

Subpart B. REGISTRATION OF SECURITIES

Chap.		Sec.
202.	EXEMPT SECURITIES	202.010
203.	EXEMPT TRANSACTIONS	203.011
204.	EXEMPTION PROCEEDINGS	204.000
205.	REGISTRATION BY COORDINATION	205.010
206.	REGISTRATION BY QUALIFICATION	206.011
207.	GENERAL REGISTRATION PROVISIONS	207.010
209.	BOOKS, RECORDS AND ACCOUNTS	209.010
210.	RETROACTIVE REGISTRATION	210.010
211.	FEDERALLY COVERED SECURITIES	211.010

CHAPTER 202. EXEMPT SECURITIES

Sec.	
202.010.	Securities issued by a governmental unit.
202.030.	Commercial paper.
202.032.	[Reserved].
202.041.	[Reserved].
202.051.	Equity securities of nonprofit organizations.
202.052.	[Reserved].
202.070.	Securities issued in connection with employee benefit plans.
202.080.	[Reserved].
202.091.	Shares of professional corporations.
202.092.	Guaranties of certain debt securities exempt.
202.093.	Charitable contributions to pooled income funds exempt.
202.094.	World class issuer exemption.
202.095.	Charitable gift annuities.

§ 202.010. Securities issued by a governmental unit.

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

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

Authority

The provisions of this § 202.010 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.010 amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 652; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 202.010, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364661) to (364662).

§ 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P.S. § 1-202(c)) is available for any security which is a Federally covered security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(3)) as interpreted by Release 33-4412 (26 FR 9158 (September 20, 1961)) issued by the Securities and Exchange Commission which provides that:

- (1) The commercial paper is prime quality of a type not ordinarily purchased by the general public.
- (2) The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.
- (3) The commercial paper is not payable on demand and does not contain a provision for an automatic “rollover.”
- (4) The commercial paper is issued to facilitate current operational business requirements.
- (5) The commercial paper proceeds are not used to:
 - (i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.
 - (ii) Purchase or construct a plant facility.
 - (iii) Purchase durable machinery or equipment.
 - (iv) Fund commercial real estate development or financing.
 - (v) Purchase real estate mortgages or other securities.
 - (vi) Finance mobile homes or home improvements.
 - (vii) Purchase or establish a business enterprise.

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

- (1) Has not been issued by the bank for which the issuer is the holding company.
- (2) Is not a deposit of the bank covered by Federal deposit insurance.

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

Authority

The provisions of this § 202.030 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.030 amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 202.030, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364662) to (364663).

§ 202.032. [Reserved].**Source**

The provisions of this § 202.032 adopted February 21, 1975, effective February 22, 1975, 5 Pa.B. 334; reserved July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 202.032, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (317563).

§ 202.041. [Reserved].**Authority**

The provisions of this § 202.041 reserved under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.041 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; transferred and renumbered from 64 Pa. Code § 202.041, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; reserved January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364663) to (364664).

§ 202.051. Equity securities of nonprofit organizations.

(a) For the purpose of section 202(e) of the act (70 P. S. § 1-202(e)), the exemption is not applicable to a proposed offering of nondebt securities by an issuer when:

- (1) a promoter transfers, directly or indirectly, assets to the issuer at a price substantially in excess of the cost (in cash or other tangible property) to the promoter or the reasonable current value thereof;
- (2) a promoter enters into or expects to enter into an employment, management or consulting arrangement with the issuer for compensation or remuneration in excess of that normally paid for services of like kind and quality in the geographical area where such services are to be rendered;
- (3) a promoter, directly or through an affiliate, enters into or expects to enter into a construction or other service contract with the issuer whereby the promoter or its affiliate will or proposes to make a profit by providing the

materials or services in excess of normal profit for such materials or services in the geographical area where such services are to be rendered; or

(4) a promoter will receive a substantial portion of the proceeds of the offering under circumstances which result in the conferring of substantial financial benefits on a promoter.

Authority

The provisions of this § 202.051 amended under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)).

Source

The provisions of this § 202.051 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 202.051, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (317564).

§ 202.052. [Reserved].

Authority

The provisions of this § 202.052 reserved under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.052 adopted August 8, 1975, effective August 9, 1975, 5 Pa.B. 2034; transferred and renumbered from 64 Pa. Code § 202.052, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; reserved January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364664) to (364665).

§ 202.070. Securities issued in connection with employe benefit plans.

(a) An issuer may rely on the exemption in section 202(g) of the act (70 P. S. § 1-202(g)) if any of the following apply:

(1) The securities are being issued in connection with a stock option, purchase, savings, pension, profit-sharing or similar compensatory benefit plan or compensatory contract for employees.

(2) The securities are being issued in good faith reliance that the transaction qualifies for an exemption under Securities and Exchange Commission Rule 701 (17 CFR 230.701) (relating to exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation) as made effective April 7, 1999, in SEC Release 33-7645.

(3) The securities being issued meet the following conditions:

(i) Have been registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(ii) Are issued in a transaction that meets the requirements of subsections (c) and (e) of Securities and Exchange Commission Rule 701 (17 CFR 230.701(c) and (e)).

(b) The exemption contained in section 202(g) of the act may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201).

Authority

The provisions of this § 202.070 amended under sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-603(a), 1-606(d) and 1-609(a)).

Source

The provisions of this § 202.070 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3613; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 202.070, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (297465) to (297466).

§ 202.080. [Reserved].

Source

The provisions of this § 202.080 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 202.080, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (297466).

§ 202.091. Shares of professional corporations.

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

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

Authority

The provisions of this § 202.091 amended under sections 202(g) and (i), 293(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (j.1) and (n), 209(b), 211(a) and (b), 504(d), 513, 603(a), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(g) and (i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-504(d), 1-513, 1-603(a), 1-606(d) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.091 adopted October 22, 1976, effective October 23, 1976, 6 Pa.B. 2688; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 202.091, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364666) to (364667).

§ 202.092. Guaranties of certain debt securities exempt.

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

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

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

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

(ii) Both of the following:

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

(I) The most recent completed fiscal year.

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

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

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

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

(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, and the com-

bined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

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

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

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

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 202.092 issued under sections 202(a), (c), (e) and (i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(a), (c), (e) and (i) and 1-609(a)); amended under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.092 adopted April 10, 1981, effective April 11, 1981, 11 Pa. B. 1252; amended February 7, 1986, effective February 8, 1986, 16 Pa.B. 384; amended January 8, 1999, effective January 9, 1999, 29 Pa.B. 202; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 202.092, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364667) to (364670).

Cross References

This section cited in 10 Pa. Code § 102.021 (relating to definitions).

§ 202.093. Charitable contributions to pooled income funds exempt.

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

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

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

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 202.093 amended under sections 202(i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(i) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.093 adopted December 2, 1988, effective December 3, 1988, 18 Pa.B. 5359; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 202.093, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364670) to (364671).

§ 202.094. World class issuer exemption.

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

(1) The securities are one of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 202.094 issued under sections 102(k), 202(h) and (i), 203(r), 204(a), 207(h), (i) and (k), 209(a), 606(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-102(k), 2-202(h) and (i), 2-203(r), 2-204(a), 2-207 (h), (i) and (k), 2-209(a), 6-606(a) and 6-609(a)); amended under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.094 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 202.094, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364671) to (364672).

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Department finds that it is not in the public interest or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

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

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

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

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

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

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

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

Authority

The provisions of this § 202.095 issued under sections 202(i) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(i) and 1-609(a)); amended under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

Source

The provisions of this § 202.095 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 202.095, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364672) to (364673).

[Next page is 203-1.]

202-12