

CHAPTER 203. EXEMPT TRANSACTIONS

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§ 203.011. Nonissuer transactions.

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

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

Authority

The provisions of this § 203.011 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 § 203.011 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; transferred and renumbered from 64 Pa. Code § 203.011, 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 page (364675).

§ 203.031. Fiduciary capacity.

Where an institutional investor purchases securities for the benefit of another person, the exemption contained in section 203(c) of the act (70 P. S. § 1-203(c)) shall be available only if the institutional investor is empowered under applicable state or Federal law to act as a corporate fiduciary and is acting as trustee, guardian, conservator, executor or administrator; provided that, section 203(c) of the act (70 P. S. § 1.203(c)) is not available for a transaction where an institutional investor is acting in the capacity of trustee, guardian, conservator, executor or administrator for the primary purpose of avoiding or facilitating the avoidance of the provisions of section 201 of the act (70 P. S. § 1-201).

Source

The provisions of this § 203.031 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; transferred and renumbered from 64 Pa. Code § 203.031, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (324408).

§ 203.041. Limited offerings.

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 203.041 amended under sections 202(a), (c), (e) and (i), 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(a), (c), (e) and (i), 1-203(d), (o) and (p), 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); sections 4 and 9(b) of the Takeover Disclosure Law (70 P.S. §§ 74 and 79(b)); and section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C).

Source

The provisions of this § 203.041 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2117; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 203.041, 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 (364676) to (364677).

Cross References

This section cited in 10 Pa. Code § 203.191 (relating to Rule 505 offerings); 10 Pa. Code § 203.201 (relating to accredited investor exemption); 10 Pa. Code § 204.010 (relating to increasing the number of purchasers and offerees); and 10 Pa. Code § 204.011 (relating to waivers of the 12-month holding period).

§ 203.091. [Reserved].

Authority

The provisions of this § 203.091 amended under sections 203(d), (i.1), (j) and (n)—(t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(d), (i.1), (j) and (n)—(t) and 1-609(a)); 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 § 203.091 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended September 4, 1987, effective September 5, 1987, 17 Pa.B. 3614; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; corrected January 5, 1996, effective November 4, 1995, 26 Pa.B. 30; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code

§ 203.091, 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 (364677) to (364678).

Cross References

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

§ 203.101. Mortgages.

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

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

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

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

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

(5) Compensation is not paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

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

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

Authority

The provisions of this § 203.101 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)); 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 § 203.101 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; 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 § 203.101, 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 page (364678).

§ 203.120. [Reserved].**Source**

The provisions of this § 203.120 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended December 2, 1988, effective December 3, 1988, 18 Pa.B. 5360; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; transferred and renumbered from 64 Pa. Code § 203.120, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (324411).

§ 203.131. [Reserved].**Authority**

The provisions of this § 203.131 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 § 203.131 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227; transferred and renumbered from 64 Pa. Code § 203.131, 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 page (364679).

§ 203.141. Sales to existing equity securityholders.

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

- (1) The offer is made to existing equity securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer does not need to be made to all the classes or series.
- (2) The offer is made pro rata to all the equity securityholders who are, of record, residents of this Commonwealth.
- (3) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission.

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

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

- (2) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a commission or other remuneration, other than a standby commission.
- (c) For purposes of subsection (a)(2), an offer will be considered to have been made pro rata when all of the following exists:
- (1) The initial offer is made pro rata.
 - (2) After the expiration of a reasonable period of time following the initial offer, an identified equity securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected equity securityholders.

Authority

The provisions of this § 203.141 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)); 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 § 203.141 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 653; corrected May 29, 1998, effective May 7, 1994, 28 Pa.B. 2509; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.141, 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 (364679) to (364681).

§ 203.151. Proxy materials.

- (a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the Department for review under section 203(o) of the act (70 P.S. § 1-203(o)), the materials must conform to Rule 14A, 17 CFR 240.14a-1—240.14b-2 (relating to solicitations of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq).
- (b) In a transaction subject to the filing requirements of section 203(o) of the act, filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals of the entities whose securityholders are voting or providing written consent.
- (c) Except for transactions described in subsection (b), notice shall be given to the Department for a transaction requiring the filing of proxy materials with the Department under section 203(o) of the act by filing:
- (1) Form 203-O in accordance with the General Instructions.
 - (2) The exemption filing fee specified in section 602(b.1)(v) of the act (70 P.S. § 1-602(b.1)(v)).

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

Authority

The provisions of this § 203.151 amended under sections 202(g) and (i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205, 206, 207(g), (j.1) and (n), 209(b), 211(a) and (b), 301, 303, 504, 513, 603(a), 606(d) and 609 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, 1-206, 1-207(g), (j.1) and (n), 1-209(b), 1-211(a) and (b), 1-301, 1-303, 1-504, 1-513, 1-603(a), 1-606(d) and 1-609); sections 4 and 9(b) of the Takeover Disclosure Law (70 P.S. §§ 74 and 79(b)); and section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C).

Source

The provisions of this § 203.151 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended August 1, 1986, effective August 2, 1986, 16 Pa.B. 2847; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 203.151, 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 page (364681).

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P.S. § 1-203(p)) shall:

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

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

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

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

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

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

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

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

- (1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m)).
- (2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).
- (3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000.
- (4) Include whatever data may be necessary to establish all of the following:
 - (i) The investors will receive a first lien on real estate of the issuer.
 - (ii) The issuer has not defaulted on prior obligations.
 - (iii) The total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

Authority

The provisions of this § 203.161 amended under sections 203(d), (i.1), (j) and (n)—(t) 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(d), (i.1), (j) and (n)—(t) 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); sections 4 and 9(b) of the Takeover Disclosure Law (70 P.S. §§ 74 and 79(b)); and section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C).

Source

The provisions of this § 203.161 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 203.161, 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 (364682) to (364683).

§ 203.171. [Reserved].

Authority

The provisions of this § 203.171 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)); 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 § 203.171 adopted May 31, 1974, effective June 1, 1974, 4 Pa.B. 1085; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4777; 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 § 203.171, 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 page (364683).

§ 203.183. Agricultural cooperative associations.

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

- (1) The securities are issued by the agricultural cooperative association.
- (2) The securities are offered and sold only to persons who are, at the time of an offer and sale, agricultural cooperative association members or to persons who, on sale of securities to them, thereby become members of the agricultural cooperative association.
- (3) The transfer of the securities for value is restricted to agricultural cooperative association members.
- (4) A person does not receive any commission or other compensation as a result of or based on the sale of the securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

Authority

The provisions of this § 203.183 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)); 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 § 203.183 adopted October 1, 1976, effective October 2, 1976, 6 Pa.B. 2447; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.183, 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 (364683) to (364685).

Cross References

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

§ 203.184. Offers and sales to principals.

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

the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities offered and sold by an issuer to:

- (1) A principal.
 - (2) A corporation, the outstanding voting stock of which is beneficially owned by one or more principals.
 - (3) A general partnership or a limited partnership, the interest in which is beneficially owned by one or more principals.
 - (4) A trust, the trustees of which are principals.
 - (5) Any other person, the interest in which is beneficially owned by one or more principals.
- (b) The exemption set forth in this section does not apply to any offer or sale to a person who has been appointed or elected a principal primarily to obtain the exemption or to an offer or sale to a relative of this person.
- (c) A person who is appointed or elected a principal in good faith for a purpose other than to obtain the exemption set forth in this section to whom, or to whose relative, securities are sold without registration following the designation or election in reliance on the exemption set forth in this section will not be considered to have been designated or elected a principal primarily to obtain the exemption set forth in this section.

Authority

The provisions of this § 203.184 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)); 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 § 203.184 adopted June 8, 1979, effective June 9, 1979, 9 Pa.B. 1807; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4778; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.184, 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 (364685) to (364686).

Cross References

This section cited in 10 Pa. Code § 102.121 (relating to definitions).

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

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

securities under section 206 of the act (70 P.S. § 1-206) before the effectiveness of the registration statement if all of the following criteria are met:

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

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

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

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

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

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

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

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

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

(3) There is a withdrawal procedure as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 203.185 issued under the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-704); 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)); 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 § 203.185 adopted January 21, 1983, effective January 22, 1983, 13 Pa.B. 526; 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 § 203.185, 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 (364686) to (364689).

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the Department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions if:

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

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

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

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

(i) Written offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment.

(ii) An opinion of counsel that the security, when sold, will be legally issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer.

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

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

Authority

The provisions of this § 203.186 issued under the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-704); 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)); 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 § 203.186 adopted January 21, 1983, effective January 22, 1983, 13 Pa.B. 523; 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 § 203.186, 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 (364689) to (364690).

§ 203.187. Small issuer exemption.

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

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

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

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

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

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

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

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

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

(b) *Integration.*

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

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

(c) *Computation.* Section 609.012 (relating to computing the number of offer-ees, purchasers and clients) applies to offers and sales of securities made under this section.

Authority

The provisions of this § 203.187 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-203(r)); 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)); 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 § 203.187 adopted January 30, 1987, effective January 31, 1987, 17 Pa.B. 562; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4780; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.187, 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 (364690) to (364691).

Cross References

This section cited in 10 Pa. Code § 203.189 (relating to isolated transaction exemption); and 10 Pa. Code § 606.031 (relating to advertising literature).

§ 203.188. Cooperative Business Associations Exemption.

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

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

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

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

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

Authority

The provisions of this § 203.188 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-203(r)); 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 § 203.188 adopted January 30, 1987, effective January 31, 1987, 17 Pa.B. 561; transferred and renumbered from 64 Pa. Code § 203.188, 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 (364691) to (364692).

Cross References

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

§ 203.189. Isolated transaction exemption.

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

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

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

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

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

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

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

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

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

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

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

(A) Registered under section 301 of the act.

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

(b) *Waivers.*

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

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

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

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

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

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

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

(c) *Inclusion of prior offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance on section 203(d), (f) or (s) of the act, § 203.187 (relating to small issuer exemption), § 204.010(a)(1) and (2), Rule 506 (17 CFR 230.506) or this section are counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

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

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

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

Authority

The provisions of this § 203.189 amended under sections 203(d), (i.1), (j) and (n)—(t) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(d), (i.1), (j) and (n)—(t) 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 § 203.189 adopted September 25, 1992, effective September 26, 1992, 22 Pa.B. 4775; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 203.189, 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 (364692) to (364694).

Cross References

This section cited in 10 Pa. Code § 606.031 (relating to advertising literature).

§ 203.190. Certain Internet offers exempt.

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

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

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

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

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

Authority

The provisions of this § 203.190 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(a), 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 § 203.190 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 203.190, 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 (364694) to (364695).

Cross References

This section cited in 10 Pa. Code § 606.031 (relating to advertising literature).

§ 203.191. Rule 505 offerings.

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

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

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

Authority

The provisions of this § 203.191 adopted 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)); 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 § 203.191 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.191, 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 (364695) to (364696).

§ 203.192. Rule 801 and 802 offerings exempt.

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

Authority

The provisions of this § 203.192 issued under section 203(j), (q) and (r) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-203(j), (q) and (r)); 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 § 203.192 adopted September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 203.192, 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 page (364696).

§ 203.201. Accredited investor exemption.

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

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

(c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in the notice remains current and accurate in all material respects. If a material statement made in the notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the Department in accordance with

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

Authority

The provisions of this § 203.201 adopted 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)); 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 § 203.201 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 203.201, 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 (364696) to (364697).

§ 203.202. Certain transactions with persons from Canada exempt.

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

- (1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).
- (2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

Authority

The provisions of this § 203.202 issued under sections 203(r) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(r) 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 § 203.202 adopted December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 203.202, 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 page (364697).

§ 203.203. Certain Rule 144A exchange transactions exempt.

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

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

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

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

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

Authority

The provisions of this § 203.203 issued under section 203(r) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-203(r)); 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 § 203.203 adopted April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307; transferred and renumbered from 64 Pa. Code § 203.203, 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 (364697) to (364698).

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