

**CHAPTER 606. MISCELLANEOUS POWERS OF THE
DEPARTMENT**

Sec.

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§ 606.011. Financial reports to securityholders.

(a) In the case of securities issued under section 203(d) or (p) of the act (70 P.S. § 1-203(d) and (p)), or registered under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements must comply with section 609(c) of the act (70 P.S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securities were issued in a transaction subject to this section wherein the financial statements delivered to offerees were not required to be audited or if the financial statements were not required to be given to the offerees, the financial statements do not need to be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)) and, within 120 days of that date, has made a filing with the Securities and Exchange Commission in accordance with either of those sections.

Authority

The provisions of this § 606.011 amended under sections 606(a) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-606(a) and (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 § 606.011 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 June 17, 1977, effective June 18, 1977, 7 Pa.B. 1644; amended February 2, 1979, effective February 3, 1979, 9 Pa.B. 430; corrected April 3, 1987, 17 Pa.B. 1370; amended October 10, 1997, effective October 11, 1997, 27 Pa.B. 5255; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 606.011, 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 (364827).

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§ 606.031. Advertising literature.

(a) *Advertisements.* Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish an advertisement concerning a security in this Commonwealth unless all of the following are met:

- (1) The advertisement is either of the following:
 - (i) Permitted by this section and complies with any requirements imposed by this section.
 - (ii) Specifically excluded from application of this section by subsection (f).
- (2) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, over-emphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, including financial projections or forecasts.

(3) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) *Registered offerings: permitted advertisements after filing but before effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has been filed with the Department under section 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Department under section 205 or 206 of the act for the sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), a person may publish any of the following in this Commonwealth before effectiveness of the registration statement under the act:

- (i) Advertisements which comply with section 2(a)(10)(b) of the Securities Act of 1933 (15 U.S.C.A. § 77b(a)(10)(b)).
- (ii) Advertisements which comply with Rule 134 (17 CFR 230.134) (relating to communications not deemed a prospectus) promulgated by the Securities and Exchange Commission.
- (iii) A preliminary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 and complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the Securities and Exchange Commission.

(iv) A summary prospectus which is part of a registration statement that has been filed with the Securities and Exchange Commission under section

5 of the Securities Act of 1933 and complies with Rule 431 (17 CFR 230.431) (relating to summary prospectuses) promulgated by the Securities and Exchange Commission.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the Securities and Exchange Commission under Regulation A (17 CFR 230.251—230.263) (relating to conditional small issues exemption), promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and with the Department under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth that complies with Rule 251(d)(1)(ii)(C) (17 CFR 230.251(d)(1)(ii)(C)) (relating to scope of exemption) promulgated by the Securities and Exchange Commission before effectiveness of the offering circular under the act if all of the following conditions are met:

(i) The advertisement is filed with the Department 10 days before publication in this Commonwealth.

(ii) The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.

(3) In connection with a registration statement filed with the Department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the Securities and Exchange Commission in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) (relating to exemption for limited offerings and sales of securities not exceeding \$5,000,000) promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth before effectiveness of the registration statement under the act if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement providing the name and address of the underwriter or where a prospectus may be obtained.

(F) A statement in the following form: "A registration statement has been filed with the Pennsylvania Department of Banking and Securities but has not yet become effective. These securities may not be sold nor may offers to buy be accepted before the time the registration statement becomes effective. This advertisement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these

securities in the Commonwealth of Pennsylvania before registration of the securities under the Pennsylvania Securities Act of 1972.”

(ii) The advertisement is filed with the Department 10 days before publication in this Commonwealth.

(iii) The Department does not issue a letter disallowing its publication in this Commonwealth before the expiration of the 10-day period.

(c) *Registered offerings: permitted advertisements after effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has become effective under section 205 or 206 of the act.

(1) In connection with a registration statement filed with the Department under section 205 or 206 of the act for the offer and sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 which has become effective, a person may publish an advertisement in this Commonwealth if it is preceded or accompanied by a copy of the final prospectus.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth that has been filed with the Securities and Exchange Commission under Regulation A (17 CFR 230.251—230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the Department under section 205 or 206 of the act and has been qualified by the Securities and Exchange Commission under Regulation A and has become effective under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth if the advertisement is accompanied or preceded by a copy of the final offering circular.

(3) In connection with a registration statement filed with the Department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the Securities and Exchange Commission in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) promulgated by the Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 that has become effective under the act, a person may publish in this Commonwealth an advertisement if all of the following are met:

- (i) The advertisement contains no more than the following:
 - (A) The name and address of the issuer of the security.
 - (B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield and the per unit offering price to the public.
 - (C) A brief, generic description of the issuer’s business.
 - (D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement, if applicable, that funds accompanying the subscription agreement are subject to escrow and the terms of the escrow.

(F) The name and address where the final prospectus may be obtained if delivery of the final prospectus does not precede or accompany the advertisement.

(G) A statement in the following form: "This advertisement does not constitute an offer to sell nor a solicitation of an offer to buy any of the securities. The offering is made only by the prospectus."

(ii) The advertisement is filed with the Department 5 days before publication in this Commonwealth.

(iii) The Department does not issue a letter disallowing publication in this Commonwealth before the expiration of the 5-day period.

(4) A person may not publish an advertisement in this Commonwealth in connection with the offer and sale of any security registered under section 205 or 206 of the act at any time after the expiration of the effective period of the registration statement relating to that security as determined by section 207 of the act (70 P.S. § 1-207).

(d) *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and (i) of the act.* Except as provided in paragraphs (2) and (3), a person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202 of the act (70 P.S. § 1-202).

(2) *Section 202(a) of the act.* In connection with the offer or sale of any security in this Commonwealth made in reliance on section 202(a) of the act which is issued by the Commonwealth, any political subdivision, or any agency or corporate or instrumentality of the Commonwealth and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation must appear prominently in bold face type of at least 12 points in size on the face page of any preliminary offering statement, official offering statement or advertisement published in this Commonwealth.

(3) *Section 202(i) of the act.* A person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202(i) of the act except if the Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions.* All of the following apply:

(1) *Advertisements permitted.* Except as provided in paragraph (2), a person may publish any advertisement in this Commonwealth in connection with a securities transaction in this Commonwealth which is exempt from registration under section 203 of the act (70 P.S. § 1-203).

(2) *Advertisements prohibited.* A person may not publish any advertisement in this Commonwealth in connection with the following securities transactions which are effected in this Commonwealth:

- (i) A sale of a security made in reliance on section 203(d) of the act.
- (ii) An offer of a security made in reliance on section 203(e) of the act which results in a sale under section 203(d) of the act.
- (iii) An offer or sale of a security made in reliance on section 203(j) of the act.
- (iv) An offer or sale of a security made in reliance on section 203(s) of the act.
- (v) An offer or sale of a security made in reliance on § 203.187 (relating to small issuer exemption).
- (vi) An offer or sale of a security made in reliance on § 203.189 (relating to isolated transaction exemption).
- (vii) An offer or sale of a security which is exempt under section 203(r) of the act when the Department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements.* All of the following apply:

- (1) This section does not apply to advertisements described in paragraph (2) if all of the following are met:

- (i) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, including financial projections or forecasts.

- (ii) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

- (2) The following advertisements are excluded from the provisions of this section if the requirements of paragraph (1) have been met:

- (i) General solicitation in connection with the offer or sale of a security in reliance on section 203(t) of the act.

- (ii) Advertisements which comply with Rule 135 promulgated by the Securities and Exchange Commission (17 CFR 230.135) (relating to notice of proposed registered offerings).

- (iii) Advertisements which comply with Rule 135c promulgated by the Securities and Exchange Commission (17 CFR 230.135c) (relating to notice of certain proposed unregistered offerings).

- (iv) Advertisements in connection with an offer of a security in reliance on § 203.190 (relating to certain Internet offers exempt) which comply with the legend requirement of § 203.190(a)(1).

(v) Advertisements in connection with the offer or sale of Federally covered securities under section 18(b)(4)(C) and (E) of the Securities Act of 1933 (15 U.S.C.A. § 77r(b)(4)(C) and (E)) when the issuer relies upon and is in compliance with Rule 506(c) of Regulation D (17 CFR 230.506) (relating to exemption for limited offers and sales without regard to dollar amount of offering) or regulation crowdfunding.

(g) *Securities and Exchange Commission interpretive advice on use of electronic media.* A person who uses electronic media to publish an advertisement in this Commonwealth in connection with a security which is the subject of a registration statement filed with the Department under section 205 or 206 of the act and with the Securities and Exchange Commission under section 5 of the Securities Act of 1933 may rely on the interpretive advice of the Securities and Exchange Commission in Release No. 33-7856 (April 28, 2000) and subsequent advice given under that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Department will not take any enforcement action if the person complies with the interpretive advice.

Authority

The provisions of this § 606.031 amended under sections 606(d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 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 § 606.031 adopted June 14, 1974, effective June 15, 1974, 4 Pa.B. 1227; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended November 21, 1980, effective November 22, 1980, 10 Pa.B. 4430; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 606.031, 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 (364828) to (364833).

Cross References

This section cited in 10 Pa. Code § 202.093 (relating to charitable contributions to pooled income funds exempt); 10 Pa. Code § 202.095 (relating to charitable gift annuities); and 10 Pa. Code § 203.201 (relating to accredited investor exemption).

§ 606.032. [Reserved].

Source

The provisions of this § 606.032 adopted January 17, 1975, effective January 18, 1975, 5 Pa.B. 105; reserved December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 606.032, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (297513).

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(389817) No. 521 Apr. 18

§ 606.033. [Reserved].**Source**

The provisions of this § 606.033 adopted January 17, 1975, effective January 18, 1975, 5 Pa.B. 105; amended July 24, 1981, effective July 25, 1981, 11 Pa.B. 2622; reserved December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 606.033, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (297514).

§ 606.034. [Reserved].**Source**

The provisions of this § 606.034 adopted March 19, 1982, effective March 20, 1982, 12 Pa.B. 995; amended August 19, 1983, effective August 20, 1983, 13 Pa.B. 2560; reserved December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 606.034, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (294514).

§ 606.041. [Reserved].**Authority**

The provisions of this § 606.041 amended under sections 606(a) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-606(a) and (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 § 606.041 adopted May 10, 1974, effective May 11, 1974, 4 Pa.B. 916; amended April 30, 1976, effective May 1, 1976, 6 Pa.B. 1007; amended June 1, 1979, effective June 2, 1979, 9 Pa.B. 1757; amended October 9, 1979, effective October 10, 1979, 9 Pa.B. 3746; amended May 2, 1980, effective May 3, 1980, 10 Pa.B. 1778; amended January 21, 1983, effective January 22, 1983, 13 Pa.B. 526; amended April 19, 1985, effective April 20, 1985, 15 Pa.B. 1432; amended January 24, 1986, effective January 25, 1986, 16 Pa.B. 255; amended November 28, 1986, effective November 29, 1986, 16 Pa.B. 4655; amended July 17, 1987, effective July 18, 1987, 17 Pa.B. 3029; amended April 28, 1989, effective April 29, 1989, 19 Pa.B. 1846; amended July 6, 1990, effective July 28, 1990, 20 Pa.B. 3688 and 4089; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 296; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 657; amended September 22, 1995, effective September 23, 1995, 25 Pa.B. 3994; amended January 8, 1999, effective January 9, 1999, 29 Pa.B. 202; amended December 30, 1999, effective January 1, 2000, 30 Pa.B. 18; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 606.041, 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 (364834) to (364838).

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