When the lump sum is received by a budget group member or LRR living in the household, other than a parent of a TANF minor parent, any portion of the lump sum that remains after the month of receipt is considered a resource under § 177.11 (relating to identification and verification of resources).

(iv) [An individual who receives GA and who is determined to be ineligible for a specified period due to receipt of lump sum income may apply for and receive AFDC during this period if otherwise eligible. Remaining lump sum income is considered a resource under Chapter 177 (relating to resources).] Any portion of the lump sum retained by the stepparent or parent of a TANF minor parent subsequent to the month of receipt is a resource to the stepparent or parent of the TANF minor parent and is not to be considered in determining eligibility for the budget group unless it is actually made available to the budget group.

(v) Any portion of the lump sum retained by the sponsor of an alien subsequent to the month of receipt is a resource to the alien in subsequent months, providing the alien's entry into the United States is within 3 years.

(vi) If the lump sum makes the budget group ineligible in the month of receipt, and the ineligibility is expected to last more than 1 month, assistance is terminated for the first payment date that can be reached either in the month of receipt or the following month after proper notice is provided as described in § 133.4 (relating to procedures). An overpayment occurs for cash assistance received during the months of ineligibility.

(vii) If the exact amount of the lump sum received is unknown because of a refusal to provide this information, the budget group is ineligible due to failure to cooperate under § 125.21(a) (relating to policy).

[Pa.B. Doc. No. 01-1415. Filed for public inspection August 3, 2001, 9:00 a.m.]

SECURITIES COMMISSION

[64 PA. CODE CHS. 202, 203, 301—304 AND 606]

National Securities Markets Improvement Act of 1996 Amendments

Statutory Authority

The Securities Commission (Commission), under the authority contained in sections 202(i), 203(r), 301(b), 302(f), 303(a), (c) and (d), 304(a), (d) and (e), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-202(i), 1-203(r), 1-301(b), 1-302(f), 1-303(a), (c) and (d), 1-304(a), (d) and (e), 1-606(d) and 1-609(a)) proposes to amend and adopt rulemakings concerning the subject matter of the act as set forth in Annex A.

Summary and Purpose of Regulations

- § 202.093 It is proposed to amend this section to permit persons to receive compensation for soliciting contributions or transfer of assets to pooled income funds if they are registered with the Commission under section 301 of the act and to permit Federally covered advisers to advise the fund.
- § 202.095 It is proposed to amend this section to permit persons to receive compensation for soliciting the sale of charitable gift annuities if they are registered with the Commission under section 301 of the act.
- § 203.202 This new section would exempt transactions effected by broker-dealers exempt from registration under § 302.065 (relating to Canadian broker-dealer exempt).
- § 301.020 This section was adopted when the Central Registration Depository (CRD) first began an agent transfer program in 1984. The program has been incorporated into Form U-4 and it is proposed that the section now reference that transfers must be done in compliance with the terms and conditions of Item 15 of Form U-4.
- § 302.061 This section is proposed to be amended by deleting the requirement to file and post Forms 302-F1, AU-1 and AU-2 to claim the exemption and reducing the number of requirements for the exemption to be available.
- § 302.062 It is proposed that this section be deleted as section 102(j)(iv) of the act (70 P.S. § 1-102(j)(iv)) was amended in 1998 to make this section a statutory exclusion from the definition of investment adviser.
- § 302.064 It is proposed that this section be broadened to include any agent of a broker-dealer registered with the Commission who is a member of a National securities exchange where the agent's only customers are other registered broker-dealers.
- § 303.011 It is proposed to conform this section with the State preemption provisions of the National Securities Markets Improvement Act of 1996 (NSMIA).
- § 303.013 It is proposed to delete the requirement to file a fingerprint card as part of the registration process for an agent of an issuer and the requirement for a broker-dealer to keep certain information on file for agents since that information is readily available to the Commission through CRD.
- § 303.031 It is proposed that this section incorporate changes made to the Series 66 exam.
- § 303.041 It is proposed to conform this section with NSMIA.
- § 304.011 It is proposed to conform this section with NSMIA.
- § 304.021 It is proposed to revise this section to conform with the state preemption provisions of NSMIA and provide that any financial information to be submitted to the Commission be prepared by an independent certified public accountant.
- § 304.041 It is proposed to adopt a new section to make clear that representatives of the Commission who conduct examinations in accordance with section 304(d) of the act have the ability to view and have access to the physical location where files are kept in the registrant's office which is the subject of an examination.
- § 304.051 It is proposed to delete references in the section to charges established by stock exchanges and the United States Securities and Exchange Commission (SEC), since the SEC structure was deregulated in the '70s.
- § 606.031 It is proposed to amend this section and make it the sole section governing use of advertising in the connection with the offer and sale of securities under the act and would incorporate by reference advice given by the SEC on publication of advertisements by use of electronic media.
- § 606.032 It is proposed that this section be deleted since its provisions have been superceded by specific provisions in the Takeover Disclosure Law (70 P.S. §§ 71—85) concerning filing of advertisements and solicitation materials in tender offers.
- § 606.033 It is proposed this section be deleted because its provisions have been preempted by NSMIA except for governmental issuers located in this Commonwealth whose provisions relating thereto have been incorporated into the proposed revisions to § 606.031 (relating to advertising literature).
- § 606.034 It is proposed this section be deleted because its provisions have been preempted by NSMIA.
- § 606.041 It is proposed that this section be amended to reflect a recent Commission reorganization, update references in the section to acknowledge interim changes in relevant statutes and rules and to grant additional authority to the Director of Corporation Finance to register certain nonprofit debt offerings.

Persons Affected by this Rulemaking

Nonprofit organizations are affected by the proposed changes to sections relating to pooled income funds and charitable gift annuities. Another regulatory proposal affects Canadian issuers who issue securities to persons covered by certain tax advantaged plans which transactions are effected by Canadian broker-dealers eligible to rely on a registration exemption. Auctioneers licensed by the State Auctioneer Board are affected by the section exempting them from broker-dealer and agent registration. Broker-dealers and agents are affected by the proposed regulatory actions impacting on registration requirements, examination requirements, required books and records retention and net capital requirements. The regulatory proposal on advertising affects issuers of securities which may publish an advertisement in this Commonwealth in connection with an offer or sale of securities.

Fiscal Impact

The proposed regulatory actions impose no new compliance costs and actually reduce compliance costs by ex-

panding exemptions, eliminating required filings with the Commission and reducing the amount of information which was be maintained by registrants.

Paperwork

The Commission proposes to eliminate Forms 302-F1, AU-1 and AU-2 required for auctioneers to claim an exemption form broker-dealer and agent registration for the occasional auctioning of securities. As previously indicated, paperwork will be reduced further by elimination of filing of currently mandated reports and information with the Commission.

Effective Date

The proposed amendments and regulations will become effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 13, 2001, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Commission within 10 days of the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Commission, the General Assembly and the Governor of objections raised.

Availability in Alternative Formats

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

Contact Person

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

M. JOANNA CUMMINGS,
Secretary

Fiscal Note: 50-116. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.093. 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 Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) of any 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:

* * * * *

(5) None of those persons responsible for solicitation of contributions to the Fund will receive commissions or other special compensation based upon 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 Commission as a broker-dealer under section 301 of the act (70 P. S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.**

(6) Any person who, for compensation, advises the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise performs as [in] an investment adviser [in connection with securities purchased or sold by the charitable organization] is [in compliance with the registration requirements of section 301 of the act (70 P. S. § 1-301), if applicable] either an investment adviser registered with the Commission under section 301 of the act or is a Federally covered adviser that is in compliance with section 303(a) of the act (70 P. S. § 1-303(a)).

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

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P. S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

* * * * *

(3) None of the persons responsible for solicitation of purchasers of annuities will receive commissions or other special compensation based upon the amount of the annuity purchased **except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Commission as a broker-dealer under section 301 of the**

act (70 P. S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.

* * * * *

(b) [Advertising literature, as defined in] 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 but is subject to the antifraud provisions of sections 401—409 of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P. S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) for the offer 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).

**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.

[(a)] An agent who wishes to terminate [his] employment with one registered broker-dealer and thereafter commence employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the Commission if all of the following conditions are met:

* * * * *

(2) The transfer is effected in accordance with the [terms and conditions of the NASAA/CRD Temporary Agent Transfer Program as established under an agreement between and operated under guidelines established by NASDAQ, Inc., a wholly-owned subsidiary of the National Association of Securities Dealers, Inc., and the North Association, Inc.] terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

[(3) The employing broker-dealer has executed and filed an Undertaking for Participation in the NASAA/CRD TAT Program.

(4) The employing broker-dealer currently is not subject to an order of the Commission which would otherwise make this section unavailable.

(b) For purposes of this section, the term Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program shall mean the docu-

ment entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the NASAA/NASD Central Registration Depository, 1735 "K" Street, N.W., Washington, DC 20006.]

CHAPTER 302. EXEMPTIONS

§ 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 Commission deems it appropriate and in the public interest to exempt [broker-dealers and agents] persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P. S. § 1-301) if [the persons fulfill the requirements of this section] all of the following conditions are met:

(1) The person [is licensed] meets one of the following conditions:

(i) Is licensed as an auctioneer [or], apprentice auctioneer, auction company or auction house under [section 707 of] the Auctioneers License Act [(63 P. S. § 707)] (AALA) (63 P. S. §§ 734.1—734.34).

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

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

(2) The person [offers and sells] effects transactions in securities solely at an "auction" or at a "sale at auction" as these terms are defined in [section 702(5) of the Auctioneers License Act (63 P. S. § 702(5))] the AALA.

(3) [The person does not sell in a period of 12 consecutive months, securities at auction of a dollar amount in excess of the lesser of \$250,000 or 5% of the total dollar amount of all "goods" as that term is defined in section 702(1) of the Auctioneers License Act (63 P. S. § 702(1)) sold by the person during that period.

(4) The person has filed an executed Commission's Form 302-F1 with the Commission at least 10 business days prior to the offer and sale of securities.

(5) The person has not been convicted of a crime or made the subject of any sanction described in section 305(a)(ii)—(ix) of the act (70 P. S. § 1-305(a)(ii)—(ix)).

(6) The person undertakes as a condition of the exemption only to offer and sell securities at auction if:

(i) No later than 24 hours prior to the auction of a security Forms AU-1 and AU-2 are completed.

(ii) No later than 24 hours prior to the auction of any security Forms AU-1 and AU-2 (except for Part C) are conspicuously posted at the place of the auction.

(iii) Immediately prior to the auction of any security, the information appearing on the responses to questions on Form AU-1 are publicly announced at the auction.

(iv) Immediately prior to the auction of any security, the information appearing on the response to questions on Form AU-2, Part B, items 3(a)—(f) are publicly announced at the auction.

(7) The person undertakes to comply with the provisions of the act, including the anti-fraud provisions contained in Part IV of the act (70 P. S. §§ 1-410—1-407) and the advertising provisions contained in section 606(c) of the act (70 P. S. § 1-606(c)).

(8) The person offers and sells at auction only securities in a] 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)).

[(9) The person shall at all times maintain a complete set of books, records, and accounts of such sales of securities including copies of Forms AU-1 and AU-2 utilized in any offers or sales of securities, for a period of 3 years.

(10) The person shall take such steps as may be necessary to ensure that all material information contained in its Form 302-F1 remains current and accurate. In the event that any material statement made in such forms, or in any attachments thereto becomes incorrect or inaccurate, the applicant shall file with the Commission an amendment on Form AM within 10 business days of the occurrence of the event which required the filing of such amendment.

(11) The person is not the subject of an order issued by the Commission denying, suspending or revoking the exemption claimed under this section.]

(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 Commission 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 Commission 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 purposes of all items other than subsection (a)(5) and (11), "person" means all affiliated auctioneers and apprentice auctioneers working with and for the same auctioneer.

(c)] Solely for purposes of subsection [(a)(8)] (a)(3), a transaction where a bank, as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)), acting as a

fiduciary under a trust agreement, estate administration or other similar relationship, causes [its] the bank's securities to be offered and sold at auction from such [persons'] accounts shall be deemed to be a nonissuer transaction.

[(d) The following forms are part of this section:]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of Forms 302-F1, AU-1 and AU-2, which currently appear at 64 Pa. Code pages 302-4—302-12, serial pages (234918)—(234926).)

§ 302.062. [Publishers exemption from investment adviser registration] (Reserved).

[(a) Under section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt investment advisers from the registration provisions of section 301 of the act (70 P. S. § 1-301) if the investment advisers fulfill the requirements of this subsection:

(1) The person's investment advisory activities in this Commonwealth are limited solely to being a publisher of a bona fide newspaper, news column, news magazine or business or financial publication with a general, regular and paid circulation or being a publisher of a securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situation.

(2) The person, or an affiliate thereof, whether prior or subsequent to becoming associated with the person, has not been subject to any of the following:

(i) Conviction within the past 10 years of a crime described in section 305(a)(ii)(A) of the act (70 P. S. § 1-305(a)(ii)(A)).

(ii) Sanctions described in section 305(a)(iii) of the act (70 P. S. § 1-305(a)(iii)).

(iii) A finding within the past 5 years that the person has met any of the criteria described in section 305(a)(iv) of the act (70 P. S. § 1-305(a)(iv)).

(b) The Commission may deny, suspend or revoke the exemption contained in this section for a person or an affiliate thereof, whether prior or subsequent to becoming associated with the person, if it finds the person or affiliate to meet the criteria set forth in any of the following clauses of section 305(a) of the act: (i), (ii)(B), (ii)—(xiii) (70 P. S. §§ 1-305(a)(i), (ii)(B), (iii)—(xiii)).]

§ 302.064. [Philadelphia] Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P. S. § 1-301), if [the individuals fulfill the] all the following requirements [of this section.] are met:

(1) The agent is representing a broker-dealer which [is] meets the following requirements:

* * * * *

(ii) A member of [the Philadelphia Stock Exchange] a National securities exchange registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

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

(3) The agent is not subject to a currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration or [another] an order of the Commission [baring the individual from any form of relationship with a person registered under section 301 of the act] issued under section 512 of the act (70 P.S. § 1-512).

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.011. Broker-dealer registration procedures.

(a) An application for initial registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Application for Broker-Dealer Registration (Form BD), or a successor form, and shall be made in the following manner[.]:

(1) [The] An applicant which is not a member of the National Association of Securities Dealers, Inc. (NASD) or a member of a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)), and financial statements in the form required by subsections (b) and (c).

(2) An applicant which is not a member of the NASD but is a member of a National securities exchange registered with the SEC under the Securities Exchange Act of 1934 shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(3) An applicant which is a member of NASD shall file Form BD in the manner set forth in § 606.011(f) (relating to filing requirements) accompanied by the filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(b) [Except as set forth in subsection (d)] Except for applicants described in subsections (a)(2) and (3), every application shall be accompanied by a statement of the financial condition of the applicant 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 [or independent public accountant]. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end

of the preceding fiscal year. If the date of the most recent audited statement of financial condition is more than 45 days prior to 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. As a part of the statement, the Commission may require the filing of separate schedules:

* * * * *

(c) [For] Except for applicants described in subsections (a)(2) and (3), an applicant that has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of income for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year.

(d) [As an alternative to subsections (b) and (c), an application filed by a member organization of the Philadelphia Stock Exchange (PHLX) that does not conduct business with customers as defined in Rule 17a-5 promulgated under the Securities and Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), and is designated to PHLX for financial responsibility under Rule 17d-1 promulgated under the Securities Exchange Act of 1934 and is exempt from Rule 15c3-1 or excluded under Rule 17a-5(d)(iii) promulgated under the Securities Exchange Act of 1934 may be accompanied by an unaudited statement financial condition, dated as of the end of the applicant's most recent fiscal year prepared in accordance with generally accepted accounting principles. The statement financial condition of shall be supplemented by a schedule of minimum net capital or minimum net liquid assets as defined in PHLX Rule 703] An applicant described in subsection (a)(2) or (3) shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(e) A broker-dealer registered under the act shall take [the] steps necessary to ensure that [the] 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 Commission [amended pages of] an amendment on Form BD [in accordance with General Instruction to Form BD] within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.013. Agent registration procedures.

(a) An application for initial registration as an agent of a broker-dealer or issuer shall contain the information requested in and shall be made on Uniform Application for Securities [Futures] Industry Registration or Transfer (Form U-4) or a successor form. [The] Except as provided in subsection (b), the agent and the broker-dealer or issuer shall complete and file with the Commission one copy of Form U-4 and exhibits thereto accompanied by the [requisite] filing fee [and exhibits, to include fingerprints. However, fingerprints are not required to be filed by an agent or a

member firm of the National Association of Securities Dealers, Inc. which firm's agents are exempt under Securities and Exchange Commission Rule 17f-2 (17 CFR 240.17f-2) (relating to fingerprinting of securities industry personnel) from the fingerprinting requirements of section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78q)] required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and evidence of passage of the examinations required by § 303.031 (relating to examination requirements for agents).

(b) [Every broker-dealer or issuer for whom agents are to be registered shall obtain from the agent and preserve the information described in paragraphs (1)—(4) with respect to each agent. While this information is required to be maintained by the broker-dealer or issuer, it otherwise is not required to be filed with the Commission on Form U-4.

(1) The name, address, date of birth, social security number and the starting date of employment or other association with the broker-dealer or issuer.

(2) The complete educational background and a complete statement of the agent's principal business or occupation for the preceding 10 years, including the reason for leaving each prior employment.

(3) A record of a denial of registration, disciplinary action taken or sanction imposed by a Federal or state agency, or by a National securities exchange or National securities association, including a finding that the agent was a cause of disciplinary action or had violated a statute.

(4) A record of convictions for a felony or misdemeanor except minor traffic offenses, of which the agent has been the subject]

An applicant for registration as an agent of a broker-dealer which is a member firm of the National Association of Securities Dealers (NASD) 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 thereto.

(2) The filing fee required by section 602(d.1) of the act.

(3) The compliance assessment required by section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required by § 303.031.

(c) 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 Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.031. Examination requirement for agents.

[Prior to an individual becoming registered as an agent for a broker-dealer or issuer, the individual shall receive a passing grade on the following examinations:]

(a) An individual may not be registered as an agent under the act unless the individual has met the requirements of subsections (b) and (c).

[(1) The] (b) The applicant has received a passing grade on the securities examination for principals or registered representatives administered by the National Association of Securities Dealers, Inc. (NASD), the New York Stock Exchange or the United States Securities and Exchange Commission within 2 years prior to the date of filing an application for registration [or]. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) 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.

(ii) The applicant has received a waiver of the examination requirement by the NASD.

(iii) The applicant has received a Commission order waiving the examination requirement.

[(2) The] (c) The applicant has received a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or, alternatively, the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by the [National Association of Securities Dealers, Inc.] NASD within 2 years prior to the date of filing an application for registration [, or,]. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the Series 63 or, alternatively, the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a Commission order waiving the requirement to take the Series 63 or, alternatively, the Series 66 and Series 7.

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in [subsections (e) and (f)] subsection (e), every broker-dealer registered [or required to be registered] under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of \$25,000. The aggregate indebtedness of a registered broker-dealer may not exceed 1500% of its net capital. For purposes of this section, the terms "net capital" and "aggregated indebtedness" have the meanings set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) As a condition of the right to continue to transact business, every broker-dealer [shall] registered under the act that is not registered as a broker-dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act (15 U.S.C.A. §§ 78a—78kk) immediately shall notify the Commission if the broker-dealer's aggregate indebtedness exceeds 1500% of its net capital or [that] if its total net capital is less than the minimum required. [Broker-dealers complying with subsection (e) shall immediately notify the Commission if the broker-dealer's net capital or net liquid assets are

less than the minimum required.] Within 24 hours after transmitting the notice, **[each]** the broker-dealer shall file a report of its financial condition **with the Commission** including the following:

* * * * *

(d) The Commission may by order 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 SEC** to file, execute and maintain a surety bond **[in the form required by section 303(e) of the act (70 P. S. § 1-303(e)) and this chapter in the amount of \$10,000 where it deems the surety bond to be necessary or appropriate in the public interest or for the protection of customers and the bond may be deemed a part of the \$25,000 minimum net capital of the applicant as required by this section]** in compliance with § 303.051 (relating to surety bonds).

(e) Every broker-dealer registered **[or required to be registered]** under section 301 of the act **[and]** that is registered **as a broker or dealer with the [Securities and Exchange Commission or a member of the National Association of Securities Dealers, Inc.]** SEC 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 and dealers) promulgated under the Securities Exchange Act of 1934.

[(f) As an alternative to subsection (a), every broker-dealer registered or required to be registered under the act that is a member organization of the Philadelphia Stock Exchange (PHLX) shall maintain minimum net capital or minimum net liquid assets in accordance with PHLX Rule 703.]

CHAPTER 304. POSTREGISTRATION PROVISIONS
§ 304.011. Broker-dealer required records.

(a) Every broker-dealer registered **[or required to be registered]** under section 301 of the act (70 P. S. § 1-301) shall make and keep the **[following books, ledgers and]** records required to be maintained as described in **[Rules]** Rule 17a-3 **[and 17a-4]** (17 CFR 240.17a-3 **[and 240.17a-4]**) (relating to records to be made by certain exchange members, brokers and dealers **[; and records to be preserved by certain exchange members, brokers and dealers]**) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) **[As a condition of the right to continue to transact business in this Commonwealth, a registered broker-dealer shall]** A broker-dealer registered under the act that is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) immediately shall notify the Commission if the broker-dealer fails to make and keep current the books and records required by this section. Within 24 hours after filing the notice with the Commission, the broker-dealer shall file with the Commission a report stating what steps have been taken and are being taken to fully comply with this section. **[The report may be made by filing with the Commission copies of the analogous report required by the National Association of Securities Dealers, Inc., or the Securities and Exchange Commission.]**

(c) Every broker-dealer registered **[or required to be registered]** under the act shall make, keep and preserve either a separate file of written complaints of customers and actions taken by the broker-dealer in response thereto, or 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. A “complaint” shall be deemed to include 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. A registered broker-dealer that also is registered as a broker or dealer with the SEC shall be deemed to be in compliance with the requirements of this subsection if it maintains records of customer complaints as prescribed by applicable SEC rules.

(d) **[The term “customer” of the broker-dealer as used in this section includes every person except the broker-dealer.**

(e) **[The records required to be maintained under this section shall be retained and preserved for [inspection by the Commission for a period of 5 years, the period to be measured from the date of the last entry therein or from the date of receipt of the communication or other information contained therein] 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 (15 U.S.C.A. §§ 78a—78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar medium; electronic or digital storage medium; 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 upon reasonable request of the Commission or its representatives.**

§ 304.021. Broker-dealer required financial reports.

(a) Every **[registered]** broker-dealer registered under the act which is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) shall file annually with the Commission a report consisting of a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) **[Except as set forth in subsections (c) and (d), the]** 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 **[or independent public accountant]**. The accountant shall submit as a supplementary opinion comments, based upon 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) **[For purposes of this section, if the subject broker-dealer is registered with the Securities and**

Exchange Commission, the filing with the Commission of the information required by Form X-17A-5 promulgated under section 17 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78g), by the Securities and Exchange Commission, 17 CFR 249.617 shall be deemed to be in compliance with this section] A broker-dealer registered under the act which also is registered as a broker or dealer with the SEC shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(d) [As an alternative to subsection (b), a member organization of the Philadelphia Stock Exchange (PHLX) that complies with the following may file annually with the Commission the reports required by PHLX Rule 703(c):

(1) Does not conduct business with customers as defined in Rule 17a-5 promulgated under the Securities and Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(2) Is designated to PHLX for financial responsibility under Rule 17d-1 promulgated under the Securities Exchange Act of 1934.

(3) Is exempt from Rule 15c3-1 or excluded under Rule 17a-5(d)(iii) promulgated under the Securities Exchange Act of 1934.

(e)] The report required by this section shall be filed within 120 days following the end of the broker-dealer's fiscal year.

[(f) A broker-dealer that receives a Securities and Exchange Commission no-action letter waiving the filing of the initial annual audited financial report required by Rule 17a-5 (17 CFR 240.17a-5) promulgated under the Securities Exchange Act of 1934, is not required to file the initial annual audited financial report required by this section, if the next annual audited financial report of the broker-dealer covers the entire period from the date of registration of the broker-dealer with the Commission.]

§ 304.041. Examinations of broker-dealers and investment advisers.

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 shall honor all requests by representatives of the Commission to have physical access to all areas of the office which is the subject of the examination and, upon request, shall permit them to review and examine files in the physical place where the files routinely are maintained. In complying with a request, a representative of the broker-dealer or investment adviser may accompany the representatives of the Commission.

§ 304.051. Broker-dealer compensation.

No broker-dealer registered [or required to be registered] under the act may charge or receive commissions or other compensation in connection with the purchase or sale of securities unless the compensation is fair and reasonable and is determined on an equitable basis,

adequately disclosed to each customer in writing at or prior to final confirmation[, provided that the charges, commissions or other compensation consistent with rates set by a national securities exchange, when applied to transactions on that exchange, or with the rules of the Securities and Exchange Commission or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), or compensation]. Compensation which complies with the Conduct Rules [of Fair Practice] of the National Association of Securities Dealers, Inc. [, may not be deemed unreasonable] shall be deemed fair and reasonable and, unless otherwise required to be disclosed in writing by [such] the Conduct Rules [of Fair Practice], need not be disclosed in writing.

Subpart F. ADMINISTRATION

CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

§ 606.031. Advertising literature.

(a) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)), prior to effectiveness with the Commission, no person shall publicly disseminate an advertisement, display, pamphlet, brochure, letter or other communication used or to be used or circulated in connection with a primary or secondary offering of securities (referred to in this section as “advertising literature”) except:

(1) Tombstone advertisements permitted under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) and the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-52) and the rules and regulations promulgated thereunder.

(2) A preliminary prospectus or offering circular filed under section 203(h) of the act (70 P. S. § 1-203(h)).

(3) Advertising literature which has been prepared, submitted and cleared in conformity with the applicable regulations or procedures adopted by the Securities and Exchange Commission or the National Association of Securities Dealers, Inc.] *Advertisements.* Except as permitted by section 606(c) of the act (70 P. S. § 1-606(c)), a person may not publish any advertisement concerning any security in this Commonwealth unless all of the following are met:

(1) The advertisement is either :

(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 are not such as to 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) [No formal filing with or approval by the Commission with respect to the advertising literature enumerated under subsection (a)(1) and (3) will be required; however, the advertising literature shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D (relating to fraudulent and prohibited practices) and all regulations adopted thereunder.] *Registered offerings; Permitted advertisements after filing but prior to 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 Commission under section 205 or 206 of the act (70 P. S. § 1-205 or § 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Commission under section 205 or 206 of the act (70 P. S. § 1-205 or § 1-206) 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 prior to 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 United States Securities and Exchange Commission (SEC).

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) which complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the SEC.

(iv) A summary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 which complies with Rule 431 (17 CFR 230.431) (relating to summary prospectus) promulgated by the SEC.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the SEC pursuant to 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 Commission 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 SEC prior to effectiveness of the offering circular under the act if the advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(3) In connection with a registration statement filed with the Commission 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 SEC 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 \$1,000,000) promulgated by the SEC under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth prior to 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 Securities Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to 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 prior to registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10 day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(c) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)), where the security or securities transaction is exempt under section 202 or 203 of the act (70 P. S. § 1-202 or § 1-203), the advertising literature may be publicly disseminated if it is not otherwise prohibited by section 202 or 203 of the act (70 P. S. § 1-202 or § 1-203). No additional formal filing with or approval by the Commission with respect to the advertising literature shall be required, however, the advertising literature shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D.] *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 Commission 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 SEC pursuant to Regulation A (17 CFR 230.251—230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the Commission under section 205 or 206 of the act and has been qualified by the SEC 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 Commission 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 SEC 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 SEC 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: "The securities being offered have been registered with the Pennsylvania Securities Commission. The fact that the securities have been registered does not mean that the Pennsylvania Securities Commission approves or disapproves of the offering or has found the prospectus to be true, accurate or not misleading. Any representation to the contrary is a criminal offense."

(ii) The advertisement is filed with the Commission 5 days before publication in this Commonwealth and, prior to the expiration of the 5-day period, the Commission does not issue a letter disallowing publication in this Commonwealth.

(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) [In connection with a registration statement filed under section 206 of the act (70 P. S. § 1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder prior to effectiveness with the Commission, no person may publicly disseminate advertising literature including a tombstone advertisement.] *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and 202(i).* 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.

(2) *Section 202(a).* 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 thereof and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation shall 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).* 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 where the Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) [In connection with a registration statement filed under section 206 of the act (70 P. S. § 1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder which registration statement has become effective with the Commission, advertising literature containing no more than the following information may be publicly disseminated:

(1) Name and address of issuer.

(2) Identity of title or security.

(3) Per unit offering price, yield, number of shares and amount of offering.

(4) Brief, generic description of business.

(5) Name and address of underwriter or address where offering circular or prospectus can be obtained.

(6) Date of issuance.

(7) Statement, based upon opinion of counsel, as to the status of the security for property tax purposes.

(8) Statement that the advertisement is neither an offer to sell nor a solicitation of an offer to buy and that the offer is made only by the prospectus.] *Exempt transactions.* 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.

(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 Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) [The character and composition of information listed in subsection (e) shall be such as to accurately inform without misleading or overemphasizing particular aspects of the offering.] *Excluded advertisements.* 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 are not such as to 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 in order 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) Use of 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 SEC (17 CFR 230.135) (relating to notice of proposed registered offering).

(iii) Advertisements which comply with Rule 135c promulgated by the SEC (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).

(g) [For purposes of this section, an advertisement, display, pamphlet, brochure, letter or other communication shall be deemed "publicly disseminated" if communicated to 50 or more persons or otherwise communicated, used or circulated in a public manner.] *Definitions.* For purposes of this chapter, the following terms have the following meanings:

Advertisement—The meaning in section 102(a) of the act (70 P.S. § 1-102(a)). The term "communication" as used in that definition 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. The term "publicly disseminated" as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish—The meaning in section 102(p) of the act and includes any form of electronic communication, including Internet and e-mail.

(h) *SEC 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 Commission under section 205 or 206 of the act and with the SEC under section 5 of the Securities Act of 1933 may rely on the interpretive advice of the SEC in SEC Release No. 33-7856 (April 28, 2000) and subsequent advice given pursuant to that Release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Commission will not take any enforcement action if the person complies with the interpretive advice.

§ 606.032. [Cash tender offers] (Reserved).

[(a) A person who proposes to make a cash tender offer for all or part of a class or classes of equity securities of an issuer or who requests an invitation for the tenders and who proposes to publicly disseminate advertisement, pamphlet, brochure, letter or other communication in connection therewith shall, prior to commencing the offer or request, file with the Commission a copy of the advertisement, pamphlet, brochure, letter or other communication; provided that, the provisions of this section do not apply to:

(1) An acquisition of securities by the issuer of the securities.

(2) An acquisition of a class of securities where less than 25% of the security holders of record of that class of the issuer's securities are residents of this Commonwealth.

(3) A purchase on a national securities exchange.

(4) An acquisition of the securities of a "reporting company" as that term is defined in section 102(q) of the act (70 P. S. § 1-102(q)) and the regulations thereunder.

No formal approval with respect to the advertisement, pamphlet, brochure, letter or other communications shall be subject to the antifraud provisions of the act and the regulations adopted thereunder.

(b) For the purpose of this section, when two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer, the syndicate or group shall be deemed a "person."

(c) For the purpose of this section, the term "equity securities" shall include securities convertible into common or preferred stock or its equivalent and warrants or options to purchase the securities.

(d) For the purpose of this section, an advertisement, pamphlet, brochure, letter or other communication shall be deemed "publicly disseminated" if communicated to 50 or more persons or otherwise communicated, used or circulated in a public manner.]

§ 606.033. [Advertising of securities issued by governments, governmental agencies and political subdivisions] (Reserved).

[(a) Sales literature, sales presentations including prepared presentations to prospective investors and advertising published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities as enumerated in section 202(a) of the act (70 P. S. § 1-202(a)) complies with § 606.031(e) (relating to advertising literature).

(b) For purposes of this section: the term "advertising" does not include a prospectus, offering circular or official statement published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities enumerated in section 202(a) of the act (70 P. S. § 1-202(a)).

(c) A prospectus, offering circular or official statement published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities enumerated in section 202(a) of the act (70 P. S. § 1-202(a)) need not be filed with the Commission; however, a prospectus, offering circular or official statement shall be subject to the antifraud provisions of the act and the Subpart D (relating to fraudulent and prohibited practices).

(d) Where securities issued by governments, governmental agencies, political subdivisions and other entities as set forth in section 202(a) of the act (70 P. S. § 1-202(a)) constitute less than a general obligation of the issuer of the securities; appropriate language denoting the issuer's limited obligation shall prominently appear in bold face type on the face page of a prospectus, offering circular

or official statement; sales literature; and advertising published or distributed in connection with the offer and sale of the securities.]

§ 606.034. [Advertising of securities issued or guaranteed by banks or credit unions] (Reserved).

[(a) Sales literature; sales presentations, including prepared presentations to prospective investors; and advertising published or distributed in connection with the offer and sale of securities issued or guaranteed by banks under 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)), except as set forth in subsection (b), may be publicly disseminated. No formal filing with or approval by the Commission with respect to advertising may be required; however, the advertising shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D (relating to fraudulent and prohibited practices).

(b) Advertising published or distributed in connection with the offer and sale of equity securities or debt securities—other than evidences of indebtedness arising from a transfer of direct obligations of, or direction obligations that are fully guaranteed as to principal and interest by, the United States or an agency thereof that a bank or credit union is obligated to purchase—issued or guaranteed by banks under section 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)) which are not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration and advertising which has not been prepared, submitted and cleared in conformity with the applicable regulations or procedures adopted by the Department of Banking or a similar agency of a foreign jurisdiction which regulates financial institutions, the Comptroller of Currency, the Federal Home Loan Bank Board or the National Credit Union Administration shall comply with the requirements of § 606.031(e) (relating to advertising literature).

(c) For purposes of this section, advertising does not include a prospectus, offering circular or written disclosure document prepared to satisfy the antifraud provisions of section 401(b) of the act (70 P. S. § 1-401(b)) which is used in connection with the offer and sale of securities issued or guaranteed by banks under section 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)). The prospectus, offering circular or written disclosure document need not be filed with or approved by the Commission prior to its use; however, a prospectus, offering circular or written disclosure document shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D.]

§ 606.041. Delegation and substitution.

(a) The Commission delegates to the Director and Assistant Directors of the Division of Enforcement [and], Litigation and Compliance:

* * * * *

(4) The power exercisable under section 606(c.1) of the act to issue a cease and desist order against

a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by Commission staff acting under the examination authority in section 304(d) of the act (70 P.S. § 1-304(d)), the records specified in §§ 304.011 or 304.012.

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

(1) The power exercisable under section 303(a)(ii) of the act (70 P.S. § 1-303(a)(ii)) to order applications for registration filed under section 303 of the act to become effective on any day earlier than the **[30th] 45th** day after the filing of the application or material amendment thereto as the Director **[or Chief]** may determine. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

(2) The power exercisable under section 609(a) of the act (70 P.S. § 1-609(a)) to waive the provisions of §§ 303.031 and 303.032 (relating to examination requirement for agents; and **[qualification of and]** examination **[requirement]** requirements for investment advisers and **[associated persons]** investment adviser representatives).

(3) The power exercisable under section 305(f) of the act (70 P.S. § 1-305(f)) to order applications to withdraw from the status of a registered broker-dealer, agent, investment adviser or **[associated person]** investment adviser representative to become effective on any day earlier than the 30th day after filing of the application.

* * * * *

(5) **[In case of applications for registration under section 303 of the act, the]** The power exercisable under **[§ 602.022 (relating to denial for abandonment)]** section 609(f) of the act (70 P.S. § 1-609(f)) with respect to applications for registration of a broker-dealer, agent, investment adviser or investment adviser representative. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

* * * * *

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

(1) **[(7)]** The power exercisable under section 603(c) of the act (70 P.S. § 1-603(c)) and § 606.031(c) (relating to public inspection of records) to treat documents filed with the Division of Licensing **[and Compliance]** as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

[(2)] (8)] The power exercisable under section 609(a) of the act to order a broker-dealer, agent, investment adviser or **[associated person]** investment adviser

representative registered under section 301 of the act (70 P.S. § 1-301) to furnish material information reasonably related to the registration.

[(3)] (9)] The power exercisable **[by the Commission]** under sections 303(a)(i) and 609(a) of the act to order an applicant for registration as a broker-dealer, agent, investment adviser or **[associated person]** investment adviser representative under section 301 of the act to furnish material information **[relevant]** reasonably related to the application.

[(4)] (10)] The power exercisable under § 303.051(a) and (b) (relating to surety bonds).

[(5)] The power to commence an administrative proceeding against a broker-dealer, investment adviser, agent or associated person applicant or registrant under 1 Pa. Code §§ 35.14 and 35.37 (relating to order to show cause; and answers to an order to show cause) and the authority to vacate, modify or amend an order to show cause issued under this paragraph. A hearing will not be held, nor will a remedial or disciplinary order be issued following institution of the proceedings, except upon the express order of the Commission.

[(6)] (11)] The power exercisable under section 305(d) of the act to **[summarily deny or postpone]** issue a summary order with respect to an application for registration **[pending final determination of a proceeding under that section]**.

[(7)] The power exercisable under section 606(c.1) of the act to issue a cease and desist order against a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by the staff of the Division of Licensing and Compliance, acting under the examination authority in section 304(d) of the act, the records specified in §§ 304.011 and 304.012.

(8) The powers in section 510(a)(i)—(iii), (b), except for hearings, and (c) of the act (70 P.S. § 1-510(a)(i)—(iii), (b) and (c)) and the authority to close, vacate, modify or amend an action authorized under this paragraph with respect to a broker-dealer, investment adviser, agent or associated person applicant or registrant.

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

* * * * *

(3) **[In the case of registration statements filed under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206), the]** The power exercisable under **[§ 602.022 (relating to denial for abandonment)]** section 609(f) of the act (70 P.S. 1-609(f)) with respect to applications for registration of securities. **[For purposes of this subparagraph, the term "application" means an application for either an initial or renewal license.]**

* * * * *

(5) The power exercisable **[under section 205(d) of the act to waive the conditions of section 205(c)(1)]**

of the act in the case of registration statements filed under section 205 of the act for securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust as these persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-52).

(6) The power, exercisable] under section 206(c) of the act to order effective a registration statement filed under section 206 of the act for securities of [an open-end or closed-end investment company, face amount certificate company or unit investment trust as these persons are classified in the Investment Company Act of 1940.] an issuer which meets all of the following:

(i) The issuer is an entity described in section 202(e)(i) of the act (70 P. S. § 1-202(e)(i)).

(ii) The issuer has not registered the securities with the United States Securities and Exchange Commission under section 5 of the Securities Exchange Act of 1933 (15 U.S.C.A. § 77e) in good faith reliance on section 3(a)(4) thereof (15 U.S.C.A. § 77c(4)).

(iii) The issuer, within the immediately preceding 18 months, had an effective registration statement with the Commission for similar securities.

(iv) The registration statement complies with the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (April 17, 1994) or any successor statement of policy.

(v) The issuer has not requested a waiver of any provision of the act or rule or order thereunder that otherwise would apply to the registration statement.

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

(A) An order described in section 305(a)(iv) of the act.

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

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

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

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

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

[(7)] (6) * * *

[(8) The power exercisable under § 204.010(f)(2) (relating to increasing number of purchasers and offerees) to issue a denial order, vacate the denial order or waive the 5-business-day filing requirement.]

[(9)] (7) * * *

[(10)] (8) * * *

[(11)] (9) The power exercisable under section 206(c) of the act to order effective a registration statement filed with the Commission under section 206 of the act by an issuer which also has a currently effective registration statement for the same securities on file with the [United States Securities and Exchange Commission (SEC) and, in the case of an issuer which has filed a registration statement designated as Form F-7, F-8, F-9 or F-10 by the SEC to waive, under section 609(a) of the act, the requirement of § 206.010(c) (relating to registration by qualification), if applicable with respect to the registration statements] SEC.

[(12)] (10) The power exercisable under section 211[c] of the act (70 P. S. § 1-211[(c)]) to:

* * * * *

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

[(14)] (12) The power, exercisable under [section 609(a) of the act, to waive, upon good cause shown, compliance with Item 8 or a successor item thereto of Form U-1 (Uniform Application to Register Securities) by:

(i) A person required to file Form U-1 with the Commission under § 205.021 (relating to registration by coordination).

(ii) A person required to file Form U-1 with the Commission under § 206.010 (relating to registration by qualification) which has filed a registration statement with the Commission designated by the SEC as Form F-7, F-8, F-9 or F-10] § 606.031(b)(2), (3)(ii) and (c)(3)(ii) (relating to advertising literature) to issue a letter disallowing publication of an advertisement in this Commonwealth in connection with the offer or sale of a security this Commonwealth.

[(e)] (d) * * *

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

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