

**CHAPTER 204. EXEMPTION PROCEEDINGS**

Sec.

204.010. Increasing number of purchasers and offerees.

204.011. Waivers of the 12-month holding period.

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

**§ 204.010. Increasing the number of purchasers and offerees.**

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act (70 P.S. § 1-203(d) and (e)), respectively, are increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during 12 consecutive months under section 203(e) of the act is 90 persons, except that offers made to experienced private placement investors who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during 12 consecutive months under section 203(d) of the act is 35 persons, except that sales made to experienced private placement investors are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner other than a limited partner, promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305(a)(ii)—(xiii) of the act (70 P.S. § 1-305(a)(ii)—(xiii)) unless the person subject to this disqualification is registered under section 301 of the act (70 P.S. § 1-301).

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

(3) *Broker-dealer requirement.*

(i) All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act.

(ii) Subparagraph (i) does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and (e) of the act, respectively.

(c) *Exceptions.*

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

(i) The person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person.

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

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

(3) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines on a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(d) *Due diligence obligation.*

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

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

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

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) meets the due diligence obligation if the issuer:

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

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

(e) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are considered to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act apply to offers and sales to persons permitted by this section.

**Authority**

The provisions of this § 204.010 issued under sections 204(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-204(a) 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 § 204.010 adopted November 4, 1983, effective November 5, 1983, 13 Pa.B. 3387; amended February 15, 1985, effective February 16, 1985, 15 Pa.B. 583; corrected April 19, 1985, effective February 16, 1985, 15 Pa.B. 1430; amended May 6, 1988, effective May 7, 1988, 18 Pa.B. 2128; 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 § 204.010, 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 (364699) to (364701).

**Cross References**

This section cited in 10 Pa. Code § 203.187 (relating to small issuer exemption); 10 Pa. Code § 203.189 (relating to isolated transaction exemption); 10 Pa. Code § 203.191 (relating to Rule 505 offerings); and 10 Pa. Code § 504.060 (relating to rescission offers).

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

(a) *Automatic waiver.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P.S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

- (1) The 203(d) restricted securities are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) after a notice is filed with the Department under section 203(d) of the act and § 203.041 (relating to limited offerings).
- (2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.
- (3) The purchaser undergoes liquidation or dissolution if the action is not undertaken to avoid registration.
- (4) The purchaser becomes insolvent.
- (5) The issuer is merged into another entity and new securities are exchanged for the 203(d) restricted securities, if the merger is not undertaken to avoid registration of the 203(d) restricted security.
- (6) The 203(d) restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer's securities.
- (7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

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

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

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

(c) *Discretionary waiver.*

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

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

#### Authority

The provisions of this § 204.011 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 § 204.011 adopted May 6, 1988, effective May 7, 1988, 18 Pa.B. 2129; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 204.011, 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 pages (364701) to (364703).

#### Cross References

This section cited in 10 Pa. Code § 203.041 (relating to limited offerings).

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

Under section 204(a) of the act (70 P.S. § 1-204(a)), the Department waives the requirement in section 203(h) of the act (70 P.S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the Department to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) of the act has filed a registration statement with the Securities and Exchange Commission under the

Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) before the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

**Authority**

The provisions of this § 204.012 amended under sections 102(k), 202(g)—(i), 203(d), (i.1), (j) and (n)—(t), 204(a), 205(b), 207(g), (i), (j.1), (k) 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. §§ 1-102(k), 1-202(g)—(i), 1-203(d), (i.1), (j) and (n)—(t), 1-204(a), 1-205(b), 1-207(g), (i), (j.1), (k) 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 § 204.012 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 204.012, 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 (364703).

[Next page is 205-1.]

204-6

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