

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

Sec.

209.010. Required records; report on sales of securities and use of proceeds.

§ 209.010. Required records; report on sales of securities and use of proceeds.

(a) An issuer who sells securities for his own account, directly or through an underwriter, in an offering registered or required to be registered under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) or in an offering exempt from registration under section 202(e) or 203(d), (p) or (r) of the act (70 P.S. §§ 1-202(e) and 1-203(d), (p) and (r)) shall preserve all of the following records during the period of the offering and for a period of 3 years following the last sale of securities in this Commonwealth or 1 year after the disposition of all proceeds, whichever is longer:

(1) Ledgers, journals or other records showing payments received from the sale of securities, including date of receipt, amount and from whom received; and disbursements of the payments, including date paid, purpose, amount and to whom made.

(2) A record showing money borrowed and money loaned together with a record of the collateral for both.

(3) Checkbooks, bank statements, copies of deposit slips, cancelled checks and bank record reconciliations.

(4) Minute books and stock ledgers, including stock transfer records.

(5) A copy of filings with the Department, and related correspondence and exhibits.

(6) Copies of communications sent or originated by the issuer pertaining to the offer, sale or transfer of securities, including subscription agreements, purchase contracts and confirmations.

(7) A list of the names and addresses of persons to whom the securities were offered or sold with all of the following information included:

(i) The type and amount of securities sold to each.

(ii) The consideration paid or promised by each.

(iii) The method of payment, that is, cash, check, property, services, note or other.

(iv) The name of the broker-dealer or other persons who represented the issuer in effecting each sale.

(b) Except as set forth in paragraph (3), report on sales of securities filing requirements are as follows:

(1) An issuer which has an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Com-

pany Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-64), shall file a report on sales of securities with the Department by completing Parts I and II of Form 209 within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

(2) An issuer which is 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, shall file with the Department an annual report on sales of securities in this Commonwealth on Form NF adopted by NASAA, or successor form, within the following time periods:

(i) 120 days after an open-end or closed-end investment company's or face amount certificate company's fiscal year end.

(ii) 60 days after 1 year from the date the registration statement relating to the securities sold in this Commonwealth became effective with the Securities and Exchange Commission with respect to a unit investment trust.

(3) The following issuers are not required to file Form 209 or Form NF, or successor form:

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the maximum fee specified in section 602(b.1)(iv) of the act (70 P.S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

Authority

The provisions of this § 209.010 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), 1-303, 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 § 209.010 adopted July 26, 1974, effective July 27, 1974, 4 Pa.B. 1533; 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 December 21, 1984, effective December 22, 1984, 14 Pa.B. 4594;

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amended November 7, 1986, effective November 8, 1986, 16 Pa.B. 4412; amended July 28, 1989, effective July 29, 1989, 19 Pa.B. 3168; 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 December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 209.010, 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 (387505) to (387507).

Cross References

This section cited in 10 Pa. Code § 203.188 (relating to Cooperative Business Associations Exemption).

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