

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

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§ 207.050. Reports by engineers, appraisers and others.

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

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

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

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

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

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

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

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

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

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

Authority

The provisions of this § 207.050 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 § 207.050 transferred and renumbered from 64 Pa. Code § 207.050, 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 (364711).

§ 207.071. Escrow of promotional securities.

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

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

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

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

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

Authority

The provisions of this § 207.071 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 § 207.071 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; transferred and renumbered from 64 Pa. Code § 207.071, 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 (364712).

§ 207.072. Escrow of proceeds.

(a) The Department, if it considers it necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-

207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds:

(1) From the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere.

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

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

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

(1) The specified amount of proceeds shall be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph (6).

(2) The escrow depository is not affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) The escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer under the terms of the agreement.

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

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

(6) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds shall be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

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

Authority

The provisions of this § 207.072 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 § 207.072 adopted December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 207.072, 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 (364713) to (364714).

§ 207.081. [Reserved].**Source**

The provisions of this § 207.081 adopted October 11, 1974, effective October 12, 1974, 4 Pa.B. 2174; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 207.081, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (324436).

§ 207.091. Subscription contracts.

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

- (1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).
- (2) A registration statement filed under section 206 of the act (70 P.S. § 1-206) if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under section 3(a)(4) or (11) of the Securities Act of 1933, Regulation A promulgated under section 3(b) of the Securities Act of 1933 or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.
- (3) A registration statement filed under section 205 or 206 of the act if the securities to be sold are interests in a direct public participation program.

Authority

The provisions of this § 207.091 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 § 207.091 adopted February 21, 1975, effective February 22, 1975, 5 Pa.B. 334; amended June 20, 1975, effective June 21, 1975, 5 Pa.B. 1593; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 207.091, 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 (364714).

§ 207.101. Effective period of registration statement.

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

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

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

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

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

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

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

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

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

(d) Except with respect to an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), the effective period of a section 205 registration statement may be extended beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the form designated as Form 207-J in accordance with the General Instructions thereto with the Department before the expiration of the currently effective period of registration.

(e) The provisions of subsection (d) are not available if the issuer, during the 3-year period from the initial effectiveness date of the registration statement in this Commonwealth, is required to file a new registration statement with Securities and Exchange Commission.

Authority

The provisions of this § 207.101 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, 1-504, 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 § 207.101 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1644; amended February 12, 1988, effective February 13, 1988, 18 Pa.B. 684; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4782; 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 § 207.101, 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 pages (364714) to (364715).

§ 207.110. [Reserved].

Source

The provisions of this § 207.110 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 June 17, 1977, effective June 18, 1977, 7 Pa.B. 1644; amended February 12, 1988, effective February 13, 1988, 18 Pa.B. 685; reserved October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 207.110, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (324438).

§ 207.120. [Reserved].

Source

The provisions of this § 207.120 reserved July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 207.120, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (324438).

§ 207.130. Notice to purchasers under section 207(m).

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P.S. § 1-206) and to securities transactions which are exempt from registration under section 203(d) and (p) of the act (70 P.S. § 1-203(d) and (p)) and, if required under rule of the Department, section 203(r) of the act.

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

- (1) The notice is in writing.
- (2) The cover page of the prospectus used in connection with the offer and sale of the securities references the notice.
- (3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to be followed in exercising the right, is in the text of the prospectus.
- (4) A subscription agreement used references the right of withdrawal.

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

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

(1) The notice is in writing.

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

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

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

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

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

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

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

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

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

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

"If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a written notice explaining your right to withdraw your acceptance under section 207(m) of the Pennsylvania Securities Act of 1972, you may elect, within two business days after the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a full refund of all moneys paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw."

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

"If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance under section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the

securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw.”

Authority

The provisions of this § 207.130 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 § 207.130 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 584; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; corrected April 9, 2004, effective March 4, 2000, 34 Pa.B. 1940; transferred and renumbered from 64 Pa. Code § 207.130, 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 (364716) to (364718).

Cross References

This section cited in 10 Pa. Code § 203.161 (relating to debt securities of nonprofit organizations).

§ 207.140. [Reserved].

Authority

The provisions of this § 207.140 issued under sections 203(d), 205, 206, 207(n), 210, 603(c), 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-203(d), 1-205, 1-206, 1-207(n), 1-210, 1-603(c), 1-606(d) and 1-609(a)); 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 § 207.140 adopted September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; transferred and renumbered from 64 Pa. Code § 207.140, 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 (364718).

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