

CHAPTER 302. EXEMPTIONS

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§ 302.051. Agent registration: bona fide officers, directors and employes.

Whether a person may be deemed a bona fide officer, director, partner or employe of an issuer, or other individual occupying similar status or performing similar functions is dependent upon the particular facts and circumstances, including by way of illustration:

- (1) The duties of the person in addition to those connected with the sale of the issuer's securities.
- (2) The arrangements regarding the person's compensation.
- (3) The parties' intentions as to the persons employment prior and subsequent to the securities offering.

Source

The provisions of this § 302.051 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; transferred and renumbered from 64 Pa. Code § 302.051, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (317619).

§ 302.060. [Reserved].**Authority**

The provisions of this § 302.060 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 § 302.060 adopted October 5, 1979, effective October 6, 1979, 9 Pa.B. 3370; transferred and renumbered from 64 Pa. Code § 302.060, 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 (364729).

§ 302.061. Auctioneers exemption from broker-dealer and agent registration.

(a) Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to

exempt persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if all of the following conditions are met:

- (1) The person meets one of the following conditions:
 - (i) Is licensed as an auctioneer, apprentice auctioneer, auction company or auction house under the Auctioneer Licensing and Trading Assistant Registration Act (ALTARA) (63 P.S. §§ 734.1—734.34).
 - (ii) Is exempt from registration under section 3(h) of the ALTARA (63 P.S. § 734.3(h)).
 - (iii) Holds a special license to conduct an auction under section 3(i) of the ALTARA.
- (2) The person effects transactions in securities solely at an “auction” or at a “sale at auction” as these terms are defined in the ALTARA.
- (3) The person engages only in effecting transactions in securities at an auction or for sale at auction which constitute a “nonissuer transaction” as that term is defined in section 102(m) of the act (70 P.S. § 1-102(m)).
- (4) The person does not effect transactions in securities at an auction or for sale at auction more than three times in any consecutive period of 24 months.
- (5) The person and any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:
 - (i) An order described in section 305(a)(iv) of the act (70 P.S. § 1-305(a)(iv)).
 - (ii) An injunction described in section 305(a)(iii) of the act.
 - (iii) A criminal conviction described in section 305(a)(ii) of the act.
 - (iv) An order of the Department issued under section 512 of the act (70 P.S. § 1-512).
 - (v) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).
 - (vi) An order of the Department imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.
- (b) For the purposes of subsection (a)(3), a transaction is considered a nonissuer transaction if a bank does the following:
 - (1) Acts as a fiduciary under a trust agreement, estate administration or other similar relationship.
 - (2) Causes the bank’s securities to be offered and sold at action from the accounts described in paragraph (1).

Authority

The provisions of this § 302.061 amended under sections 302(f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-302(f) 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 § 302.061 adopted December 4, 1981, effective December 5, 1981, 11 Pa.B. 4196; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 302.061, 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 (364730) to (364731).

§ 302.062. [Reserved].**Source**

The provisions of this § 302.062 adopted March 25, 1983, effective March 26, 1983, 13 Pa.B. 1143; amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2603; reserved December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 302.062, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (317621).

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt financial institutions and individuals representing financial institutions from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if the activities of the financial institution and individuals representing the financial institutions are conducted under a networking arrangement or brokerage affiliate arrangement.

Authority

The provisions of this § 302.063 issued under section 302(f) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-302(f)); amended under sections 202(i), 206(b) and (d), 302(f), 606(d), 609(a) and (c) and 610 of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-202(i), 1-206(b) and (d), 1-302(f), 1-606(d), 1-609(a) and (c) and 1-610); 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 § 302.063 adopted January 30, 1987, effective January 31, 1987, 17 Pa.B. 570; amended January 8, 1999, effective January 9, 1999, 29 Pa.B. 202; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 302.063, 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 (364731) to (364732).

§ 302.064. Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P.S. § 1-301), if all the following requirements are met:

- (1) The agent is representing a broker-dealer which is:

- (i) Registered under section 301 of the act.
- (ii) A member of a National securities exchange.
- (2) The agent's only customers are broker-dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78qq) or section 301 of the act.
- (3) The agent is not subject to either of the following:
 - (i) A currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration.
 - (ii) A currently effective order of the Department issued under section 512 of the act (70 P.S. § 1-512).

Authority

The provisions of this § 302.064 issued under sections 302(f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-302(f) 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 § 302.064 adopted March 9, 1990, effective March 10, 1990, 20 Pa.B. 1407; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 302.064, 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 (364732).

§ 302.065. Canadian broker-dealer exempt.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the Department considers it appropriate and in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) when effecting transactions in securities in this Commonwealth with persons described in paragraph (1) if the broker-dealer meets the conditions of paragraph (2).

- (1) The customer is one of the following:
 - (i) A person from Canada who temporarily is present in this Commonwealth with whom the Canadian broker-dealer had a bona fide business-customer relationship before the person entered this Commonwealth.
 - (ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.
- (2) The Canadian broker-dealer meets the following conditions:
 - (i) Is a member in good standing of a self-regulatory organization or stock exchange in Canada at the time it is effecting transactions into this Commonwealth in reliance on this section.

(ii) Is registered as a broker or dealer in good standing in the province or territory of Canada from which it is effecting transactions into this Commonwealth in reliance on this section.

(iii) Discloses to its customers in this Commonwealth at the time of a transaction made in reliance on this section that it is not registered under the act.

Authority

The provisions of this § 302.065 amended under sections 102(k), 202(h) and (i), 203(r), 204(a), 207(h), (i) and (k), 209(a), 606(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-102(k), 2-202(h) and (i), 2-203(r), 2-204(a), 2-207(h), (i) and (k), 2-209(a), 6-606(a) and 6-609(a)); 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 § 302.065 adopted October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; transferred and renumbered from 64 Pa. Code § 302.065, 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 (364732) to (364733).

Cross References

This section cited in 10 Pa. Code § 203.202 (relating to certain transactions with persons from Canada exempt).

§ 302.070. Registration exemption for investment advisers to private funds.

(a) *Exemption for private fund advisers.* Subject to the additional requirements of subsection (b), a private fund adviser is exempt from the registration requirements of section 301(c) of the act (70 P.S. § 1-301(c)) if the private fund adviser satisfies the following conditions:

(1) The private fund adviser and any of its advisory affiliates are not subject to a disqualification as described in Rule 262 of Securities and Exchange Commission Regulation A (17 CFR 230.262) (relating to disqualification provisions).

(2) The private fund adviser files with the Department each report and amendment that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Securities and Exchange Commission Rule 204-4 (17 CFR 275.204-4) (relating to reporting by exempt reporting advisers).

(b) *Additional requirements for private fund advisers to certain 3(c)(1) funds.* To qualify for the exemption described in subsection (a), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall also:

(1) Advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities other than short-term paper are beneficially owned entirely by persons who would each meet the definition of “qualified

client” in Securities and Exchange Commission Rule 205-3 (17 CFR 275.205-3) (relating to exemption from the compensation prohibition of section 205(a)(1) for investment advisers) at the time the securities are purchased from the issuer.

(2) Disclose, at the time of purchase, the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

- (i) Services, if any, to be provided to individual beneficial owners.
- (ii) Duties, if any, the investment adviser owes to the beneficial owners.
- (iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) Obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and deliver a copy of the audited financial statements to each beneficial owner of the fund.

(c) *Federally covered investment advisers.* If a private fund adviser is registered with the Securities and Exchange Commission, the adviser is not eligible for this exemption and shall comply with the State notice filing requirements applicable to Federally covered investment advisers in section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)).

(d) *Investment adviser representatives.* A person is exempt from the registration requirements of section 301(c) of the act if the person:

- (1) Is employed by or associated with an investment adviser that is exempt from registration in this Commonwealth under this section.
- (2) Does not otherwise act as an investment adviser representative.

(e) *Electronic filing.*

(1) A private fund adviser shall file the report filings described in subsection (a)(2) electronically through the IARD.

(2) The Department will consider a report filed when the report is filed and accepted by the IARD on the Department’s behalf.

(f) *Transition.* If an investment adviser becomes ineligible for the exemption provided in this section, the investment adviser shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser’s eligibility for this exemption ceases.

(g) *Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.* An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has one or more beneficial owners who are not qualified clients as described in subsection (b)(1) is eligible for the exemption contained in subsection (a) if all of the following conditions are satisfied:

- (1) The subject fund existed before January 13, 2018.
- (2) The subject fund ceases to accept beneficial owners who are not qualified clients, as described in subsection (b)(1), as of January 13, 2018.
- (3) The investment adviser discloses in writing the information described in subsection (b)(2) to all beneficial owners of the fund.

(4) The investment adviser delivers audited financial statements as required under subsection (b)(3) as of January 13, 2018.

(h) *Scope.* This section does not supersede an applicable exclusion from the definition of investment adviser or exemption from registration for an investment adviser in the act.

Authority

The provisions of this § 302.070 issued 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 § 302.070 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

Cross References

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

§ 302.071. Registration exemption for solicitors.

A solicitor does not need to register as an investment adviser or investment adviser representative if the solicitor:

- (1) Is in compliance with all requirements of § 404.012 (relating to cash payment for client solicitation).
- (2) Provides impersonal investment advisory services.
- (3) Is not subject to any order, judgment or decree described in section 305(a)(ii)—(vi) of the act (70 P.S. § 1-305(a)(ii)—(vi)).

Authority

The provisions of this § 302.071 issued 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 § 302.071 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

Cross References

This section cited in 10 Pa. Code § 404.012 (relating to cash payment for client solicitation).

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