

REGULATORY ANALYSIS FORM		This space for use by IRRC	
(1) Agency PA Securities Commission		IRRC Number: 2007 OCT 30 PM 12:13 2204	
(2) I.D. Number (Governor's Office Use) #50-116			
(3) Short Title Charitable contributions to pooled income funds exempt Charitable gift annuities Certain transactions with persons from Canada exempt Agent transfers Auctioneers exemption from broker-dealer and agent registration Publishers exemption from investment adviser registration Philadelphia Stock Exchange Exemption from agent registration Broker-dealer registration procedures Agent registration procedures Examination requirement for agents Broker-dealer capital requirements Broker-dealer required records Broker-dealer required financial reports Examinations of broker-dealers and investment advisers Broker-dealer compensation Advertising literature Cash tender offers Advertising of securities issued by governments, governmental agencies and political subdivisions Advertising of securities issued or guaranteed by banks or credit unions Delegation and substitution			
(4) PA Code Cite 64 Pa. Code § 202.093 64 Pa. Code § 202.095 64 Pa. Code § 203.202 64 Pa. Code § 301.020 64 Pa. Code § 302.061 64 Pa. Code § 302.062 64 Pa. Code § 302.064 64 Pa. Code § 303.011 64 Pa. Code § 303.013 64 Pa. Code § 303.031 64 Pa. Code § 303.041 64 Pa. Code § 304.011 64 Pa. Code § 304.021 64 Pa. Code § 304.041 64 Pa. Code § 304.051 64 Pa. Code § 606.031 64 Pa. Code § 606.032 64 Pa. Code § 606.033 64 Pa. Code § 606.034 64 Pa. Code § 606.041		(5) Agency Contacts & Telephone Numbers Primary Contact: G. Philip Rutledge 783-5130 Secondary Contact: Lynn D. Naefach 783-5130	
(6) Type of Rulemaking(check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120 Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	

(8) Briefly explain the regulation in clear and nontechnical language.

- a. Commission Regulation 202.093 provides an exemption from registration for securities issued or created in connection with contributions to a pooled income fund. Revisions provide that a person advising a pooled income fund on investments must be registered with the Commission as an investment adviser or be a Federally covered adviser in compliance with the notice requirements of Section 303(a) of the 1972 Act and that a registered broker-dealer or agent may receive compensation for soliciting contributions.
- b. Commission Regulation 202.095 clarifies that a person may receive commissions or special compensation for solicitation of purchasers of a gift annuity if the person is registered as a broker dealer or agent of the broker-dealer and provides that a person advising a qualified charity on investments must be registered with the Commission as an investment adviser or be a Federally covered adviser in compliance with the notice requirements of Section 303(a) of the 1972 Act.
- c. Commission Regulation 203.202 creates an exemption from registration for offers and sales of securities by a broker-dealer who is exempt from registration under Commission Regulation 302.065 relating to exempt Canadian broker-dealers
- d. Commission Regulation 301.020 reflects a change in procedure for transferring agent registration from participation in the Central Registration Depository Temporary Agent Transfer program to compliance with the terms and conditions of Item 15 of Form U-4, Uniform Application for Securities Registration or Transfer.
- e. Commission Regulation 302.061 deletes the requirement to file Forms 302F1, AU-1 and AU-2 to claim the auctioneer's exemption from broker-dealer and agent registration and reduces the conditions upon which the exemption is available.
- f. Commission Regulation 302.062 is repealed to reflect the amendment of Section 102(j)(iv) of the 1972 Act in 1998 to create a statutory exclusion from the definition of investment adviser for those whose activities are limited to publications of a general, regular and paid circulation that do not provide advice to subscribers on their specific investment situation.
- g. Commission Regulation 302.064 increases the scope of the exemption to exempt agents from registration if they work for a broker-dealer registered with the Commission who is a member of a national securities exchange and the agents' only customers are other registered broker-dealers.
- h. Commission Regulation 303.011 revises broker-dealer financial statement requirements to conform to the state preemption provisions of the National Securities Markets Improvement Act of 1996 (NSMIA).
- i. Commission Regulation 303.013 deletes the requirement to file a fingerprint card with the Commission as part of the registration application process for an agent of an issuer, and deletes the requirement for a broker-dealer to keep on file information for agents that is readily available through the Central Registration Depository.
- j. Commission Regulation 303.031 adds language to reflect changes made to the Uniform Combined State Law Examination (Series 66).
- k. Commission Regulation 303.041 reflects federal preemption by NSMIA of state broker-dealer net capital requirements where inconsistent with Securities and Exchange Commission (SEC) rules; repeals preempted rules applicable to Philadelphia Stock Exchange members and adds a requirement that a broker-dealer provide a copy of any financial statement or financial information required by SEC within five days of a written or electronic request from the Commission.
- l. Commission Regulation 304.011 revises the broker-dealer record keeping requirements to make them consistent with SEC rules.

- m. Commission Regulation 304.021 reflects preemption by NSMIA of state broker-dealer financial report requirements where inconsistent with SEC rules, and adds a requirement that a broker-dealer provide a copy of any financial statement or financial information required by SEC and prepared by a independent certified public accountant within five days of a written or electronic request from the Commission.
- n. Commission Regulation 304.041 establishes a requirement that broker-dealer and investment adviser registrants provide Commission staff, conducting a branch office examination, with physical access to all areas of the office and the opportunity to view files where they are physically maintained on a routine basis. A representative of the registrant may accompany the Commission's representative.
- o. Commission Regulation 304.051 deletes references to compensation limits established by stock exchanges and SEC as sales commissions have been de-regulated.
- p. Commission Regulation 606.031 is amended to be the sole regulation governing the use of advertising in connection with the offer and sale of securities under the 1972 Act and to incorporate by reference advice given by SEC on publication of advertisements by use of electronic media.
- q. Commission Regulation 606.032 is deleted because its provisions have been superceded by specific provisions in the Pennsylvania Takeover Disclosure Law concerning filing of advertisements and solicitation materials in tender offers.
- r. Commission Regulation 606.033 is deleted because its provisions have been preempted by NSMIA, except for governmental issuers located in Pennsylvania, and provisions relating thereto have been incorporated into Commission Regulation 606.031.
- s. Commission Regulation 606.034 is deleted because its provisions have been preempted by NSMIA.
- t. Commission Regulation 606.041 is amended to reflect a recent Commission reorganization, to update references in the regulation to acknowledge interim changes in relevant statutes and rules, and to grant additional authority to the Director of Corporation Finance to register certain non-profit debt offerings.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

- a. 70 P.S. § 1-202(i) and 70 P.S. § 1-609(a)
- b. 70 P.S. § 1-202 (i) and 70 P.S. § 1-609 (a)
- c. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)
- d. 70 P.S. § 1-301(b) and 70 P.S. § 1-609(a)
- e. 70 P.S. § 1-302(f) and 70 P.S. § 1-609(a)
- f. 70 P.S. § 1-302(f) and 70 P.S. § 1-609(a)
- g. 70 P.S. § 1-302(f) and 70 P.S. § 1-609(a)
- h. 70 P.S. § 1-303(a) and 70 P.S. § 1-609(a)
- i. 70 P.S. § 1-303(a) and 70 P.S. § 1-609(a)
- j. 70 P.S. § 1-303(c) and 70 P.S. § 1-609(a)
- k. 70 P.S. § 1-303(d) and 70 P.S. § 1-609(a)
- l. 70 P.S. § 1-304(a) and 70 P.S. § 1-609(a)
- m. 70 P.S. § 1-303(d) and 70 P.S. § 1-609(a)
- n. 70 P.S. § 1-304(d) and 70 P.S. § 1-609(a)
- o. 70 P.S. § 1-304(e) and 70 P.S. § 1-609(a)
- p. 70 P.S. § 1-606(c) and 70 P.S. § 1-609(a)
- q. 70 P.S. § 1-606(c) and 70 P.S. § 1-609(a)
- r. 70 P.S. § 1-606(c) and 70 P.S. § 1-609(a)
- s. 70 P.S. § 1-606(c) and 70 P.S. § 1-609(a)
- t. 70 P.S. § 1-606(d) and 70 P.S. § 1-609(a)

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Changes to Commission Regulations 303.011, 303.041, 304.011, and 304.021 conform these regulations to the requirements of the federal National Securities Markets Improvement Act of 1996. Commission Regulations 606.033 and 606.034 are deleted due to preemption by NSMIA.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

- a. Commission Regulation 202.093 clarifies that a person advising a pooled income fund on investments must be registered with the Commission or be a Federally covered adviser in compliance with the notice filing requirements of Section 303(a) of the 1972 Act. Additionally, the regulation codifies a recent Commission order allowing a person to receive compensation for soliciting contributions to the fund if the person is registered as a broker-dealer or agent of the broker-dealer.
- b. Commission Regulation 202.095 codifies a recent Commission order allowing a person to receive compensation for soliciting purchasers of gift annuities if the person is registered as a broker-dealer or agent of the broker-dealer.
- c. Commission Regulation 203.021 provides an exemption from registration for securities sold by a Canadian broker-dealer, who is exempt from registration under Commission Regulation 302.065, to a person from Canada who is in Pennsylvania at the time of sale. The exemption was requested by the Investment Dealers Association of Canada and is consistent with North American Securities Administrators Association Model Rules.
- d. Commission Regulation 301.020 reflects a change in the procedure for transferring an agent's registration to a new firm. At the time the regulation was adopted, the transfer of an agent's registration was completed through the Central Registration Depository Temporary Agent Transfer program. The program is now incorporated into Form U-4, Uniform Application for Securities Registration or Transfer. The modifications clarify that transfers must be effected through compliance with the terms and conditions of Item 15 of Form U-4.
- e. Commission Regulation 302.061 provides an exemption from broker-dealer and agent registration for a licensed auctioneer auctioning stock, usually as part of an estate sale. Commission Regulation 302.061 is conditioned on the auctioneer meeting 11 different conditions, including the filing of a form. Since 1983, the Commission has received only 15 filings. The modifications would repeal the filing of the form, and would make the exemption available to a person licensed as an auctioneer, with no disciplinary history, who does not sell securities at auction more than three times in a consecutive 24 month period.
- f. Commission Regulation 302.062 is repealed because persons covered by this exemption are excluded from the definition of an investment adviser under Section 102(j) of the 1972 Act, amended in 1998.
- g. Commission Regulation 302.064 exempts agents from the requirement to register with the Commission if they work for a broker-dealer registered with the Commission who is a member of the Philadelphia Stock Exchange and the agent's only customers are other registered broker-dealers. The modifications would extend the exemption to agents of registered broker-dealers who are members of other national securities exchanges that also deal exclusively with other registered broker-dealers.
- h. Commission Regulation 303.011 reflects preemption, imposed by the National Securities Markets Improvement Act of 1996 (NSMIA), of state laws concerning broker-dealer net capital requirements which are inconsistent with Securities and Exchange Commission (SEC) rules. The modifications require a broker-dealer to provide a copy of any financial statement or information required by SEC to the Commission within five days of receipt of a written or electronic request from the Commission.
- i. Commission Regulation 303.013 eliminates the requirement for a broker-dealer agent to file fingerprint cards as part of the application for registration. Agents of National Association of Securities Dealers (NASD) members are exempt from this requirement because fingerprint cards are collected by NASD, so only agents of issuers file fingerprint cards with the Commission. The Commission does not have available to it a cost-effective method for using the fingerprint cards to provide any measure of increased investor protection. Currently, no one is registered with the Commission as an agent of an issuer.
- j. Commission Regulation 303.031 reflects changes made to the Series 66, Uniform Combined State Law Examination.
- k. Commission Regulation 303.041 reflects preemption, imposed by NSMIA, of state laws concerning broker-dealer net capital requirements which are inconsistent with SEC rules. The modifications require a broker-dealer to provide a copy of any financial statement or information required by SEC to the Commission within five days of receipt of a written or electronic request from the Commission.

- l. Commission Regulation 304.011 reflects preemption, imposed by NSMIA, of state laws concerning broker-dealer recordkeeping requirements which are inconsistent with SEC rules.
- m. Commission Regulation 304.021 reflects preemption, imposed by NSMIA, of state laws concerning broker-dealer financial reports which are inconsistent with SEC rules. The modifications require a broker-dealer to provide a copy of any financial statement or information required by SEC to the Commission within five days of receipt of a written or electronic request from the Commission, and that the financial reports be prepared by an independent certified public accountant.
- n. Commission Regulation 304.041 address difficulties encountered by Commission staff in conducting branch office examinations where physical access to areas of the branch office has been denied to Commission representatives. The regulation requires registrants to provide Commission staff access to all areas of the office and to view files where they are physically maintained on a routine basis. The regulation permits a representative of the registrant to accompany the Commission's representative.
- o. Commission Regulation 304.051 reflects deregulation by SEC and the stock exchanges of sales commissions received by broker-dealers.
- p. Commission Regulation 606.031 would be the sole regulation governing advertising in connection with the offer and sale of securities under the 1972 Act and would incorporate by reference advice given by SEC on publication of advertisements by use of electronic media.
- q. Commission Regulation 606.032 is deleted since its provisions have been superceded by specific provisions in the Pennsylvania Takeover Disclosure Law concerning filing of advertisements and solicitation materials in tender offers.
- r. Commission Regulation 606.033 is deleted because its provisions have been preempted by NSMIA, except for provisions relating to governmental issuers located in Pennsylvania. Provisions relating to governmental issuers located in Pennsylvania are included in the proposed revisions to Commission Regulation 606.031.
- s. Commission Regulation 606.034 is deleted because its provisions are preempted by NSMIA.
- t. Changes to Commission Regulation 606.041 reflect a recent Commission reorganization, update references to acknowledge statutory changes, and grant additional authority to the Director of Corporation Finance to register certain non-profit debt offerings.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation:

- a. Failure to amend Commission Regulation 202.093 could result in ambiguity among issuers and their counsel as to when this exemption is available.
- b. Failure to change Commission Regulation 202.095 could result in ambiguity among issuers and their counsel as to when this exemption is available.
- c. Failure to adopt Commission Regulation 203.021 could limit the investment options afforded to Canadian residents temporarily in Pennsylvania, particularly with respect to Canadian tax advantaged retirement plans.
- d. If Commission Regulation 301.020 is not amended, the Commission's regulations will not reflect the current system for effecting transfers of agent registrations between brokerage firms.
- e. If Commission Regulation 302.061 is not amended, an auctioneer whose activity in selling securities is incidental to its primary business will continue to be subject to burdensome requirements to claim an exemption from broker-dealer and agent registration.
- f. In the absence of the amendment to Commission Regulation 302.062, the Commission's regulations will contain contradictory provisions between exemptions and exceptions afforded by the Act.
- g. If Commission Regulation 302.064 is not amended members of national securities exchanges other than the Philadelphia Stock Exchange will continue to incur the expense of registration even though their customers are limited to other broker-dealers.
- h. If Commission Regulation 303.011 is not amended, Commission regulations will not comply with federal law.
- i. If Commission Regulation 303.013 is not amended, agents of issuers will continued to be required to incur the expense and inconvenience of filing fingerprint cards with the Commission which the Commission has no means of utilizing to increase investor protection.
- j. It is necessary to effect the amendments proposed in Commission Regulation 303.031 to reflect changes to the Series 66, Uniform Combined State Law Examination.
- k. Changes to Commission Regulation 303.041 are necessary to conform its provisions to federal law.
- l. Amendments to Commission Regulation 304.011 are necessary to reflect changes required by federal law.
- m. The changes proposed in Commission Regulation 304.021 are intended to conform Pennsylvania law to the existing requirements of federal law.
- n. Unless Commission Regulation 304.041 is adopted, registrants could continue to deny Commission representatives physical access to all areas of the office and to view files in the area in which they are stored, thereby hindering Commission representatives conducting effective branch office examinations.
- o. Failing to effect the changes proposed in Commission Regulation 304.051 would subject broker-dealers doing business in Pennsylvania to limits on compensation that are not imposed on them under federal law or by the stock exchanges, and could reduce the willingness of broker-dealers to do business in the state.
- p. Commission Regulation 606.031 is intended to include all advertising regulations in a single regulation, and to provide consistency with federal policy relating to advertising by use of electronic media.
- q. Failure to change Commission Regulation 606.032 would cause the regulations to continue to include provisions that have been superceded by the Pennsylvania Takeover Disclosure Law.
- r. Revisions to Commission Regulation 606.033 are necessary to conform to federal law.
- s. Revisions to Commission Regulation 606.034 are necessary to conform to federal law.
- t. If Commission Regulation 606.041 is not amended the delegations of authority will be inconsistent with the organization of the Commission.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

- a. Persons who make charitable gifts to a pooled income fund will benefit from the changes to Commission Regulation 202.093 because the changes will clarify that pooled income funds may receive investment advice from both state registered and federally covered investment advisers. Federally covered investment advisers could benefit because they will be able to provide investment advisory services to these pooled income funds. Registrants will benefit because they will be able to solicit contributions to pooled income funds relying on the exemption for compensation.
- b. Persons who purchase charitable gift annuities benefit from the changes to Commission Regulation 202.095 because the changes will clarify that charities may receive investment advice from both state registered and federally covered investment advisers. Registrants will benefit because they will be able to solicit contributions to charitable gift annuities relying on the exemption for compensation.
- c. Canadian residents who are present in Pennsylvania and would like to effect transactions through a Canadian broker-dealer or agent of a Canadian broker-dealer described in Commission Regulation 302.065(c) will benefit from Commission Regulation 203.202.
- d. Agents of registered broker-dealers that wish to terminate employment with that broker-dealer and commence employment with another registered broker-dealer will benefit from Commission Regulation 301.020.
- e. Licensed auctioneers who, incidental to their business, engage in the auctioning of stock would benefit from Regulation 302.061 because it provides a regulatory safe harbor from broker-dealer and agent registration based on the number of sales that occur within a consecutive 24 month period.
- f. Investment advisers engaged in publication of materials of a general, regular and paid circulation and who do not provide advice to subscribers on their specific investment situations would benefit from repeal of Commission Regulation 302.062 as repeal would eliminate the confusion as to whether such persons are excluded from the definition of investment adviser set forth in Section 102(j)(iv) of the 1972 Act or are exempt from the registration requirements of Section 301 of the 1972 Act.
- g. The proposed changes to Commission Regulation 302.064 will benefit agents who work for a broker-dealer registered with the Commission who is a member of a national securities exchanges.
- h. Commission Regulation 303.011 will benefit an applicant for registration as a broker-dealer that is a member of the National Association of Securities Dealers (NASD) or a securities exchange by reducing the compliance burden on applicants.
- i. An individual that files an application to register as an agent of an issuer will benefit from proposed changes to Commission Regulation 303.013 as that person will no longer be required to file a fingerprint card.
- j. Commission Regulation 303.031 will benefit individuals seeking registration as a securities agent in Pennsylvania.
- k. Commission Regulation 303.041 will benefit the regulated community by keeping the Commission's regulations up-to-date with recent developments in securities regulation.
- l. Commission Regulation 304.011 will benefit the regulated community by keeping the Commission's regulations up to date with recent developments in securities regulation.

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- m. Commission Regulation 304.021 will benefit the regulated community by keeping the Commission's regulations up to date with recent developments in securities regulation.
 - n. Commission Regulation 304.041 will benefit Pennsylvania investors because it will afford Commission representatives access to information necessary to conduct a complete examination of branch offices maintained by registrants.
 - o. Broker-dealers will benefit from changes to Commission Regulation 304.051 as modifications will create uniformity with federal and self-regulatory organization rules regarding broker-dealer compensation.
 - p. Changes to Commission Regulation 606.031 will benefit issuers of securities as it will become the sole regulation governing use of advertising in connection with the offer and sale of securities under the 1972 Act and will incorporate by reference advice given by Securities and Exchange Commission (SEC) on publication of advertisements by use of electronic media.
 - q. Persons who propose to make a cash tender offer for all or part of a class of equity securities will benefit from deletion of Commission Regulation 606.032 since its provisions have been superceded by specific provisions in the Pennsylvania Takeover Disclosure Law concerning filing of advertisements and solicitation materials in tender offers.
 - r. Governmental issuers will benefit by the harmonization of federal and state law relating to regulation of the issuance of government securities.
 - s. Deleting Commission Regulation 606.034 will benefit banks and credit unions by keeping the Commission's regulations up to date with recent developments in securities regulation.
 - t. Proposed changes benefit the regulated community as they clarify responsibilities delegated by the Commission to representatives of the Commission. Issuers of non-profit debt offerings will benefit from delegation of registration responsibility to the Director of Corporation Finance as it will eliminate registration delays.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No groups will be adversely affected by these regulations. These regulatory actions: (1) reduce filing burdens on issuers, applicants and registrants; (2) harmonize provisions of Pennsylvania law with applicable provisions of federal law; (3) adopt uniform model rules adopted by NASAA; and (4) clarify ambiguities in existing regulatory language.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

- a. The following proposed regulations merely delete or modify existing language and do not increase current compliance requirements: Commission Regulations 302.061, 302.064, 303.011, 303.031, 303.041, 304.011, 304.021, 304.051, 606.032, 606.033, and 606.034.
- b. Persons responsible for administration of a pooled income fund will be responsible for determining that persons receiving compensation for soliciting contributions to the pooled income fund are registered by the Commission as a broker-dealer or agent of a broker-dealer.
- c. State registered and federally covered investment advisers advising a charity on investments will be required to comply with the registration requirement of Commission Regulation 202.095. Persons responsible for administration of a charitable gift annuity will be responsible for determining that persons receiving compensation for soliciting purchasers of annuities are registered by the Commission as broker-dealers or agents of a broker-dealer.
- d. Canadian broker-dealers and agents of Canadian broker-dealers will be required to comply with Commission Regulation 203.202.
- e. An agent of a broker-dealer who wishes to terminate employment with that broker-dealer and commence employment with another registered broker-dealer will be required to comply with Commission Regulation 301.020.
- f. A person who holds a license as an auctioneer, apprentice auctioneer, auction company or auction house who effects transactions in securities at auction or sale at auction will be required to comply with Commission Regulation 302.061 in order to rely upon the exemption from registration as a broker-dealer or agent.
- g. An agent representing a broker-dealer that is a member of a national securities exchange must comply with Commission Regulation 302.064 in order to rely upon the exemption from registration granted by that regulation.
- h. Applicants for registration as a broker-dealer who are not members of the National Association of Securities Dealers (NASD) or of a national securities exchange registered with the Securities and Exchange Commission (SEC) will be required to comply with the financial statement requirements of Commission Regulation 303.011. Applicants for registration as a broker-dealer who are members of the NASD or national securities exchange registered with SEC will be required to provide the Commission with financial information within five days of receipt of a written or electronic request.
- i. Commission Regulation 303.013 eliminates the requirement that an applicant for registration as an agent of a broker-dealer that is not a member of the NASD or a national securities exchange file a fingerprint card as part of the registration application. Currently, there are no registered agents of issuers.
- j. An agent taking the Uniform Combined State Law Examination in order to satisfy agent registration requirements will be required to comply with Commission Regulation 303.031.
- k. Broker-dealers will be required to comply with the requirement of Commission Regulation 303.041 to provide a copy of any financial statement or financial information required by SEC within five days of receipt of a written or electronic request from the Commission.
- l. Broker-dealers will be required to comply with Commission Regulation 304.011.
- m. Broker-dealers will be required by Commission Regulation 304.021 to provide a copy of any financial statement or financial information required by SEC within five days of receipt of a written or electronic request from the Commission and to have the financial information prepared by an independent certified public accountant.
- n. Broker-dealer and investment adviser registrants will be required to comply with Commission Regulation 304.041.
- o. Broker-dealer registrants will be required to comply with Commission Regulation 304.051.
- p. Persons disseminating advertising literature in Pennsylvania in connection with a securities offering will be required to comply with Commission Regulation 606.031.
- q. Various staff of the Commission will be required to comply with Commission Regulation 606.041

(16) Describe the communications with and input from the public in the development with drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Commission sought the input of the regulated community, primarily by means of the Commission's Attorney Advisory Committee.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including and legal, accounting or consulting procedures which may be required.

- a. By permitting a pooled income fund to compensate registered broker-dealers and agents for soliciting contributions to the fund, Commission Regulation 202.093 will benefit the pooled income fund because use of professionals will decrease the expense of locating suitable purchasers, potentially resulting in larger receipts.
- b. By permitting the sponsors of a charitable gift annuity program to compensate registered broker-dealers and agents for soliciting purchasers of annuities, Commission Regulation 202.095 will benefit the sponsor because use of professionals will decrease the expense of locating suitable purchasers. Charities may benefit by the corresponding increase in contributions.
- c. The exemption provided by Commission Regulation 203.202 will save Canadian issuers the expense of registering securities in Pennsylvania so that Canadian residents temporarily in Pennsylvania can purchase them.
- d. The cost of compliance with Commission Regulation 302.061 will be reduced due to elimination of the requirements to file a form with the Commission, to post a notice at the auction site and to make detailed inquiries of the issuer of the security.
- e. Commission Regulation 302.064 would eliminate the cost of registration for agents of registered broker-dealers who are members of national stock exchanges and whose only customers are other registered broker-dealers.
- f. Commission Regulation 303.013 would reduce the registration costs incurred by an agent affiliated with a broker-dealer not registered with the National Association of Securities Dealers or a national securities exchange of having fingerprints taken and submitting them.
- g. Under Commission Regulation 304.021, a broker-dealer, in response to a written or electronic request from the Commission, would incur the cost of compliance with respect to filing a copy of financial statement, financial report or other financial information required by SEC rules or rules of a national securities association or national securities exchange registered with the SEC of which the applicant is a member.
- h. Issuers choosing to advertise a securities offering in Pennsylvania will incur the costs of making a determination that such advertising complies with Commission Regulation 606.031. Placing all advertising provisions into a single regulation, however, should reduce the cost of determining compliance.
- i. The delegation of authority under Commission Regulation 606.041 to the Director of Corporation Finance to grant effectiveness to an application to register offerings of debt securities by non-profit issuers will reduce the costs to the non-profit entity associated with delay in registration, until the full Commission can consider the application.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The only Commission Regulation affecting governments is Commission Regulation 606.031 which is revenue neutral to the governments that may be required to comply with its conditions.

(19) Provide a specific estimate of costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Reductions in forms and certain filing requirements will reduce costs to the Commission of processing, reviewing, and storing such information.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

(in thousands)	Current FY Year	FY+1 Year	FY+2 Year	FY+3 Year	FY+4 Year	FY+5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

All proposed regulatory action will result in reduced compliance costs. However, it is not possible to quantify the dollar amount of savings of legal fees from filing and similar compliance expenditures.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Being a small agency, the Commission does not maintain expenditure history for its operating divisions.

PROGRAM	FY-3	FY-2	FY-1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

All of the proposed changes are beneficial as they reduce compliance burdens.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

As the 1972 Act requires the Commission to take action by rulemaking, no alternative regulatory scheme was considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See Item 22.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. In many instances, the changes are being made either to conform to federal law requirements or to make Pennsylvania's requirements conform with other states.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

- a. The following regulations would merely delete or modify existing language and do not affect Pennsylvania's competitiveness with other states: Commission Regulations 202.093; 202.095; 301.020, 302.061, 302.062, 302.064, 303.011, 303.013, 303.031; 303.041; 304.011; 304.021; 304.051; 606.031; 606.032; 606.033; and 606.034.
- b. Commission Regulation 203.202 is based in part on model rules promulgated by the North American Securities Administrator's Association, Inc., an organization that represents all state securities regulators.
- c. The remaining Commission Regulations herein relate to existing compliance requirements and do not affect Pennsylvania's competitiveness with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulations affect only the promulgating agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times and locations, if applicable.

None are anticipated at this time.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

- a. Commission Regulation 301.020 will eliminate the requirement that the employing broker-dealer for an agent file with the NASAA/CRD Central Registration Depository an Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program.
- b. Commission Regulation 302.061 will eliminate the requirement that an auctioneer file Forms AU-1 and AU-2 and 302F1 to claim the exemption.
- c. Commission Regulation 303.013 will eliminate the requirement that an agent of an issuer file a fingerprint card with the Commission as part of the registration application and the requirement to keep certain information on file for agents that is readily available to the Commission through the CRD.
- d. Commission Regulations 303.011, 303.041 and 304.011 provide that all records maintained under SEC rules satisfy state law requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Commission Regulation 203.202 provides a exemption for the registration of securities to be sold by Canadian broker-dealers to Canadian residents temporarily located in Pennsylvania.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become effective upon publication of final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Commission Regulations herein will be periodically reviewed by staff and, where changes are warranted, they will be included in the Commission's Regulatory Agenda.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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2204

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

PENNSYLVANIA SECURITIES COMMISSION
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 50-116

DATE OF ADOPTION: October 16, 2001

BY: M. James Cunningham

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY: [Signature]

October 16, 2001
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION
TITLE 64. SECURITIES

Subpart B. Registration of Securities
Ch. 202 Exempt Securities
Ch. 203. Exempt Transactions

Subpart C. Registration of Broker-Dealers, Agents, Investment Advisers and
Investment Adviser Representatives and Notice Filings by Federally Covered Advisers
Ch. 301. Registration Requirement
Ch. 302. Exemptions
Ch.303. Registration Procedure
Ch. 304. Post-Registration Provisions

Subpart F. Administration
Ch. 606. Miscellaneous Powers of Commission

**FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION**

Statutory Authority

Notice is hereby given that the Pennsylvania Securities Commission (Commission), pursuant to the authority contained in sections 202(i), 203(r), 301(b), 302(f), 303(a), (c), and (d), 304(a), (d) and (e), 606(d), and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P.S. §§1-202(i), 1-203(r), 1-303(b), 1-302(f), 1-303(a), (b) and (d), 1-304(a), (d) and (e), 1-606(d) and 1-609(a)) amends and adopts regulations concerning the subject matter of the act.

Publication of Notice of Proposed Rulemaking

Notice of Proposed Rulemaking appeared at 31 Pa.B. 4174 (August 4, 2001).

Public Comments

§606.031(c)(3)(i)(G). Although the Commission received no public comments during the 30-day public comment period, it did receive a verbal comment after the close of the public comment period concerning this provision. As proposed, this provision would require a highly specific legend to be placed on all advertisements for securities that had an effective registration statement with the Commission under Section 206 of the act which offering was being made pursuant to Section 3(a)(4), Section 3(a)(11) of the Securities Act of 1933 or Rule 504 adopted thereunder. Since Rule 504 and Section 3(a)(4) offerings often are made in several states simultaneously, a specific legend requirement may run counter to the Mid-Atlantic Regional Review Protocol of which the Commission is a signatory. The proposal also creates a higher compliance requirement than what currently exists in §606.031(e)(8). The Commission has no evidence that the existing legend requirement is inadequate and therefore adopted a provision which reflects the current legend requirement.

Comments of the Independent Regulatory Review Commission (IRRC)

§303.041. This new regulation provides that, when Commission representatives are conducting an examination under Section 304(d) of the act of the offices of a broker-dealer or investment adviser registered with the Commission, the Commission representatives are to have physical access to all areas where files routinely are kept. By letter dated October 4, 2001, IRRC suggested, that for clarity, the Commission provide examples of the types of files that its representatives would be reviewing during such examination.

**FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION**

In response to IRRC's comments, the Commission, in adopting final form rules, added subsection (b) to this section which describes, without limitation, the types of files that would be subject to review during an examination. These files included all documents required to be kept by chapter 304, rules of the US Securities and Exchange Commission or the National Association of Securities Dealers, and any documents relating to these required records.

Persons Affected by the Final Form Regulations

Non-profit organizations are affected by the changes to regulations relating to pooled income funds and charitable gift annuities. Another regulation affects Canadian issuers who issue securities to persons covered by certain tax advantaged plans which transactions are effected by Canadian broker-dealers eligible to rely on an exemption from broker-dealer in §302.065. Auctioneers licensed by the State Auctioneer Board are affected by the regulation exempting them from broker-dealer and agent registration. Broker-dealers and agents are affected by the amendments impacting on registration requirements, examination requirements, required books and records retention and net capital requirements. The regulation on advertising affects issuers of securities which may publish an advertisement in this Commonwealth in connection with a securities offering.

Fiscal Impact

The final form rules impose no new compliance costs and reduce compliance costs by expanding exemptions, eliminating required filings with the Commission and reducing the amount of information which must be maintained by registrants.

Paperwork

The final form rules repeal Forms 302-F1, AU-1 and AU-2 required for auctioneers to claim an exemption from broker-dealer and agent registration for the occasional auctioning of securities. As previously indicated, paperwork will be reduced further by elimination of filing of currently mandated reports and information with the Commission and permitting storage of required records in electronic form.

**FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION**

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission, on July 13, 2001 submitted a copy of proposed rulemaking published at 31 Pa.B. 4174 to IRRC and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In accordance with section 5(b) of the Regulatory Review Act, the Commission provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

By letter dated October 4, 2001, IRRC provided the Commission with its comments on the proposed rulemaking. The Commission's response to those comments is contained in this Preamble.

In preparing final form rules, the Commission considered all comments received from the public and IRRC. The final form rules were submitted on October 30, 2001 to the House Committee on Commerce and Economic Development, the Senate Committee on Banking and Insurance and IRRC. Final form rules were deemed approved by the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance on 2001. IRRC met on _____ and approved the final form rules.

Availability in Alternative Formats

The final form rules may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

Contact Person

The contact person for an explanation of these regulations and amendments is G. Philip Rutledge, Chief Counsel, Pennsylvania Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

**FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION**

Order

The Commission, acting under the authorizing statute, orders that:

- (a) The regulations of the Commission, 64 Pa. Code Chapters 202, 203, 301, 302, 303, 304, and 606 are amended by amending §§202.093, 202.095, 301.020, 302.061, 302.062, 302.064, 303.011, 303.013, 303.031, 303.041, 304.011, 304.021, 304.051, 606.032, 606.033, 606.034 and 606.041 to read as set forth at 31 Pa.B. 4174; by adopting §203.202 as set forth at 31 Pa.B. 4174; by adopting §304.041 as set forth in Annex A; and by amending §603.031 as set forth in Annex A.
- (b) The Secretary of the Commission shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.
- (c) The Secretary of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.



BY ORDER OF THE COMMISSION


M. JOANNA CUMMINGS, SECRETARY

**FINAL FORM RULES
PENNSYLVANIA SECURITIES COMMISSION**

ANNEX A

TITLE 64. SECURITIES

**Subpart C. Registration of Broker-Dealers, Agents, Investment Advisers and
Investment Adviser Representatives and Notice Filings by Federally Covered Advisers**

Ch. 304. Post-Registration Provisions

§304.041. Examinations of broker-dealers and investment advisers.

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. §1-304(d)), every broker-dealer and investment adviser registered under the act shall honor all requests by representatives of the Commission to have physical access to all areas of the office which is the subject of the examination and, upon request, shall permit them to review and examine the files in the physical place where the files routinely are maintained. In complying with a request, a representative of the broker-dealer or investment adviser may accompany the representatives of the Commission.

(B) FILES REFERRED TO IN SUBSECTION (A) INCLUDE, BUT ARE NOT LIMITED TO, BOOKS, LEDGERS, ACCOUNTS, RECORDS, AND ELECTRONIC FILES REQUIRED TO BE KEPT BY BROKER-DEALERS AND INVESTMENT ADVISERS IN ACCORDANCE WITH CHAPTER 304, RULES OF THE U.S. SECURITIES AND EXCHANGE COMMISSION OR RULES OF A NATIONAL SECURITIES EXCHANGE OR NATIONAL SECURITIES ASSOCIATION REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION, AND ANY DOCUMENT REASONABLY RELATED TO THESE REQUIRED RECORDS.

Subpart F. Administration

Ch. 606. Miscellaneous Powers of Commission

§606.031. Advertising literature.

(a) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§77a – 77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. §§77a – 77c(b)), prior to effectiveness with the Commission, no person shall publicly disseminate an advertisement, display, pamphlet, brochure, letter or other communication used or to be used or circulated in connection with a primary or secondary offering of securities (referred

to in this section as “advertising literature”) except:

(1) Tombstone advertisements permitted under the Securities Act of 1933 (15 U.S.C.A. §§77a – 77aa) and the Investment Company Act of 1940 (15 U.S.C.A. §§80a-1 – 80a-52) and the rules and regulations promulgated thereunder.

(2) A preliminary prospectus or offering circular filed under section 203(h) of the act (70 P.S. §1-203(h)).

(3) Advertising literature which has been prepared, submitted and cleared in conformity with the applicable regulations or procedures adopted by the Securities and Exchange Commission or the National Association of Securities Dealers, Inc.]

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

(1) The advertisement is either :

(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 are not such as to 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).

(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) [No formal filing with or approval by the Commission with respect to the advertising literature enumerated under subsection (a)(1) and (3) will be required; however, the advertising literature shall be subject to the antifraud provisions of the act (70 P.S. §§1-401 – 1-407) and Subpart D (relating to fraudulent and prohibited practices) and all regulations adopted thereunder.] Registered Offerings: Permitted Advertisements after Filing but Prior To 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 Commission under section 205 or 206 of the act (70 P.S. §1-205 or §1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Commission under section 205 or 206 of the act (70 P.S. §1-205 or §1-206) 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 prior to 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 United States Securities and Exchange Commission (SEC).

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 (15 U.S.C.A. §77e) which complies with Rule 430 (17 CFR §230.430)(relating to prospectus for use prior to effective date) promulgated by the SEC.

(iv) A summary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 (15 U.S.C.A. §77e) which complies with Rule 431 (17 CFR §230.431) (relating to summary prospectus) promulgated by the SEC.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the SEC pursuant to 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 Commission 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 SEC prior to effectiveness of the offering circular under the act if the advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(3) In connection with a registration statement filed with the Commission 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 SEC in reliance on section 3(a)(4) or 3(a)(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 \$1,000,000) promulgated by the SEC under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth prior to 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 Securities Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to 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 prior to registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(c) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§77a – 77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. §77c(b)), where the security or securities transaction is exempt under section 202 or 203 of the act (70 P.S. §1-202 or §1-203), the advertising literature may be publicly disseminated if it is not otherwise prohibited by section 202 or 203 of the act (70 P.S. §1-202 or §1-203). No additional formal filing with or approval by the Commission with respect to the advertising literature shall be required, however, the advertising literature shall be subject to the antifraud provisions of the act (70 P.S. §§1-401 – 1-407) and Subpart D.] 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 Commission 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 SEC pursuant to 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 and with the commission under section 205 or 206 of the act and has been qualified by the SEC 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 Commission 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 SEC in reliance on section 3(a)(4) or 3(a)(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 \$1,000,000) promulgated by the SEC 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: ~~"The securities being offered have been registered with the Pennsylvania Securities Commission. The fact that the securities have been registered does not mean that the Pennsylvania Securities Commission approves or disapproves of the offering or has found the prospectus to be true, accurate or not misleading. Any representation to the contrary is a criminal offense."~~ "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 Commission 5 days before publication in this Commonwealth and, prior to the expiration of the 5-day period, the Commission does not issue a letter disallowing publication in this Commonwealth.

(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) [In connection with a registration statement filed under section 206 of the act (70 P.S. §1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. §77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder prior to effectiveness with the Commission, no person may publicly disseminate advertising literature including a tombstone advertisement.] Exempt Securities. The following apply:

(1) Exempt Securities other than Sections 202(a) and 202(i). 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.

(2) Section 202(a). 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 thereof and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation shall 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). 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 where the Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) [In connection with a registration statement filed under section 206 of the act (70 P.S. §1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. §77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder which registration statement has become effective with the Commission, advertising literature containing no more than the following information may be publicly disseminated:

- (1) Name and address of issuer.
- (2) Identity of title or security.
- (3) Per unit offering price, yield, number of shares and amount of offering.
- (4) Brief, generic description of business.

(5) Name and address of underwriter or address where offering circular or prospectus can be obtained.

(6) Date of issuance.

(7) Statement, based upon opinion of counsel, as to the status of the security for property tax purposes.

(8) Statement that the advertisement is neither an offer to sell nor a solicitation of an offer to buy and that the offer is made only by the prospectus.] Exempt Transactions. 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.

(2) Advertisements Prohibited. No person shall 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 Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) [The character and composition of information listed in subsection (e) shall be such as to accurately inform without misleading or overemphasizing particular aspects of the offering.]

Excluded Advertisements. The following apply.

(1) This section shall 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 are not such as to 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 in order 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) Use of 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 SEC (17 CFR §§230.135) (relating to notice of proposed registered offering).

(iii) Advertisements which comply with Rule 135c promulgated by the SEC (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).

(g) [For purposes of this section, an advertisement, display, pamphlet, brochure, letter or other communication shall be deemed “publicly disseminated” if communicated to 50 or more persons or otherwise communicated, used or circulated in a public manner.] Definitions. For purposes of this chapter, the following terms have the following meanings:

Advertisement – The meaning in section 102(a) of the act (70 P.S. §1-102(a)). The term “communication” as used in that definition includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security. The term “publicly disseminated” as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish – The meaning in section 102(p) of the act and includes any form of electronic communication, including Internet and e-mail.

(h) SEC 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 Commission under section 205 or 206 of the act

and with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C.A. §77e) may rely on the interpretive advice of the SEC in SEC Release No. 33-7856 (April 28, 2000) and subsequent advice given pursuant to that Release. To the extent that such interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Commission will not take any enforcement action if the person complies with the interpretive advice.

panding exemptions, eliminating required filings with the Commission and reducing the amount of information which was maintained by registrants.

Paperwork

The Commission proposes to eliminate Forms 302-F1, AU-1 and AU-2 required for auctioneers to claim an exemption from broker-dealer and agent registration for the occasional auctioning of securities. As previously indicated, paperwork will be reduced further by elimination of filing of currently mandated reports and information with the Commission.

Effective Date

The proposed amendments and regulations will become effective upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 13, 2001, the Commission submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed rulemaking, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Commission within 10 days of the close of the Committee's review period. The notification shall specify the regulatory review criteria which have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Commission, the General Assembly and the Governor of objections raised.

Availability in Alternative Formats

This proposed rulemaking may be made available in alternative formats upon request. The Commission also will receive comments on this proposed rulemaking in alternative formats. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

Contact Person

Interested persons are invited to send comments concerning the proposed rulemaking within 30 days of publication of this notice to G. Philip Rutledge, Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130. G. Philip Rutledge also is the contact person for an explanation of the proposed rulemaking.

M. JOANNA CUMMINGS,
Secretary

Fiscal Note: 50-116. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.093. Charitable contributions to pooled income funds exempt.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any securities issued or created in connection with contributions or transfers of property to, or certificates of interest or participation in, pooled income funds if the following conditions are met:

* * * * *

(5) None of those persons responsible for solicitation of contributions to the Fund will receive commissions or other special compensation based upon the amount of property transferred except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Commission as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.

(6) Any person who, for compensation, advises the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise performs as [in] an investment adviser [in connection with securities purchased or sold by the charitable organization] is [in compliance with the registration requirements of section 301 of the act (70 P.S. § 1-301), if applicable] either an investment adviser registered with the Commission under section 301 of the act or is a Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) [Advertising literature as defined in] If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the Fund in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401-409 of the act (70 P.S. §§ 1-401-1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the Commission finds that it is not in the public interest nor necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

* * * * *

(3) None of the persons responsible for solicitation of purchasers of annuities will receive commissions or other special compensation based upon the amount of the annuity purchased except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the Commission as a broker-dealer under section 301 of the

act (70 P.S. § 1-301) or is registered with the Commission under section 301 as an agent of the broker-dealer.

* * * * *

(b) [Advertising literature, as defined in] If permitted by § 606.031(a) (relating to advertising literature), advertising literature may be used by the qualified charity in connection with the solicitation of contributions but is subject to the antifraud provisions of sections 401—409 of the act (70 P.S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices).

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the Commission finds it neither necessary nor appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security if the following requirements are met:

- (1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).
- (2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

**Subpart C. REGISTRATION OF
BROKER-DEALERS, AGENTS, INVESTMENT
ADVISERS AND INVESTMENT ADVISER
REPRESENTATIVES AND NOTICE FILINGS BY
FEDERALLY-COVERED ADVISERS**

CHAPTER 301. REGISTRATION REQUIREMENT

§ 301.020. Agent transfers.

[(a)] An agent who wishes to terminate [his] employment with one registered broker-dealer and thereafter commence employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the Commission if all of the following conditions are met:

* * * * *

(2) The transfer is effected in accordance with the [terms and conditions of the NASAA/CRD Temporary Agent Transfer Program as established under an agreement between and operated under guidelines established by NASDAQ, Inc., a wholly-owned subsidiary of the National Association of Securities Dealers, Inc., and the North Association, Inc.] terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

[(3) The employing broker-dealer has executed and filed an Undertaking for Participation in the NASAA/CRD TAT Program.

(4) The employing broker-dealer currently is not subject to an order of the Commission which would otherwise make this section unavailable.

(b) For purposes of this section, the term Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program shall mean the docu-

ment entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the NASAA/NASD Central Registration Depository, 1735 "K" Street, N.W., Washington, DC 20006.]

CHAPTER 302. EXEMPTIONS

§ 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 Commission deems it appropriate and in the public interest to exempt [broker-dealers and agents] persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if [the persons fulfill the requirements of this section] all of the following conditions are met:

- (1) The person [is licensed] meets one of the following conditions:
 - (i) Is licensed as an auctioneer [or], apprentice auctioneer, auction company or auction house under [section 707 of] the Auctioneers License Act [(63 P.S. § 707)] (AALA) (63 P.S. §§ 734.1—734.34).
 - (ii) Is exempt from registration under section 3(h) of the AALA (63 P.S. § 734.3(h)).
 - (iii) Holds a special license to conduct an auction under section 3(i) of the AALA.

(2) The person [offers and sells] effects transactions in securities solely at an "auction" or at a "sale at auction" as these terms are defined in [section 702(5) of the Auctioneers License Act (63 P.S. § 702(5))] the AALA.

(3) [The person does not sell in a period of 12 consecutive months, securities at auction of a dollar amount in excess of the lesser of \$250,000 or 5% of the total dollar amount of all "goods" as that term is defined in section 702(1) of the Auctioneers License Act (63 P.S. § 702(1)) sold by the person during that period.

(4) The person has filed an executed Commission's Form 302-F1 with the Commission at least 10 business days prior to the offer and sale of securities.

(5) The person has not been convicted of a crime or made the subject of any sanction described in section 305(a)(ii)—(ix) of the act (70 P.S. § 1-305(a)(ii)—(ix)).

(6) The person undertakes as a condition of the exemption only to offer and sell securities at auction if:

- (i) No later than 24 hours prior to the auction of a security Forms AU-1 and AU-2 are completed.
- (ii) No later than 24 hours prior to the auction of any security Forms AU-1 and AU-2 (except for Part C) are conspicuously posted at the place of the auction.
- (iii) Immediately prior to the auction of any security, the information appearing on the responses to questions on Form AU-1 are publicly announced at the auction.

(iv) Immediately prior to the auction of any security, the information appearing on the response to questions on Form AU-2, Part B, items 3(a)—(f) are publicly announced at the auction.

(7) The person undertakes to comply with the provisions of the act, including the anti-fraud provisions contained in Part IV of the act (70 P. S. §§ 1-410—1-407) and the advertising provisions contained in section 606(c) of the act (70 P. S. § 1-606(c)).

(8) The person offers and sells at auction only securities in a] 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)).

[(9) The person shall at all times maintain a complete set of books, records, and accounts of such sales of securities including copies of Forms AU-1 and AU-2 utilized in any offers or sales of securities, for a period of 3 years.

(10) The person shall take such steps as may be necessary to ensure that all material information contained in its Form 302-F1 remains current and accurate. In the event that any material statement made in such forms, or in any attachments thereto becomes incorrect or inaccurate, the applicant shall file with the Commission an amendment on Form AM within 10 business days of the occurrence of the event which required the filing of such amendment.

(11) The person is not the subject of an order issued by the Commission denying, suspending or revoking the exemption claimed under this section.]

(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 Commission 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 Commission 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 purposes of all items other than subsection (a)(5) and (11), "person" means all affiliated auctioneers and apprentice auctioneers working with and for the same auctioneer.

(c)] Solely for purposes of subsection [(a)(8)] (a)(3), a transaction where a bank, as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)), acting as a

fiduciary under a trust agreement, estate administration or other similar relationship, causes [its] the bank's securities to be offered and sold at auction from such [persons'] accounts shall be deemed to be a nonissuer transaction.

[(d) The following forms are part of this section:]

(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of Forms 302-F1, AU-1 and AU-2, which currently appear at 64 Pa. Code pages 302-4—302-12, serial pages (234918)—(234926).)

§ 302.062. [Publishers exemption from investment adviser registration] (Reserved).

[(a) Under section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt investment advisers from the registration provisions of section 301 of the act (70 P. S. § 1-301) if the investment advisers fulfill the requirements of this subsection:

(1) The person's investment advisory activities in this Commonwealth are limited solely to being a publisher of a bona fide newspaper, news column, news magazine or business or financial publication with a general, regular and paid circulation or being a publisher of a securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situation.

(2) The person, or an affiliate thereof, whether prior or subsequent to becoming associated with the person, has not been subject to any of the following:

(i) Conviction within the past 10 years of a crime described in section 305(a)(ii)(A) of the act (70 P. S. § 1-305(a)(ii)(A)).

(ii) Sanctions described in section 305(a)(iii) of the act (70 P. S. § 1-305(a)(iii)).

(iii) A finding within the past 5 years that the person has met any of the criteria described in section 305(a)(iv) of the act (70 P. S. § 1-305(a)(iv)).

(b) The Commission may deny, suspend or revoke the exemption contained in this section for a person or an affiliate thereof, whether prior or subsequent to becoming associated with the person, if it finds the person or affiliate to meet the criteria set forth in any of the following clauses of section 305(a) of the act: (i), (ii)(B), (ii)—(xiii) (70 P. S. §§ 1-305(a)(i), (ii)(B), (iii)—(xiii)).]

§ 302.064. [Philadelphia] Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P. S. § 1-302(f)), the Commission deems it appropriate in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P. S. § 1-301), if [the individuals fulfill the] all the following requirements [of this section.] are met:

(1) The agent is representing a broker-dealer which [is] meets the following requirements:

* * * * *

(ii) A member of [the Philadelphia Stock Exchange] a National securities exchange registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(2) The agent's only customers are broker-dealers [which are] registered with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 [(15 U.S.C.A. §§ 78a—78kk)] or section 301 of the act.

(3) The agent is not subject to a currently effective order under section 305 of the act (70 P. S. § 1-305) denying, suspending, conditioning or revoking registration or [another] an order of the Commission [barring the individual from any form of relationship with a person registered under section 301 of the act] issued under section 512 of the act (70 P. S. § 1-512).

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.011. Broker-dealer registration procedures.

(a) An application for initial registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Application for Broker-Dealer Registration (Form BD), or a successor form, and shall be made in the following manner[.]:

(1) [The] An applicant which is not a member of the National Association of Securities Dealers, Inc. (NASD) or a member of a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act (70 P. S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(3) of the act (70 P. S. § 1-602.1(a)(3)), and financial statements in the form required by subsections (b) and (c).

(2) An applicant which is not a member of the NASD but is a member of a National securities exchange registered with the SEC under the Securities Exchange Act of 1934 shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(3) An applicant which is a member of NASD shall file Form BD in the manner set forth in § 606.011(f) (relating to filing requirements) accompanied by the filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(b) [Except as set forth in subsection (d)] Except for applicants described in subsections (a)(2) and (3), every application shall be accompanied by a statement of the financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant [or independent public accountant]. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end

of the preceding fiscal year. If the date of the most recent audited statement of financial condition is more than 45 days prior to the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing. As a part of the statement, the Commission may require the filing of separate schedules:

* * * * *

(c) [For] Except for applicants described in subsections (a)(2) and (3), an applicant that has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of income for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year.

(d) [As an alternative to subsections (b) and (c), an application filed by a member organization of the Philadelphia Stock Exchange (PHLX) that does not conduct business with customers as defined in Rule 17a-5 promulgated under the Securities and Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), and is designated to PHLX for financial responsibility under Rule 17d-1 promulgated under the Securities Exchange Act of 1934 and is exempt from Rule 15c3-1 or excluded under Rule 17a-5(d)(iii) promulgated under the Securities Exchange Act of 1934 may be accompanied by an unaudited statement financial condition, dated as of the end of the applicant's most recent fiscal year prepared in accordance with generally accepted accounting principles. The statement financial condition of shall be supplemented by a schedule of minimum net capital or minimum net liquid assets as defined in PHLX Rule 703] An applicant described in subsection (a)(2) or (3) shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(e) A broker-dealer registered under the act shall take [the] steps necessary to ensure that [the] material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Commission [amended pages of] an amendment on Form BD [in accordance with General Instruction to Form BD] within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.013. Agent registration procedures.

(a) An application for initial registration as an agent of a broker-dealer or issuer shall contain the information requested in and shall be made on Uniform Application for Securities [/Futures] Industry Registration or Transfer (Form U-4) or a successor form. [The] Except as provided in subsection (b), the agent and the broker-dealer or issuer shall complete and file with the Commission one copy of Form U-4 and exhibits thereto accompanied by the [requisite] filing fee [and exhibits, to include fingerprints. However, fingerprints are not required to be filed by an agent or a

member firm of the National Association of Securities Dealers, Inc. which firm's agents are exempt under Securities and Exchange Commission Rule 17f-2 (17 CFR 240.17f-2) (relating to fingerprinting of securities industry personnel) from the fingerprinting requirements of section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78q)] required by section 602(d.1) of the act (70 P.S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)) and evidence of passage of the examinations required by § 303.031 (relating to examination requirements for agents).

(b) [Every broker-dealer or issuer for whom agents are to be registered shall obtain from the agent and preserve the information described in paragraphs (1)—(4) with respect to each agent. While this information is required to be maintained by the broker-dealer or issuer, it otherwise is not required to be filed with the Commission on Form U-4.

(1) The name, address, date of birth, social security number and the starting date of employment or other association with the broker-dealer or issuer.

(2) The complete educational background and a complete statement of the agent's principal business or occupation for the preceding 10 years, including the reason for leaving each prior employment.

(3) A record of a denial of registration, disciplinary action taken or sanction imposed by a Federal or state agency, or by a National securities exchange or National securities association, including a finding that the agent was a cause of disciplinary action or had violated a statute.

(4) A record of convictions for a felony or misdemeanor except minor traffic offenses, of which the agent has been the subject]

An applicant for registration as an agent of a broker-dealer which is a member firm of the National Association of Securities Dealers (NASD) shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

(1) A completed and executed Form U-4 and exhibits thereto.

(2) The filing fee required by section 602(d.1) of the act.

(3) The compliance assessment required by section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations required by § 303.031.

(c) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.031. Examination requirement for agents.

[Prior to an individual becoming registered as an agent for a broker-dealer or issuer, the individual shall receive a passing grade on the following examinations:]

(a) An individual may not be registered as an agent under the act unless the individual has met the requirements of subsections (b) and (c).

[(1) The] (b) The applicant has received a passing grade on the securities examination for principals or registered representatives administered by the National Association of Securities Dealers, Inc. (NASD), the New York Stock Exchange or the United States Securities and Exchange Commission within 2 years prior to the date of filing an application for registration [or]. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a waiver of the examination requirement by the NASD.

(iii) The applicant has received a Commission order waiving the examination requirement.

[(2) The] (c) The applicant has received a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or, alternatively, the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by the [National Association of Securities Dealers, Inc.] NASD within 2 years prior to the date of filing an application for registration [, or]. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the Series 63 or, alternatively, the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a Commission order waiving the requirement to take the Series 63 or, alternatively, the Series 66 and Series 7.

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in [subsections (e) and (f)] subsection (e), every broker-dealer registered [or required to be registered] under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of \$25,000. The aggregate indebtedness of a registered broker-dealer may not exceed 1500% of its net capital. For purposes of this section, the terms "net capital" and "aggregated indebtedness" have the meanings set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) As a condition of the right to continue to transact business, every broker-dealer [shall] registered under the act that is not registered as a broker-dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act (15 U.S.C.A. §§ 78a—78kk) immediately shall notify the Commission if the broker-dealer's aggregate indebtedness exceeds 1500% of its net capital or [that] if its total net capital is less than the minimum required. [Broker-dealers complying with subsection (e) shall immediately notify the Commission if the broker-dealer's net capital or net liquid assets are

less than the minimum required.] Within 24 hours after transmitting the notice, [each] the broker-dealer shall file a report of its financial condition with the Commission including the following:

* * * * *

(d) The Commission may by order permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the SEC to file, execute and maintain a surety bond [in the form required by section 303(e) of the act (70 P.S. § 1-303(e)) and this chapter in the amount of \$10,000 where it deems the surety bond to be necessary or appropriate in the public interest or for the protection of customers and the bond may be deemed a part of the \$25,000 minimum net capital of the applicant as required by this section] in compliance with § 303.051 (relating to surety bonds).

(e) Every broker-dealer registered [or required to be registered] under section 301 of the act [and] that is registered as a broker or dealer with the [Securities and Exchange Commission or a member of the National Association of Securities Dealers, Inc.] SEC shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934.

[(f) As an alternative to subsection (a), every broker-dealer registered or required to be registered under the act that is a member organization of the Philadelphia Stock Exchange (PHLX) shall maintain minimum net capital or minimum net liquid assets in accordance with PHLX Rule 703.]

CHAPTER 304. POSTREGISTRATION PROVISIONS

§ 304.011. Broker-dealer required records.

(a) Every broker-dealer registered [or required to be registered] under section 301 of the act (70 P.S. § 1-301) shall make and keep the [following books, ledgers and] records required to be maintained as described in [Rules] Rule 17a-3 [and 17a-4] (17 CFR 240.17a-3 [and 240.17a-4]) (relating to records to be made by certain exchange members, brokers and dealers [; and records to be preserved by certain exchange members, brokers and dealers]) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(b) [As a condition of the right to continue to transact business in this Commonwealth, a registered broker-dealer shall] A broker-dealer registered under the act that is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) immediately shall notify the Commission if the broker-dealer fails to make and keep current the books and records required by this section. Within 24 hours after filing the notice with the Commission, the broker-dealer shall file with the Commission a report stating what steps have been taken and are being taken to fully comply with this section. [The report may be made by filing with the Commission copies of the analogous report required by the National Association of Securities Dealers, Inc., or the Securities and Exchange Commission.]

(c) Every broker-dealer registered [or required to be registered] under the act shall make, keep and preserve either a separate file of written complaints of customers and actions taken by the broker-dealer in response thereto, or a separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer. A "complaint" shall be deemed to include a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer. A registered broker-dealer that also is registered as a broker or dealer with the SEC shall be deemed to be in compliance with the requirements of this subsection if it maintains records of customer complaints as prescribed by applicable SEC rules.

(d) [The term "customer" of the broker-dealer as used in this section includes every person except the broker-dealer.

(e) [The records required to be maintained under this section shall be retained and preserved for [inspection by the Commission for a period of 5 years, the period to be measured from the date of the last entry therein or from the date of receipt of the communication or other information contained therein] the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar medium; electronic or digital storage medium; computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly upon reasonable request of the Commission or its representatives.

§ 304.021. Broker-dealer required financial reports.

(a) Every [registered] broker-dealer registered under the act which is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) shall file annually with the Commission a report consisting of a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) [Except as set forth in subsections (c) and (d), the] The annual report of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant [or independent public accountant]. The accountant shall submit as a supplementary opinion comments, based upon the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) [For purposes of this section, if the subject broker-dealer is registered with the Securities and

Exchange Commission, the filing with the Commission of the information required by Form X-17A-5 promulgated under section 17 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78g), by the Securities and Exchange Commission, 17 CFR 249.617 shall be deemed to be in compliance with this section] A broker-dealer registered under the act which also is registered as a broker or dealer with the SEC shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(d) [As an alternative to subsection (b), a member organization of the Philadelphia Stock Exchange (PHLX) that complies with the following may file annually with the Commission the reports required by PHLX Rule 703(c):

(1) Does not conduct business with customers as defined in Rule 17a-5 promulgated under the Securities and Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk).

(2) Is designated to PHLX for financial responsibility under Rule 17d-1 promulgated under the Securities Exchange Act of 1934.

(3) Is exempt from Rule 15c3-1 or excluded under Rule 17a-5(d)(iii) promulgated under the Securities Exchange Act of 1934.

(e)] The report required by this section shall be filed within 120 days following the end of the broker-dealer's fiscal year.

[(f) A broker-dealer that receives a Securities and Exchange Commission no-action letter waiving the filing of the initial annual audited financial report required by Rule 17a-5 (17 CFR 240.17a-5) promulgated under the Securities Exchange Act of 1934, is not required to file the initial annual audited financial report required by this section, if the next annual audited financial report of the broker-dealer covers the entire period from the date of registration of the broker-dealer with the Commission.]

§ 304.041. Examinations of broker-dealers and investment advisers.

In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act shall honor all requests by representatives of the Commission to have physical access to all areas of the office which is the subject of the examination and, upon request, shall permit them to review and examine files in the physical place where the files routinely are maintained. In complying with a request, a representative of the broker-dealer or investment adviser may accompany the representatives of the Commission.

§ 304.051. Broker-dealer compensation.

No broker-dealer registered [or required to be registered] under the act may charge or receive commissions or other compensation in connection with the purchase or sale of securities unless the compensation is fair and reasonable and is determined on an equitable basis,

adequately disclosed to each customer in writing at or prior to final confirmation[, provided that the charges, commissions or other compensation consistent with rates set by a national securities exchange, when applied to transactions on that exchange, or with the rules of the Securities and Exchange Commission or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk), or compensation]. Compensation which complies with the Conduct Rules [of Fair Practice] of the National Association of Securities Dealers, Inc.[, may not be deemed unreasonable] shall be deemed fair and reasonable and, unless otherwise required to be disclosed in writing by [such] the Conduct Rules [of Fair Practice], need not be disclosed in writing.

Subpart F. ADMINISTRATION

CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION

§ 606.031. Advertising literature.

(a) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)), prior to effectiveness with the Commission, no person shall publicly disseminate an advertisement, display, pamphlet, brochure, letter or other communication used or to be used or circulated in connection with a primary or secondary offering of securities (referred to in this section as "advertising literature") except:

(1) Tombstone advertisements permitted under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) and the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80a-52) and the rules and regulations promulgated thereunder.

(2) A preliminary prospectus or offering circular filed under section 203(h) of the act (70 P.S. § 1-203(h)).

(3) Advertising literature which has been prepared, submitted and cleared in conformity with the applicable regulations or procedures adopted by the Securities and Exchange Commission or the National Association of Securities Dealers, Inc.] *Advertisements*. Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish any advertisement concerning any security in this Commonwealth unless all of the following are met:

(1) The advertisement is either :

(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 are not such as to 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).

(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) [No formal filing with or approval by the Commission with respect to the advertising literature enumerated under subsection (a)(1) and (3) will be required; however, the advertising literature shall be subject to the antifraud provisions of the act (70 P.S. §§ 1-401—1-407) and Subpart D (relating to fraudulent and prohibited practices) and all regulations adopted thereunder.] *Registered offerings: Permitted advertisements after filing but prior to 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 Commission under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the Commission under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206) 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 prior to 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 United States Securities and Exchange Commission (SEC).

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) which complies with Rule 430 (17 CFR 230.430) (relating to prospectus for use prior to effective date) promulgated by the SEC.

(iv) A summary prospectus which is part of a registration statement that has been filed with the SEC pursuant to section 5 of the Securities Act of 1933 which complies with Rule 431 (17 CFR 230.431) (relating to summary prospectus) promulgated by the SEC.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the SEC pursuant to 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 Commission 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 SEC prior to effectiveness of the offering circular under the act if the advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10-day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(3) In connection with a registration statement filed with the Commission 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 SEC 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 \$1,000,000) promulgated by the SEC under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth prior to 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 Securities Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to 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 prior to registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the Commission 10 days before publication in this Commonwealth and, prior to the expiration of the 10 day period, the Commission does not issue a letter disallowing its publication in this Commonwealth.

(c) [In connection with a registration statement filed under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa), or exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)), where the security or securities transaction is exempt under section 202 or 203 of the act (70 P.S. § 1-202 or § 1-203), the advertising literature may be publicly disseminated if it is not otherwise prohibited by section 202 or 203 of the act (70 P.S. § 1-202 or § 1-203). No additional formal filing with or approval by the Commission with respect to the advertising literature shall be required, however, the advertising literature shall be subject to the antifraud provisions of the act (70 P.S. §§ 1-401—1-407) and Subpart D.] *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 Commission 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 SEC pursuant to Regulation A (17 CFR 230.251-230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the Commission under section 205 or 206 of the act and has been qualified by the SEC 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 Commission 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 SEC 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 SEC 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: "The securities being offered have been registered with the Pennsylvania Securities Commission. The fact that the securities have been registered does not mean that the Pennsylvania Securities Commission approves or disapproves of the offering or has found the prospectus to be true, accurate or not misleading. Any representation to the contrary is a criminal offense."

(ii) The advertisement is filed with the Commission 5 days before publication in this Commonwealth and, prior to the expiration of the 5-day period, the Commission does not issue a letter disallowing publication in this Commonwealth.

(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) [In connection with a registration statement filed under section 206 of the act (70 P. S. § 1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder prior to effectiveness with the Commission, no person may publicly disseminate advertising literature including a tombstone advertisement.] *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and 202(i).* 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.

(2) *Section 202(a).* 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 thereof and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation shall 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).* 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 where the Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) [In connection with a registration statement filed under section 206 of the act (70 P. S. § 1-206) in reliance on section 3(a)(11) or (a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(11) or (a)(4)), and the rules and regulations promulgated thereunder which registration statement has become effective with the Commission, advertising literature containing no more than the following information may be publicly disseminated:

(1) Name and address of issuer.

(2) Identity of title or security.

(3) Per unit offering price, yield, number of shares and amount of offering.

(4) Brief, generic description of business.

(5) Name and address of underwriter or address where offering circular or prospectus can be obtained.

(6) Date of issuance.

(7) Statement, based upon opinion of counsel, as to the status of the security for property tax purposes.

(8) Statement that the advertisement is neither an offer to sell nor a solicitation of an offer to buy and that the offer is made only by the prospectus.] *Exempt transactions.* 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.

(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 Commission, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) [The character and composition of information listed in subsection (e) shall be such as to accurately inform without misleading or overemphasizing particular aspects of the offering.] *Excluded advertisements.* 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 are not such as to 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 in order 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) Use of 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 SEC (17 CFR 230.135) (relating to notice of proposed registered offering).

(iii) Advertisements which comply with Rule 135c promulgated by the SEC (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).

(g) [For purposes of this section, an advertisement, display, pamphlet, brochure, letter or other communication shall be deemed "publicly disseminated" if communicated to 50 or more persons or otherwise communicated, used or circulated in a public manner.] *Definitions.* For purposes of this chapter, the following terms have the following meanings:

Advertisement—The meaning in section 102(a) of the act (70 P. S. § 1-102(a)). The term "communication" as used in that definition includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security. The term "publicly disseminated" as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish—The meaning in section 102(p) of the act and includes any form of electronic communication, including Internet and e-mail.

(h) *SEC 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 Commission under section 205 or 206 of the act and with the SEC under section 5 of the Securities Act of 1933 may rely on the interpretive advice of the SEC in SEC Release No. 33-7856 (April 28, 2000) and subsequent advice given pursuant to that Release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the Commission will not take any enforcement action if the person complies with the interpretive advice.

§ 606.032. [Cash tender offers] (Reserved).

[(a) A person who proposes to make a cash tender offer for all or part of a class or classes of equity securities of an issuer or who requests an invitation for the tenders and who proposes to publicly disseminate advertisement, pamphlet, brochure, letter or other communication in connection therewith shall, prior to commencing the offer or request, file with the Commission a copy of the advertisement, pamphlet, brochure, letter or other communication; provided that, the provisions of this section do not apply to:

(1) An acquisition of securities by the issuer of the securities.

(2) An acquisition of a class of securities where less than 25% of the security holders of record of that class of the issuer's securities are residents of this Commonwealth.

(3) A purchase on a national securities exchange.

(4) An acquisition of the securities of a "reporting company" as that term is defined in section 102(q) of the act (70 P. S. § 1-102(q)) and the regulations thereunder.

No formal approval with respect to the advertisement, pamphlet, brochure, letter or other communication shall be required; however, the communications shall be subject to the antifraud provisions of the act and the regulations adopted thereunder.

(b) For the purpose of this section, when two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer, the syndicate or group shall be deemed a "person."

(c) For the purpose of this section, the term "equity securities" shall include securities convertible into common or preferred stock or its equivalent and warrants or options to purchase the securities.

(d) For the purpose of this section, an advertisement, pamphlet, brochure, letter or other communication shall be deemed "publicly disseminated" if communicated to 50 or more persons or otherwise communicated, used or circulated in a public manner.]

§ 606.033. [Advertising of securities issued by governments, governmental agencies and political subdivisions] (Reserved).

[(a) Sales literature, sales presentations including prepared presentations to prospective investors and advertising published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities as enumerated in section 202(a) of the act (70 P. S. § 1-202(a)) complies with § 606.031(e) (relating to advertising literature).

(b) For purposes of this section: the term "advertising" does not include a prospectus, offering circular or official statement published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities enumerated in section 202(a) of the act (70 P. S. § 1-202(a)).

(c) A prospectus, offering circular or official statement published or distributed in connection with the offer and sale of securities issued by governments, governmental agencies, political subdivisions and other entities enumerated in section 202(a) of the act (70 P. S. § 1-202(a)) need not be filed with the Commission; however, a prospectus, offering circular or official statement shall be subject to the antifraud provisions of the act and the Subpart D (relating to fraudulent and prohibited practices).

(d) Where securities issued by governments, governmental agencies, political subdivisions and other entities as set forth in section 202(a) of the act (70 P. S. § 1-202(a)) constitute less than a general obligation of the issuer of the securities; appropriate language denoting the issuer's limited obligation shall prominently appear in bold face type on the face page of a prospectus, offering circular

or official statement; sales literature; and advertising published or distributed in connection with the offer and sale of the securities.]

§ 606.034. [Advertising of securities issued or guaranteed by banks or credit unions] (Reserved).

[(a) Sales literature; sales presentations, including prepared presentations to prospective investors; and advertising published or distributed in connection with the offer and sale of securities issued or guaranteed by banks under 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)), except as set forth in subsection (b), may be publicly disseminated. No formal filing with or approval by the Commission with respect to advertising may be required; however, the advertising shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D (relating to fraudulent and prohibited practices).

(b) Advertising published or distributed in connection with the offer and sale of equity securities or debt securities—other than evidences of indebtedness arising from a transfer of direct obligations of, or direction obligations that are fully guaranteed as to principal and interest by, the United States or an agency thereof that a bank or credit union is obligated to purchase—issued or guaranteed by banks under section 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)) which are not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration and advertising which has not been prepared, submitted and cleared in conformity with the applicable regulations or procedures adopted by the Department of Banking or a similar agency of a foreign jurisdiction which regulates financial institutions, the Comptroller of Currency, the Federal Home Loan Bank Board or the National Credit Union Administration shall comply with the requirements of § 606.031(e) (relating to advertising literature).

(c) For purposes of this section, advertising does not include a prospectus, offering circular or written disclosure document prepared to satisfy the antifraud provisions of section 401(b) of the act (70 P. S. § 1-401(b)) which is used in connection with the offer and sale of securities issued or guaranteed by banks under section 202(b) of the act (70 P. S. § 1-202(b)) or credit unions under section 202(d) of the act (70 P. S. § 1-202(d)). The prospectus, offering circular or written disclosure document need not be filed with or approved by the Commission prior to its use; however, a prospectus, offering circular or written disclosure document shall be subject to the antifraud provisions of the act (70 P. S. §§ 1-401—1-407) and Subpart D.]

§ 606.041. Delegation and substitution.

(a) The Commission delegates to the Director and Assistant Directors of the Division of Enforcement [and], Litigation and Compliance:

* * * * *

(4) The power exercisable under section 606(c.1) of the act to issue a cease and desist order against

a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by Commission staff acting under the examination authority in section 304(d) of the act (70 P.S. § 1-304(d)), the records specified in §§ 304.011 or 304.012.

(b) The Commission delegates to the Director of the Division of Licensing [and Compliance, the Assistant Director of the Division of Licensing and Compliance and the Chief of the Licensing Section of the Division of Licensing and Compliance]:

(1) The power exercisable under section 303(a)(ii) of the act (70 P.S. § 1-303(a)(ii)) to order applications for registration filed under section 303 of the act to become effective on any day earlier than the [30th] 45th day after the filing of the application or material amendment thereto as the Director [or Chief] may determine. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

(2) The power exercisable under section 609(a) of the act (70 P.S. § 1-609(a)) to waive the provisions of §§ 303.031 and 303.032 (relating to examination requirement for agents; and [qualification of and] examination [requirement] requirements for investment advisers and [associated persons] investment adviser representatives).

(3) The power exercisable under section 305(f) of the act (70 P.S. § 1-305(f)) to order applications to withdraw from the status of a registered broker-dealer, agent, investment adviser or [associated person] investment adviser representative to become effective on any day earlier than the 30th day after filing of the application.

* * * * *

(5) [In case of applications for registration under section 303 of the act, the] The power exercisable under [§ 602.022 (relating to denial for abandonment)] section 609(f) of the act (70 P.S. § 1-609(f)) with respect to applications for registration of a broker-dealer, agent, investment adviser or investment adviser representative. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

* * * * *

[(c) The Commission delegates to the Director of the Division of Licensing and Compliance and the Assistant Director of the Division of Licensing and Compliance:

(1)] (7) The power exercisable under section 603(c) of the act (70 P.S. § 1-603(c)) and § 606.031(c) (relating to public inspection of records) to treat documents filed with the Division of Licensing [and Compliance] as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

[(2)] (8) The power exercisable under section 609(a) of the act to order a broker-dealer, agent, investment adviser or [associated person] investment adviser

representative registered under section 301 of the act (70 P.S. § 1-301) to furnish material information reasonably related to the registration.

[(3)] (9) The power exercisable [by the Commission] under sections 303(a)(i) and 609(a) of the act to order an applicant for registration as a broker-dealer, agent, investment adviser or [associated person] investment adviser representative under section 301 of the act to furnish material information [relevant] reasonably related to the application.

[(4)] (10) The power exercisable under § 303.051(a) and (b) (relating to surety bonds).

[(5)] The power to commence an administrative proceeding against a broker-dealer, investment adviser, agent or associated person applicant or registrant under 1 Pa. Code §§ 35.14 and 35.37 (relating to order to show cause; and answers to an order to show cause) and the authority to vacate, modify or amend an order to show cause issued under this paragraph. A hearing will not be held, nor will a remedial or disciplinary order be issued following institution of the proceedings, except upon the express order of the Commission.

[(6)] (11) The power exercisable under section 305(d) of the act to [summarily deny or postpone] issue a summary order with respect to an application for registration [pending final determination of a proceeding under that section].

[(7)] The power exercisable under section 606(c.1) of the act to issue a cease and desist order against a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by the staff of the Division of Licensing and Compliance, acting under the examination authority in section 304(d) of the act, the records specified in §§ 304.011 and 304.012.

(8) The powers in section 510(a)(i)—(iii), (b), except for hearings, and (c) of the act (70 P.S. § 1-510(a)(i)—(iii), (b) and (c)) and the authority to close, vacate, modify or amend an action authorized under this paragraph with respect to a broker-dealer, investment adviser, agent or associated person applicant or registrant.

(d)] (c) The Commission delegates to the Director of the Division of Corporation Finance:

* * * * *

(3) [In the case of registration statements filed under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206), the] The power exercisable under [§ 602.022 (relating to denial for abandonment)] section 609(f) of the act (70 P.S. 1-609(f)) with respect to applications for registration of securities. [For purposes of this subparagraph, the term "application" means an application for either an initial or renewal license.]

* * * * *

(5) The power exercisable [under section 205(d) of the act to waive the conditions of section 205(c)(1)

of the act in the case of registration statements filed under section 205 of the act for securities of an open-end or closed-end investment company, face amount certificate company or unit investment trust as these persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1-80a-52).

(6) The power, exercisable] under section 206(c) of the act to order effective a registration statement filed under section 206 of the act for securities of [an open-end or closed-end investment company, face amount certificate company or unit investment trust as these persons are classified in the Investment Company Act of 1940.] an issuer which meets all of the following:

(i) The issuer is an entity described in section 202(e)(i) of the act (70 P. S. § 1-202(e)(i)).

(ii) The issuer has not registered the securities with the United States Securities and Exchange Commission under section 5 of the Securities Exchange Act of 1933 (15 U.S.C.A. § 77e) in good faith reliance on section 3(a)(4) thereof (15 U.S.C.A. § 77c(4)).

(iii) The issuer, within the immediately preceding 18 months, had an effective registration statement with the Commission for similar securities.

(iv) The registration statement complies with the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (April 17, 1994) or any successor statement of policy.

(v) The issuer has not requested a waiver of any provision of the act or rule or order thereunder that otherwise would apply to the registration statement.

(vi) The issuer or any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(A) An order described in section 305(a)(iv) of the act.

(B) An injunction described in section 305(a)(iii) of the act.

(C) A criminal conviction described in section 305(a)(ii) of the act.

(D) An order of the Commission issued under section 512 of the act (70 P. S. § 1-512).

(E) A court order finding civil contempt under section 509(c) of the act (70 P. S. § 1-509(c)).

(F) An order of the Commission imposing an administrative assessment under section 602.1 of the act (70 P. S. § 1-602.1) which has not been paid in full.

[(7)] (6) * * *

[(8) The power exercisable under § 204.010(f)(2) (relating to increasing number of purchasers and offerees) to issue a denial order, vacate the denial order or waive the 5-business-day filing requirement.]

[(9)] (7) * * *

[(10)] (8) * * *

[(11)] (9) The power exercisable under section 206(c) of the act to order effective a registration statement filed with the Commission under section 206 of the act by an issuer which also has a currently effective registration statement for the same securities on file with the [United States Securities and Exchange Commission (SEC) and, in the case of an issuer which has filed a registration statement designated as Form F-7, F-8, F-9 or F-10 by the SEC to waive, under section 609(a) of the act, the requirement of § 206.010(c) (relating to registration by qualification), if applicable with respect to the registration statements] SEC.

[(12)] (10) The power exercisable under section 211[c] of the act (70 P. S. § 1-211[(c)]) to:

* * * * *

[(13)] (11) The power exercisable under section 207(1)[(1)] of the act (70 P. S. § 1-207(1)[(1)]) to declare effective an amendment to any currently effective registration statement relating to the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the applicable filing fee, if any, required by section 602(b.1) of the act (70 P. S. § 1-602(b.1)) has been paid.

[(14)] (12) The power, exercisable under [section 609(a) of the act, to waive, upon good cause shown, compliance with Item 8 or a successor item thereto of Form U-1 (Uniform Application to Register Securities)] by:

(i) A person required to file Form U-1 with the Commission under § 205.021 (relating to registration by coordination).

(ii) A person required to file Form U-1 with the Commission under § 206.010 (relating to registration by qualification) which has filed a registration statement with the Commission designated by the SEC as Form F-7, F-8, F-9 or F-10] § 606.031(b)(2), (3)(ii) and (c)(3)(ii) (relating to advertising literature) to issue a letter disallowing publication of an advertisement in this Commonwealth in connection with the offer or sale of a security this Commonwealth.

[(e)] (d) * * *

[(f)] (e) The Commission authorizes the [Assistant Director of the Division of Corporation Finance, the Assistant Director of the Division of Enforcement and Litigation and the Assistant Director of the Division of Licensing and Compliance] Chief Counsel or Deputy Chief Counsel to exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance [, the Director of the Division of Enforcement and Litigation] or the Director of the Division of Licensing [and Compliance, respectively].

[Pa.B. Doc. No. 01-1416. Filed for public inspection August 3, 2001, 9:00 a.m.]



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Robert M. Lam
Chairman

October 30, 2001

Honorable John R. McGinley, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

**RE: SECURITIES COMMISSION
64 Pa. Code, Chs. 202, 203, 301, 302, 303, 304 and 606
FINAL FORM RULES
#50-116 National Securities Markets Improvement Act of 1996 Amendments**

Dear Mr. McGinley:

Enclosed is a copy of the above-referenced regulatory action for review pursuant to the Regulatory Review Act.

By letter dated October 4, 2001, the Independent Regulatory Review Commission provided a comment and suggestion concerning 64 Pa. Code §304.041. The Commission has responded to this suggestion in its final form rules by adding a new subsection to that section. As a result of a verbal comment received from the public, the Commission withdrew its proposed language in 64 Pa. Code §606.031(c)(3)(i)(G) and reinstated existing regulatory language.

If you or your staff have any questions or required additional information, please contact Chief Counsel Philip Rutledge or Deputy Chief Counsel Lynn Naefach at 783-5130.

Very truly yours,

A handwritten signature in cursive script that reads "Bob".

Robert M. Lam
Chairman

RML:gpr
Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 50-116
SUBJECT: National Securities Improvement Act of 1996 Amendments
AGENCY: Pennsylvania Securities Commission

2001 OCT 30 PM 12:13
PENNSYLVANIA SECURITIES COMMISSION

TYPE OF REGULATION

- Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions
b. Without Revisions

FILING OF REGULATION

Table with 3 columns: DATE, SIGNATURE, DESIGNATION. Includes entries for House Committee on Commerce and Economic Development, Senate Committee on Banking and Insurance, Independent Regulatory Review Commission, Attorney General, and Legislative Reference Bureau.