

		This space for use by IRRC	
<b>(1) Agency</b> PA Securities Commission		IRRC Number: <b>2321</b> MAY 15 PM 12:33 REVIEW COMMISSION	
<b>(2) I.D. Number (Governor's Office Use)</b> #50-118			
<b>(3) Short Title</b> Banking institution; savings and loan institution SEPs, IRAs and KEOGHs as institutional investors Real property units Exchange Private activity bonds Commercial paper Commercial paper issued by bank holding companies Equity Securities of nonprofit organizations Guaranties of debt securities exempt Limited Offerings Equity securities issued by a reporting company Debt securities of nonprofit organizations Isolated transaction exemption Increasing number of purchasers and offerees Continuous offering Supervision of agents, investment adviser representatives and employes Financial reports to security holders Delegation and Substitution			
<b>(4) PA Code Cite</b> 64 Pa. Code § 102.041 64 Pa. Code § 102.112 64 Pa. Code § 102.202 64 Pa. Code § 102.241 64 Pa. Code § 202.010 64 Pa. Code § 202.030 64 Pa. Code § 202.032 64 Pa. Code § 202.051 64 Pa. Code § 202.092 64 Pa. Code § 203.041 64 Pa. Code § 203.091 64 Pa. Code § 203.161 64 Pa. Code § 203.189 64 Pa. Code § 204.010 64 Pa. Code § 207.120 64 Pa. Code § 305.011 64 Pa. Code § 606.011 64 Pa. Code § 606.041		<b>(5) Agency Contacts &amp; Telephone Numbers</b>  Primary Contact: G. Philip Rutledge 783-5130  Secondary Contact: Lynn D. Naefach 783-5130	
<b>(6) Type of Rulemaking(check one)</b>  <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		<b>(7) Is a 120 Day Emergency Certification Attached?</b>  <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 102.041 specifies that a "bank" as defined under the Pennsylvania Securities Act of 1972 ("1972 Act") does not include a bank-in-organization or a person organized as a holding company and codifies the Commission's interpretation as to when a bank-in-organization becomes a "bank" for purposes of the 1972 Act.
- b. Commission Regulation 102.112 codifies the Commission's published position as to when IRAs, SEPs and KEOGHs may be considered "institutional investors" for purposes of the 1972 Act.
- c. Commission Regulation 102.202 specifies when the term "security" under the 1972 Act includes the offer and sale of real property and defines the term "rental pool arrangement" for purposes of the regulation.
- d. Commission Regulation 102.241 provides that the term "exchange" under the 1972 Act includes national securities exchanges registered with the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 ("1934 Act") and national quotation systems operated by national securities associations registered with the SEC under the 1934 Act.
- e. Commission Regulation 202.010 states that the exemption provided by Section 202(a) of the 1972 Act (relating to securities issued by governmental entities, agencies or instrumentalities) applies to securities that are exempt securities under Section 3(a)(2) of the Securities Act of 1933 ("1933 Act") (relating to securities issued by governmental entities, agencies or instrumentalities) except for those securities considered separate securities under SEC Rule 131 (17 CFR §230.131).
- f. Commission Regulation 202.030 provides that the exemption contained in Section 202(c) of the 1972 Act (relating to commercial paper) is available for securities exempt under Section 3(a)(3) of the 1933 Act (relating to short-term commercial paper arising out of current transactions) as interpreted by SEC Release 33-4412 (26 Fed. Reg. 9158 (1961)). Regulation 202.030 also defines the term "prime quality" for purposes of the regulation, prohibits use of public advertising in connection with offers and sales of commercial paper exempt under the 1972 Act and specifies certain disclosure requirements for commercial paper issued by bank holding companies.
- g. Commission Regulation 202.032 has been deleted, as its requirements have been incorporated into Commission Regulation 202.030.
- h. Commission Regulation 202.051 is being amended to correct a typographical error.
- i. Commission Regulation 202.092 establishes an exemption for guarantees issued to secure bonds, notes and other evidences of indebtedness issued by governmental entities, agencies and instrumentalities located in Pennsylvania. The regulation sets forth requirements with respect to disclosure, use of proceeds, and provisions of the guaranty and trust indenture or similar agreement which must be met in order for the exemption to apply.
- j. Commission Regulation 203.041 amends Commission Form E to require issuers filing notices under Sections 203(d) and 203(s) of the 1972 Act to specify in the Form E both the aggregate amount of securities being offered pursuant to the notice and the amount being offered only in Pennsylvania. Currently such issuers must specify only the aggregate offering amount.
- k. Commission Regulation 203.091 deletes the requirement to make a notice filing with the Commission in order to claim the Section 203(i) exemption.
- l. Commission Regulation 203.161 specifies the requirements for information to be included by issuers offering and selling securities under the exemption provided by Section 203(p) of the 1972 Act (relating to first lien debt securities of nonprofit organizations).
- m. Commission Regulation 203.189 is being amended to transfer the definition of "accredited investor" from Commission Regulation 204.010 where it is no longer required.
- n. Commission Regulation 204.010 is being amended to delete a reference to the definition of "accredited investor" in Rule 501(a) of SEC Regulation D (17 CFR § 230.501(a)) as that term is no longer used in the regulation.
- o. Commission Regulation 207.120 is being deleted as it has been preempted by federal legislation prohibiting states from registering securities issued by registered investment companies.
- p. Commission Regulation 305.011 sets forth requirements for broker-dealers and investment advisers to promulgate written procedures that address, inter alia, the periodic inspection of each location in Pennsylvania from which the broker-dealer or investment adviser does business.
- q. Commission Regulation 606.011 requires that persons issuing securities under Section 203(p) of the 1972 Act deliver financial statements to security holders in Pennsylvania annually within 120 days of the end of the issuer's fiscal year.
- r. Commission Regulation 606.041 is being amended to permit the Assistant Director of Corporation Finance to exercise delegations in the absence of the Director and to delegate authority to the Director and Assistant Director of the Division of Enforcement, Litigation and Compliance to institute proceedings under Sections 512, 513 and 514 of the 1972 Act.

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

- a. 70 P.S. § 1-102(d) and 70 P.S. § 1-609(a)
- b. 70 P.S. § 1-102(k) and 70 P.S. § 1-609(a)
- c. 70 P.S. § 1-102(t) and 70 P.S. § 1-609(a)
- d. 70 P.S. § 1-102 and 70 P.S. § 1-609(a)
- e. 70 P.S. § 1-202(a) and 70 P.S. § 1-609(a)
- f. 70 P.S. § 1-202(c) and 70 P.S. § 1-609(a)
- g. 70 P.S. § 1-202(c) and 70 P.S. § 1-609(a)
- h. 70 P.S. § 1-202(e) and 70 P.S. § 1-609(a)
- i. 70 P.S. § 1-202(j) and 70 P.S. § 1-609(a)
- j. 70 P.S. § 1-203(d) and 70 P.S. § 1-609(a)
- k. 70 P.S. § 1-203(i.1) and 70 P.S. § 1-609(a)
- l. 70 P.S. § 1-203(p) and 70 P.S. § 1-609(a)
- m. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)
- n. 70 P.S. § 1-204(a) and 70 P.S. § 1-609(a)
- o. 70 P.S. § 1-207(l) and 70 P.S. § 1-609(a)
- p. 70 P.S. § 1-305(a) and 70 P.S. § 1-609(a)
- q. 70 P.S. § 1-606(a) and 70 P.S. § 1-609(a)
- r. 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 Regulation 102.241 conform this regulation to the requirements of the federal Securities Exchange Act of 1934. Changes to Commission Regulations 202.010, 202.092 and 207.120 conform these regulations to the National Securities Markets Improvement Act of 1996. Changes to Commission Regulation 202.030 conform that regulation to the requirements of the Securities Act of 1933 and pertinent SEC releases. Changes to Commission Regulation 203.091 conform that regulation to the requirements of Act 108 of 2002. Changes to Commission Regulation 305.011 conform that regulation to the criteria set forth in Conduct Rule 3010(g) promulgated by the National Association of Securities Dealers ("NASD") and NASD Notice to Members 98-38.

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

- a. Changes to Commission Regulation 102.041 are needed to clarify that the term "bank" as used in the 1972 Act does not include bank holding companies and to formalize the Commission's published position that as to when banks in organization become "banks" for purposes of the 1972 Act.
- b. The Commission has published a position as to when SEPs, IRAs, and KEOGHs are considered "institutional investors" under the 1972 Act. Creating Commission Regulation 102.112 will provide additional clarity and more formal guidance with respect to the circumstances under which SEPs, IRAs, and KEOGHs are considered "institutional investors" under the 1972 Act.
- c. Changes to Commission Regulation 102.202 are necessary in order to provide an affirmative statement as to when real property will be considered a "security" under the 1972 Act and align the Commission's position with that of SEC.
- d. Commission Regulation 102.241 will defer to federal law with respect to what comprises an "exchange."
- e. Amendments to Commission Regulation 202.010 will promote uniformity with federal law, as expressed in the National Securities Markets Improvement Act of 1996 ("NSMIA"), and facilitate compliance with the 1972 Act by issuers and counsel in connection with issuance of securities issued by governmental entities while protecting Pennsylvania investors through continuing Commission regulation of those securities deemed to be "separate securities" under SEC Rule 131 (17 CFR § 230.131).
- f. NSMIA preempted states from regulating issuance of commercial paper exempt from the registration provisions of the 1933 Act. Changes to Commission Regulation 202.030 are needed to bring the statutory exemption in Section 202(c) of the 1972 Act into line with federal preemption while retaining the Commission's ability to regulate certain types of commercial paper, pursuant to the conditions set forth in SEC Release 33-4412, by prohibiting use of public media advertisement in connection with offers and sales of commercial paper and by requiring certain disclosures of bank holding companies issuing commercial paper.
- g. Deletion of Commission Regulation 202.032 is necessary to avoid redundancy with Commission Regulation 202.030.
- h. Correcting the typographical error in Commission Regulation 202.051 is necessary to prevent ambiguity in connection with the statutory references in the regulation.
- i. Under NSMIA, a state is prohibited from regulating issuance by governmental entities of securities exempt under Section 3(a)(2) of the 1933 Act, with the exception of securities issued by governmental entities in that state. Commission Regulation 202.092 relates specifically to guarantees of such securities. Similar to Commission Regulation 202.010, changes to Commission Regulation 202.092 will promote uniformity with federal law, facilitate compliance with the 1972 Act by issuers and counsel in connection with issuance of securities issued by governmental entities, and protect Pennsylvania investors through continuing Commission regulation of those securities deemed to be "separate securities" under SEC Rule 131 (17 CFR § 230.131).
- j. Amending Commission Form E to require issuers filing notices under Sections 203(d) and 203(s) of the 1972 Act to specify the amount of securities being offered in Pennsylvania pursuant to the notice will facilitate processing of these filings and help to ensure that Commission records are complete and accurate.
- k. Changes to Commission Regulation 203.091 are necessary in order to conform that regulation to the provisions of Act 108 of 2002, which eliminated the notice filing requirement in connection with the exemption provided by Section 203(i.1) of the 1972 Act.
- l. Changes to Commission Regulation 203.161 are necessary in order to conform the requirements of the regulation to the provisions of Act 108 of 2002, which shortened the time allowed for filing with the Commission a notice under Section 203(p) of the 1972 Act. Amendments to the regulation also promote uniformity with states that have adopted the North American Securities Administrators Association Statement of Policy Regarding Church Bonds (SOP) by suggesting that issuers preparing offering materials to meet the requirements of Section 203(p) and the regulation do so in accordance with the disclosure requirements of the SOP and by requiring that such issuers comply with the trust indenture and trustee qualification provisions of the SOP.

- m. It is necessary to amend Commission Regulation 203.189 to include the definition of "accredited investor" in Rule 501 of SEC Regulation D (17 C.F.R. § 230.501). Formerly the regulation referred to the definition of "accredited investor" in Commission Regulation 204.010, which in turn referred to the definition of that term in Rule 501 of SEC Regulation D. However, as detailed below, the accredited investor definition is being deleted from Regulation 204.010.
- n. As Act 109 of 1998 created an accredited investor exemption, the definition of "accredited investor" in Commission Regulation 204.010 is no longer needed.
- o. Commission Regulation 207.120 has been deleted in order to conform the Commission's regulations with the provisions of NSMIA, which prohibits states from registering securities issued by registered investment companies.
- p. Amendments to Commission Regulation 305.011 promote uniformity with federal requirements by conforming certain provisions and definitions in that regulation to NASD Conduct Rule 3010(g) and NASD Notice to Members 98-38.
- q. Changes to Commission Regulation 606.011 are necessary to enact authority provided to the Commission by Act 108 of 2002 to require by rule that persons purchasing securities from a non-profit issuer under Section 203(p) of the 1972 Act receive annual financial information from the issuer of those securities.
- r. Commission 606.041 is being amended so that the Assistant Director of Corporation Finance may act for the Director as to certain delegations in the Director's absence and to permit the Director and Assistant Director of the Enforcement, Litigation and compliance to initiate proceeds to impose statutory bars, order rescission offers and order the return of sales compensation in connection with alleged violations of the 1972 Act.

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

- a. Neglecting to amend Commission Regulation 102.041 could result in confusion as to the scope of the term "bank" under the 1972 Act and as to whether an entity is a "bank" or a "bank in organization" under the Act.
- b. Failure to create Commission Regulation 102.112 to codify the Commission's position as to when SEPs, IRAs and KEOGHs are "institutional investors" under the 1972 Act could cause ambiguity as to the applicability of that definition to those plans and may result in issuers not taking advantage of the Act's exemption for transactions with institutional investors, thus incurring unnecessary transaction costs.
- c. Failure to change Commission Regulation 102.202 could result in ambiguity among issuers and their counsel as to when the offer and sale of real property would be a "security" under the 1972 Act.
- d. Changing the definition of "exchange" in Commission Regulation 102.241 is advisable to promote uniformity with federal law.
- e. It is necessary to amend Commission Regulation 202.010 to conform the provisions of that regulation with the requirements of NSMIA and also to codify the "carve outs" permitted under NSMIA for securities issued by governmental entities located in Pennsylvania and under SEC Rule 131 for "separate securities" in order to preserve Commission jurisdiction over those issuers and securities.
- f. Failure to amend Commission Regulation 202.030 will cause the regulation's provisions to deviate from the requirements of NSMIA and SEC interpretations with respect to conditions limiting availability of the exemption for commercial paper.
- g. If Commission Regulation 202.032 is not deleted as proposed, there will be a redundancy in the Commission's regulations.
- h. Commission Regulation 202.051 is being amended to correct a typographical error with respect to a citation referring to another section of the 1972 Act.
- i. If Commission Regulation 202.092 is not amended the provisions of the regulation will not comport with NSMIA. Changes are also necessary to preserve Commission jurisdiction over certain issuers and securities within the NSMIA framework.
- j. It is necessary to amend Commission Regulation 203.041 to help ensure that Commission records continue to be as complete as possible with respect to the specific amounts of securities offered in Pennsylvania by issuers filing notices under Sections 203(d) and 203(s) of the 1972 Act.
- k. Amendment of Commission Regulation 203.091 is necessary to conform the regulation to changes in Act 108 of 2002.
- l. It is necessary to amend Commission Regulation 203.161 to effect changes required by Act 108 of 2002.
- m. Failure to amend Commission Regulation 203.189 to change a definitional cross-reference in that regulation may cause confusion among issuers and counsel seeking to comply with the regulation.

- n. A definition of the term "accredited investor" is no longer needed in Commission Regulation 204.010 due to changes to the 1972 Act pursuant to Act 109 of 1998. The presence of the "accredited investor" definition has caused confusion among issuers and counsel as to the applicability of the definition. Failure to amend the regulation to delete the definition may perpetuate this confusion.
- o. Commission Regulation 207.120 is being repealed in order to conform the Commission's regulations to the requirements of NSMIA.
- p. Failure to amend Commission Regulation 305.011 as proposed may enhance the compliance burden on broker-dealers and investment advisers. The proposed amendments would change certain requirements in the regulation to mirror requirements in NASD conduct rules and policies. Differences between the Pennsylvania requirements and those of NASD may cause broker-dealers and investment advisers to incur additional compliance costs or expend additional effort to comply.
- q. Changes to Commission Regulation 606.011 are necessary in order to conform the regulation to the requirements of Act 108 of 2002.
- r. Changes to Commission Regulation 606.041 are necessary to ensure that the Assistant Director of Corporation Finance may act as to certain delegations in the absence of the Director and to enable the Director and Assistant Director of Enforcement, Litigation and Compliance to act as expeditiously as possible to initiate proceedings to impose remedies available under Sections 512, 513, and 514 of the 1972 Act with respect to alleged violations of the 1972 Act.

**(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. Banks, bank holding companies, "banks in organization" and their counsel will benefit from amendments to Commission Regulation 102.041 in assessing compliance with the 1972 Act. The amendments specify that "bank" under the 1972 Act does not include bank holding companies and clarify when "banks in organization" are "banks" under the 1972 Act.
- b. Issuers who wish to rely on the exemption provided by Section 203(c) of the 1972 Act and counsel who are responsible for advising their clients whether this exemption is available will benefit from Commission Regulation 102.112, which codifies the Commission's published position as to when IRAs, SEPs, and KEOGHs are considered "institutional investors" for purposes of the 1972 Act.
- c. Persons engaged or planning to engage in the offer and sale of real property and counsel who are responsible for advising such persons as to compliance with the 1972 Act will benefit from amendments to Commission Regulation 102.202, which specify when the offer and sale of real property is a "security" under the 1972 Act.
- d. Changes to Commission Regulation 102.241 will benefit the regulated community by making the Commission's regulation consistent with federal law.
- e. Issuers who wish to rely on the exemption provided by Section 202(a) of the 1972 Act and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed in Commission Regulation 202.010, which specifies the types of security to which the exemption applies and makes the scope of the exemption afforded by Section 202(a) and the regulation consistent with requirements of federal law, thereby promoting uniformity with federal law and facilitating compliance.
- f. Issuers who wish to rely on the exemption provided by Section 202(c) of the 1972 Act and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed in Commission Regulation 202.030, which makes the scope of the exemption afforded by Section 202(c) consistent with requirements of federal law, thereby promoting uniformity with federal law and facilitating compliance. Pennsylvania investors purchasing commercial paper sold by a bank holding company on behalf of a bank also will benefit from the special disclosures required by Commission Regulation 202.030 in connection with such transactions.
- g. Commission Regulation 202.032 is being deleted in order to avoid redundancy with Commission Regulation 202.030.
- h. Issuers who wish to rely on the exemption provided by Section 202(e) of the 1972 Act and their counsel will benefit from the changes to Commission Regulation 202.051, which will correct a typographical error in the regulation.
- i. Issuers who wish to rely on the exemption provided by Commission Regulation 202.092 and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed to that regulation, which conforms the exemption to requirements of federal law, thereby promoting uniformity with federal law and facilitating compliance. Consistent with federal law, the amended regulation will specify when guarantees of debt securities are not exempt under the regulation's provisions, and Pennsylvania investors will benefit from the Commission's oversight and regulation of these securities.
- j. The changes to Commission Form E in Regulation 203.041 will help ensure the continued accuracy and completeness of Commission records with respect to the amounts of securities offered by persons filing notices with the Commission pursuant to Sections 203(d) and 203(s) of the 1972 Act.
- k. Issuers who wish to rely on the exemption provided by Section 203(i.1) of the 1972 Act will benefit from proposed changes to Commission Regulation 203.091, which eliminate the requirement to make a notice filing with the Commission in connection with that exemption.

- l. Issuers who wish to rely on the exemption provided by Section 203(p) of the 1972 Act will benefit from proposed changes to Commission Regulation 203.161, which replace Pennsylvania-specific disclosure requirements and trustee and trust indenture standards for mandatory offering materials under that section with the disclosure requirements from the Statement of Policy Regarding Church Bonds promulgated by the North American Securities Administrators Association, thereby promoting uniformity with other states and facilitating compliance.
- m. Commission Regulation 203.189 is being amended to include a reference in that regulation of the definition of "accredited investor" in Commission Regulation 204.010 to the definition of "accredited investor" in Rule 501(a) of SEC Regulation D (17 CFR § 230.501(a)).
- n. As Act 109 of 1998 created an accredited investor exemption, the definition of "accredited investor" in Commission Regulation 204.010 is no longer needed.
- o. Commission Regulation 207.120 has been deleted in order to conform the Commission's regulations with the provisions of NSMIA, which prohibits states from registering securities issued by registered investment companies.
- p. Pennsylvania-registered broker-dealers and investment advisers will benefit from the proposed changes in Commission Regulation 305.011, which, in accordance with NSMIA, will be amended to mirror the criteria for inspections set forth in NASD Rule 3010(g) and NASD Notice to Members 98-38 thereby facilitating compliance.
- q. Pennsylvania residents who purchase securities offered and sold under the exemption provided by Section 203(p) of the 1972 Act will benefit from changes to Commission Regulation 606.011, which require every issuer of such securities annually to provide financial statements to holders of those securities in Pennsylvania within 120 days of the close of the issuer's fiscal year.
- r. Permitting the Assistant Director of Corporation Finance to exercise certain delegations in the absence of the Director, as proposed in Commission Regulation 606.041, will help ensure continuity in the operations of the Division. Presently, the Commission alone has authority to initiate proceedings to impose remedies available under Sections 512, 513 and 514. Delegation of this authority to the Director and Assistant Director of Enforcement, Litigation and Compliance through amendments to Regulation 606.041 will permit Commission staff to respond more quickly to alleged violations of the 1972 Act.

**(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; (2) harmonize provisions of Pennsylvania law with applicable provisions of federal law; (3) adopt uniform NASAA statements of policy; (4) clarify ambiguities in existing regulatory language; and (5) implement changes mandated by Act 108 of 2002.

**(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 add language or delete or modify existing language that does not increase the current compliance requirements: Commission Regulations 102.041, 102.112, 102.241, 202.032, 202.051, 203.189, 204.010, and 207.120. Commission Regulation 203.091 deletes the requirement to file Form 203-I in connection with the exemption provided by Section 203(i.1) under the 1972 Act, thereby reducing compliance requirements as to that exemption.
- b. Issuers seeking to offer and sell real property in Pennsylvania must refer to Commission Regulation 102.202 to determine whether the proposed offer or sale will be considered a "security" under the 1972 Act.
- c. Issuers proposing to offer and sell securities in reliance on the exemption provided by Section 202(a) of the 1972 Act must look to Commission Regulation 202.010, which defines the scope of the exemption in view of NSMIA provisions preempting state regulation of securities issued by governmental entities while retaining Commission regulation of "separate securities" under SEC Rule 131 (17 CFR § 230.131).
- d. Issuers proposing to offer and sell securities in reliance on the exemption provided by Section 202(c) of the 1972 Act must refer to Commission Regulation 202.030, which defines the scope of the exemption in view of NSMIA provisions preempting state regulation of commercial paper and positions of SEC staff further refining the applicability of those provisions.
- e. Persons executing guarantees of bonds issued by a governmental agency, or instrumentality where the issuer of the bond is located in Pennsylvania or where the guarantee is deemed to be a "separate security" under SEC Rule 131 (17 CFR § 230.131) must comply with Commission Regulation 202.092, which exempts from registration guarantees that meet certain conditions and requirements.
- f. Issuers filing notices on Commission Form E pursuant to Sections 203(d) and 203(s) of the 1972 Act must comply with Regulation 203.041.

- g. Non-profit issuers proposing to offer and sell debt securities under the exemption provided by Section 203(p) of the 1972 Act must comply with Commission Regulation 203.161, which specifies requirements for filing a notice form and accompanying offering materials required under Section 203(p) and prescribes disclosure requirements and other conditions to be met, and Commission Regulation 606.011, which requires such issuers annually to provide all holders of the issuers' debt securities in Pennsylvania copies of the issuers' financial statements.
- h. Broker-dealers and investment advisers registered under Section 301 of the 1972 Act must comply with Commission Regulation 305.011 in fulfilling their obligation to exercise diligent supervision over the activities of their agents, investment adviser representatives and employees by conducting inspections of their offices.

**(16) Describe the communications with and input from the public in the development and 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, which supports adoption of the proposed rules.

**(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. Commission Regulations 202.010, 202.030, and 202.092 conform the provisions of those regulations to the requirements of federal law, as amended by NSMLA and interpreted by SEC staff positions. These changes will reduce the compliance costs of affected issuers by positing compliance with Pennsylvania requirements on the same basis as compliance with federal requirements.
- b. Commission Regulation 203.091 will reduce compliance costs for issuers proposing to sell securities under the exemption provided by Section 203(i.1) of the 1972 Act by eliminating the requirement to file a notice with the Commission in connection with that exemption.
- c. Commission Regulation 203.161 will reduce compliance costs for non-profit issuers proposing to sell debt securities under the exemption in Section 203(p) of the 1972 Act, which are predominantly churches seeking to sell bonds, by adopting the uniform disclosure requirements and trustee and trust indenture standards set forth in the Statement of Policy Regarding Church Bonds (SOP) promulgated by the North American Securities Administrators Association. Such issuers will no longer be required to comply with disclosure requirements and trustee and trust indenture standards that are unique to Pennsylvania, compliance with which would require additional effort and expense, in order for the exemption under Section 203(p) to be available.
- d. Non-profit issuers proposing to sell debt securities under the exemption in Section 203(p) of the 1972 Act may incur additional costs in complying with Commission Regulation 606.011, which requires such issuers annually to provide copies of the issuer's financial statements to holders of the issuer's securities in Pennsylvania. These additional costs are anticipated to be minimal. Further, additional compliance costs are balanced by the additional protection afforded investors in Pennsylvania by providing annual notice of the financial condition of the issuers whose debt securities the investors have purchased.
- f. Under Commission Regulation 305.011, investment advisers would incur the cost necessary to establish and enforce policies and procedures aimed at effective supervision of their investment adviser representatives.

**(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.**

These Commission Regulations do not affect local government.

**(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community*						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community**						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Revenue Losses</b>	None	None	None	None	None	None

\* Savings: Although there are overall savings to the regulated community in the elimination of a notice filing and the alignment of Pennsylvania law with federal law, they are not quantifiable.

\*\* Costs: There will be some cost to non-profit organizations that sell debt securities secured by a first lien mortgage to Pennsylvania investors in that they will have to provide annual financial information to those purchasers. Since there have been less than five issuers per year that would be subject to this requirement, compliance costs should not be burdensome.

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

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

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.**

See Item 20.

**(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 current federal regulation.

**(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 proposed regulations add language or delete or modify existing language that does not affect Pennsylvania's competitiveness with other states: Commission Regulations 102.041, 102.112, 102.241, 202.032, 202.051, 203.189, 204.010, and 207.120. Commission Regulation 203.091 deletes the requirement to file Form 203-I in connection with the exemption provided by Section 203(i.1) under the 1972 Act, thereby reducing compliance requirements as to that exemption.
- b. Commission Regulation 203.161 adopts requirements and standards set forth in a Statement of Policy promulgated by the North American Securities Administrator's Association, Inc., an organization that comprises 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 203.041 amends Form E to require issuers filing notices under Sections 203(d) and 203(s) of the 1972 Act to specify the amount of securities to be offered in Pennsylvania pursuant to the notice. Presently, such issuers are required only to specify the aggregate offering amount.
- a. Commission Regulation 203.091 eliminates the requirement for issuers proposing to sell securities under the exemption in Section 203(i.1) of the 1972 Act to file Form 203-I with the Commission in connection with that exemption.
- b. Commission Regulation 606.011 requires issuers that have sold securities under the exemption in Section 203(p) of the 1972 Act annually to provide financial statements to all holders of those securities in Pennsylvania.

**(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.**

None.

**(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)

JUN 15 PM 12:33

REVIEW COMMISSION

# 2321

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. 50-118

DATE OF ADOPTION: May 13, 2003

BY: M. Joanne Cummings

TITLE: Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: \_\_\_\_\_

May 13, 2003  
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 REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION  
TITLE 64. SECURITIES

Subpart A. Definitions  
Ch. 102. Definitions

Subpart B. Registration of Securities  
Ch. 202. Exempt Securities  
Ch. 203. Exempt Transactions  
Ch. 204. Exemption Proceedings  
Ch. 207. General Registration Provisions

Subpart C. Registration of Broker-Dealers, Agents, Investment Advisers and  
Investment Adviser Representatives and Notice Filings by Federally Covered Advisers  
Ch. 305. Denial, Suspension, Revocation and Conditioning of Registration

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

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

***Statutory Authority***

The Pennsylvania Securities Commission (Commission), pursuant to the authority contained in sections 102(d), (k) and (t); 202(a),(c), (e) and (i); 203(d), (i.1), (p) and (r); 204(a); 207(l); 305(a)(ix); 606(a) and (d); and 609(a) of the Pennsylvania Securities Act of 1972, as amended, Act of December 5, 1972 (P.L. 1280 No. 284) (70 P.S. §§1-101 *et seq.*) (Act), has adopted amendments to regulations concerning the subject matter of the Act as set forth in 33 Pa.B. 884 and Annex A.

***Publication of Notice of Proposed Rulemaking***

Publication of proposed rulemaking appeared at 33 Pa.B. 884 on February 15, 2003.

***Public Comments***

No written comments were received during the public comment period. After the public comment period closed, the Commission received a telephone inquiry from Thomas Harding, Esq., Pugh, Jones & Johnson, P.C., 180 N. LaSalle St., Chicago, IL who asked for additional background information concerning §202.010. After receiving the information and discussing it with staff, Mr. Harding indicated that he had no comment on the proposed rulemaking.

***Comments of the Independent Regulatory Review Commission***

By letter dated April 17, 2003, the Independent Regulatory Review Commission (IRRC) provided the Commission with comments on §§102.041, 102.112, 203.030, 203.161, and 305.011. No comments, suggestions or objections were provided by IRRC with respect to the remainder of the proposed rulemaking set forth at 33 Pa.B. 884.

With regard to §102.041, IRRC suggested that subsection (b)(2) be revised to use the declarative rather than subjective mood. The Commission made this change. With respect to §102.111, IRRC requested clarification of “a person knowledgeable and experienced in financial and business matters.” The Commission has revised this regulation to require that such person be registered with the Commission as an investment adviser or be a federally covered adviser.

With respect to §203.030, IRRC requested that the Commission clarify, if possible, the use of the term nationally recognized statistical rating organization (NRSRO). The Commission has no legal authority to do so. First, this regulation is being changed to conform to federal law as dictated by the National Securities Markets Improvement Act of 1996 (NSMIA). Second, the use of the term NRSRO and the determination of those firms which are to be so designated is within the exclusive jurisdiction of the U.S. Securities & Exchange Commission (SEC).

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

Since 1975, SEC has required credit ratings by NRSROs in its net capital rule for broker-dealers which the Commission, pursuant to NSMIA, is required to follow. Initially, Standard & Poor's, Moody's Investor Services, and Fitch's (the same firms that existed in 1975) are the only NRSROs. NRSRO is not defined in SEC regulations and the process for obtaining NRSRO designation from SEC is not specified. Generally, designation of NRSROs has been done through an informal process by way of a no-action letter from the staff of the SEC Division of Market Regulation. The number of firms designated as NRSROs was expanded to four upon issuance of a SEC staff-no action on February 24, 2003 in which Dominion Bond Rating Service, Ltd. was designated as the newest NRSRO.

With regard to §203.161, IRRC suggested that the reference to, and role of, the NASAA Statement of Policy on Church Bonds be clarified. The Commission revised the regulation to indicate that an offering document would meet the requirements of this regulation if it includes the information elicited by the sections of that statement of policy enumerated in the regulation.

IRRC requested that the Commission clarify §305.011 by giving examples when more frequent inspections would be required. The Commission revised this regulation to be compliant with NSMIA. The internal inspection requirement for broker-dealers is dictated by the Conduct Rules of the National Association of Securities Dealers, Inc. (NASD). Under NSMIA, the Commission cannot adopt a rule for broker-dealers that is inconsistent with NASD Conduct Rules. Therefore, the Commission has incorporated examples provided in NASD Notice to Members 98-38 (May 1998) regarding frequency of internal inspections.

***Changes Made by the Commission on Adoption***

In response to IRRC comments, the Commission modified language in §§102.041, 102.112, 203.161, and 305.011 as indicated in the previous paragraph.

The Commission also revised Item 7 to Commission Form E in §203.041 to elicit information of the amount of securities to be offered in Pennsylvania. This is required so that Commission staff can accurately calculate the statutorily required filing fee set forth in Section 602(b.1)(viii). The Commission also delegated authority in §606.041(a) to the Director of the Division of Enforcement, Litigation and Compliance to institute a proceeding under Sections 512, 513 and 514 of the Act.

***Summary and Purpose of Regulations***

§102.041. This states that a "bank," as defined under the Act, does not include a person organized as a holding company; and codifies the Commission's interpretation of when a "bank-in-organization" becomes a "bank" for purposes of the Act.

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

- §102.112. The Commission’s published position on when this definition would include IRAs, SEPs and KEOGHs has been codified into a separate regulation.
- §102.202. This regulation includes a statement of when the offer and sale of real property would be a “security” under the Act; deletes references to the Unit Property Act; and follows SEC Staff no action letters which base the existence of a security on participation in a mandatory rental pool arrangement.
- §102.241. This regulation has been conformed to make the definition similar to the federal securities laws.
- §202.010. The regulation makes it clear that all securities that are exempt securities under Section 3(a)(2) of the federal Securities Act of 1933 (1933 Act) are exempt under Section 202(a) of the Act except where a separate security exists by application of SEC Rule 131.
- §202.030. The regulation states that all Section 3(a)(3) exempt securities under the 1933 Act, as interpreted by SEC Release 33-4412, are eligible for the Section 202(c) exemption; defines “prime quality” as being in one of the three highest ratings of a nationally recognized statistical rating organization; prohibits use of public media advertising and mass mailings; and requires that commercial paper issued by bank holding companies contain disclosures that the paper is not issued by a “bank” and, therefore, is not covered by FDIC insurance.
- §202.051. The regulation was amended to correct a mis-citation.
- §202.092. The regulation defines the term guaranty and includes only issuers located in Pennsylvania or any issuer where the guaranty would be deemed a separate security under SEC Rule 131.
- §203.041. The Commission has adopted a minor revision to Form E to distinguish the amount of securities to be offered in this Commonwealth in order to assess the correct filing fee established in Section 602(b.1)(viii) of the Act.
- §203.091. As required by Act 108 of 2002, the regulation deletes the filing requirement and Form 203-I.

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

- §203.161. The regulation permits issuers relying on this section to comply with the trust indenture and offering circular requirements of Section 203(p) of the Act by satisfying Parts V-VII of the Statement of Policy of the North American Securities Administrators Association Regarding Church Bonds.
- §203.189. The definition of accredited investor previously set forth in §204.010 has been inserted into this regulation and is the same definition as set forth in SEC Rule 501(a).
- §204.010. Since Act 109 of 1998 enacted an accredited investor exemption in Section 203(t) of the Act, the accredited investor definition in §204.010 has been repealed.
- §207.120. NSMIA prohibits states from registering securities issued by registered investment companies. This regulation relates to registration of investment company securities and, pursuant to NSMIA, is no longer applicable. Therefore, the regulation has been repealed.
- §305.011. NSMIA prohibits states from maintaining rules governing record keeping, or financial or operational reporting requirements for broker-dealers that are inconsistent with rules established by SEC under the Securities Exchange Act of 1934. These generally are NASD Conduct Rules which are subject to SEC approval. The regulation has been revised to mirror inspection requirements for broker-dealers of their offices of supervisory jurisdiction, branch offices and non-branch locations in accordance with criteria set forth in NASD Rule 3010(g) and NASD Notice to Members 98-38.
- §606.011. Act 108 of 2002 gave the Commission authority to require, by rule, that persons purchasing securities from a non-profit issuer under Section 203(p) of the Act receive annual financial information from the issuer. The regulation was amended to include securities sold under Section 203(p).
- §606.041. The regulation has been amended to permit the Assistant Director of the Division of Corporation Finance to exercise authority delegated to the Director in his or her absence and also to delegate to the Director of the Division of Enforcement, Litigation and Compliance the authority to institute a proceeding under Sections 512, 513 and 514 of the Act.



**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

***Persons Affected by these Regulations***

Pennsylvania issuers of municipal securities and issuers of commercial paper will be affected by these amendments. Registered broker-dealers will be affected by the changes to inspection requirements for various offices maintained by the broker-dealer. Non-profit organizations issuing debt securities secured by a first lien mortgage must comply with certain disclosure requirements in the use of an offering circular and in annual financial information to be given to security holders in Pennsylvania.

***Fiscal Impact***

The amendments reduce compliance costs by eliminating the filing of Form 203-I. The only new compliance cost is that non-profit organizations which sell debt securities to Pennsylvanians that are secured by a first lien mortgage on property owned by the issuer must provide annual financial information to those purchasers. The Commission does not believe the compliance cost to be unreasonable when balanced against an investor's need to know the financial health of the issuer and the security of bonds the investor purchased. No additional compliance cost is envisioned for broker-dealer inspection of their offices as the regulatory requirement mirrors that which already exists in NASD Conduct Rules.

***Paperwork***

The Commission has eliminated Form 203-I. The only new paperwork requirement is the provision of annual financial information to Pennsylvania residents who have purchased debt securities from a non-profit organization which are secured by a first lien mortgage on property owned by the organization.

***Regulatory Review***

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 3, 2002, the Commission submitted a copy of the proposed rulemaking published at 33 Pa.B. 884 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 by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

By letter dated April 17, 2003, IRRC provided the Commission with comments on §§102.041, 102.112, 203.030, 203.161, and 305.011 and the Commission's response to those comments set forth above. IRRC did not provide any objections, comments or suggestions with respect to other proposed amendments published at 33 Pa.B. 884.

The final-form regulations were submitted on May 15, 2003, to the House Committee on Commerce and Economic Development, the Senate Committee on Banking and Insurance and IRRC. Final form regulations were deemed approved by the House Committee on Commerce and Economic Development on \_\_\_\_\_ and the Senate Committee on Banking and Insurance on \_\_\_\_\_. IRRC met on \_\_\_\_\_ and approved the final-form regulations

***Availability in Alternative Formats***

The final-form regulations 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 George Spiess, ADA Coordinator, at (717) 787-6828.

***Contact Person***

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

***Order***

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

(a) The regulations of the Commission, 64 Pa. Code, Chapters 102, 202-204, 207, 305 and 606 are amended by amending §§102.202, 102.241, 202.010, 202.030, 202.032, 202.051, 202.092, 203.189, 204.010, 207.120, and 606.011 to read as set forth at 33 Pa.B. 884; and by amending §§102.041, 102.111, 203.041, 203.161, 305.011, and 606.041 to read as set forth in Annex A.

(b) The Secretary of the Commission shall submit this order, 33 Pa.B. 884 and Annex A to the Office of Attorney General for approval as to form and legality.

**FINAL-FORM REGULATIONS  
PENNSYLVANIA SECURITIES COMMISSION**

(c) The Secretary of the Commission shall certify this order, 33 Pa.B. 884 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*  
M. JOANNA CUMMINGS, SECRETARY

## ANNEX A

### **§102.041. [Banking institution; savings and loan institution] Bank holding companies; banks in organization.**

(a) [For the purpose of section 102(d) of the act (70 P.S. §1-102(d)), the term “banking institution” means an institution organized under the applicable State or Federal law:

(1) The business of which is substantially confined to the business of banking.

(2) Supervised and examined as a bank by the appropriate State or Federal authorities having supervision over the institution. For the purpose of this subsection, the “banking business” is deemed to be borrowing and lending and the receipt of deposits. The term “banking institution” does not include a bank holding company or a bank in organization] The definition of “bank” in section 102(d) of the act (70 P.S. §1-102(d)) does not include a holding company for a bank.

(b) [For the purpose of section 102(d) of the act (70 P.S. §1-102(d)), the term “savings and loan institution” means an institution organized under the applicable State or Federal law:

(1) The business of which is substantially confined to the savings association business.

(2) Examined and supervised as a savings association by the appropriate State or Federal authorities having supervision over an institution. For the purpose of this subsection, the term “savings association business” is deemed to be the receipt of deposits from and the making of loans to members of the association. The term “savings and loan institution” does not include a savings and loan holding company or a savings and loan in organization] The definition of “bank” in section 102(d) of the act (70 P.S. §1-102(d)) does not include a bank-in-organization. Whether an entity is a “bank” or a “bank-in-organization” should SHALL be determined in accordance with the interpretation of the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it must otherwise comply.

### **§102.112. SEPs, IRAs and KEOGHs as institutional investors.**

Institutional investor, as defined in section 102(k) of the act (70 P.S. §1-102(k)), includes a Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal Revenue Code of 1986 (KEOGH), an Individual Retirement Accounts under section 408 of the Internal Revenue Code of 1986 (IRA) and a Simplified Employee Pension under section 408(k) of the Internal Revenue Code of 1986 (SEP) if the KEOGH, IRA or SEP has:

(a) Plan assets of \$5 million or more; or

(b) Retained, on an ongoing basis, the services of a person knowledgeable and experienced in financial and business matters AN INVESTMENT ADVISER REGISTERED UNDER SECTION 301 OF THE ACT (70 P.S. §1-301) OR A FEDERALLY COVERED ADVISER to render professional investment management advice and has investments of \$500,000 or more in securities.

**§203.041. LIMITED OFFERINGS.**

(A) THE NOTICE REQUIRED BY SECTION 203(D) OF THE ACT (70 P.S. §1-203(D)) SHALL BE FILED WITH THE COMMISSION WITHIN THE TIME PERIOD SPECIFIED BY THAT SECTION ON THE FOLLOWING FORM, DESIGNATED BY THE COMMISSION AS FORM E.

**COMMISSION FORM E**

\* \* \*

**7. DESCRIPTION OF SECURITIES TO BE SOLD**

DESCRIBE TYPE [AND AMOUNT] OF SECURITIES PROPOSED TO BE SOLD, PRICE PER UNIT AND EXPECTED NET PROCEEDS TO THE ISSUER. INDICATE THE AGGREGATE OFFERING AMOUNT AND THE AMOUNT TO BE OFFERED IN PENNSYLVANIA. \_\_\_\_\_ CHECK HERE IF RESPONDING TO THIS ITEM BY INCORPORATING ITEMS C.1-4 OF SEC FORM D ATTACHED HERETO (THE AMOUNT TO BE OFFERED IN PENNSYLVANIA EITHER MUST BE SHOWN HERE OR ON SEC FORM D).

\* \* \*

**§203.161. Debt securities of nonprofit organizations.**

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P.S. §1-203(p)) shall complete and file with the Commission two copies of the following notice, designated by the Commission as Form 203-P not later than five business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

(b) Except in cases where the delivery of [a complete offering circular,] an offering document [before or concurrently with any offer of securities,] is not required by order of the Commission [as a condition of qualification under section 203(p) of the act (70 P.S. §1-203(p))], every offering of debt securities pursuant to [this] section 203(p) shall be made by an offering [circular] document containing [complete] all material information about the securities being offered and the issuer [, including the following:]. In preparing an AN offering document WILL BE DEEMED to meet the requirements of this section; the Commission suggests that issuers include IF IT INCLUDES THE information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002 by the North American Securities Administrators Association, Inc. and any successor policy thereto (NASAA Guidelines”) and IS in the format suggested SET FORTH therein. A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) shall be filed with the Commission at the same time the notice required by subsection (a) must be filed.

[(1) The name, address and date of formation of the issuer.

(2) The date of the offering circular.

(3) The risk factors including by way of illustration and not limitation the following, if applicable, ability of issuer to pay interest and repay indebtedness; fluctuation in issuer's income; limited experience of chief executive officer or operating personnel; limited experience of underwriter or other persons or both assisting in the offering, or of both; amount of commissions, consulting fees and underwriting compensation; lack of marketability of the securities and lack of loan value of the securities.

(4) Activities engaged in by the issuer.

(5) Financial statements in accordance with section 609(c) (70 P.S. §1-609(c)) and the regulations thereunder.

(6) Membership figures for the three year period preceding the date of the offering.

(7) Use of proceeds and purpose of the offering; alternative plans if all securities are not sold; escrows of proceeds to be raised in the offering until a state percentage of estimated project or operational costs are raised.

(8) Education and prior employment background of chief executive officer or operating personnel, officer, directors, trustees or organizers and all remuneration paid or proposed to be paid; directly or indirectly, to each of such persons in connection with the issuer's activities or in connection with the offering and any relationship or affiliation between any such person and any vendor, contractor, developer, or any other person who proposes to engage in any material transaction with the issuer or who has at any time within the past five years engaged in any

material transaction with the issuer.

(9) Detailed information about the security including information with respect to: interest, subordination, call or redemption privileges, lien priorities, amortization, maturity, sinking fund, retirement, and default including the type of event which constitutes a default and whether or not periodic evidence is required to be furnished as to the absence of any default in compliance with the terms of the indenture or other trust instrument.

(10) Name and address of trustee, if any, and the nature of any material relationship with the issuer or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action in the event of a default and what indemnification the trustee may require before proceeding to enforce any lien referred to in paragraph (9) of this subsection; if there is no trustee, the issuer should undertake to notify all investors in the event of a default in the issuer's obligations. The issuer must undertake to notify all security holders of the existence of such default and of the steps to be taken to assert their rights under the terms of the securities.

(11) Name and address of any underwriter, the amount being underwritten, any relationship between the underwriter and the issuer or any affiliate of the issuers; all commissions or other consideration to be paid, directly or indirectly, to any underwriter in connection with the offering.

(12) Name and address of any person assisting the issuer by way of preparation of offering literature, instructing representatives on selling techniques, pricing the offering, acting as a finder or otherwise consulting with the issuer with respect to the offering; the amount of any compensation to be paid, directly or indirectly, to such person; whether any such person, or any affiliate will enter into any consulting, construction or other agreement with the issuer, or any affiliate of the issuer, in furtherance of the issuer's activities; and whether such person is licensed as a broker-dealer, agent or investment adviser (or equivalent) in any jurisdiction.

(13) A breakdown of total expenses of the offering including, without limitation, legal and accounting fees, printing costs, fees referred to in paragraphs (11) and (12) of this subsection, finders' fees and other anticipated expenses.

(14) Any terms on which purchases may be made, such as periodic payments and any arrangements to be made by the issuer or any person described in paragraphs (11) and (12) of this subsection to secure financing for purchasers of securities.

(15) A notice describing the provisions of section 207(m)(2) (70 P.S. §1-207(m)(2)) and informing an offeree or purchaser of the method of exercising the rights created by that section and the regulations promulgated thereunder.

(16) A description of any legal proceedings pending against the issuer.

(17) An indication that an annual report containing a balance sheet and income statement of the issuer for the preceding fiscal year, prepared by an independent public accountant or certified public accountant and including an opinion of the accountant as to the financial condition, will be distributed to investors not more than 120 days after the end of the issuer's fiscal year; and

(18) Other information as the issuer may deem material, such as the status of the securities for personal property taxation in the Commonwealth.]

(c) [The issuance of debt securities in an amount exceeding \$100,000 under section 203(p) (70 P.S. §1-203(p)) must be pursuant to an indenture or other trust instrument complying with the provisions of the Trust Indenture Act of 1939, 15 U.S.C. §77aaa et. seq. (1972).] The offering document required by subsection (b) must:

(1) Contain a notice of a right to withdraw that complies with §207.130 (relating to notice to purchasers under section 207(m));

(2) Contain financial statements of the issuer that comply with §609.034(b) (relating to financial statements);

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000; and

[(d) Include with the offering circular described in subsection (b) of this section an opinion of counsel with respect to the lien priority granted to purchasers of the securities, the validity and effect of the securities when issued and paid for and the availability of the section 203(p) (70 P.S. §1-203(p)) exemption with respect to the particular offering. Also, include] (4) Include whatever data may be necessary to establish that investors will receive a first lien on real estate of the issuer, that the issuer has not defaulted on prior obligations and that the total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities [, less the unpaid amount of any unpaid special assessment taxes].

[(e) Describe supplementally, if applicable, any provisions made for escrowing the proceeds of the offering until the first lien in subsection (d) of this section is established.]

### **§305.011. Supervision of agents, investment adviser representatives and employes.**

\* \* \*

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and



shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

\* \* \*

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced. IN ACQUITTING THEIR OBLIGATIONS UNDER THIS REGULATION, REGISTRANTS ARE TO CONSULT NASD NOTICE TO MEMBERS 98-38 (MAY 1998) AND SEC RELEASE No. 34-38174 (JANUARY 15, 1997). IN ACCORDANCE WITH NASD NOTICE TO MEMBERS 98-38, UNANNOUNCED VISITS MAY BE APPROPRIATE WHERE THERE ARE INDICATORS OF MISCONDUCT SUCH AS RECEIPT OF SIGNIFICANT CUSTOMER COMPLAINTS; PERSONNEL WITH DISCIPLINARY RECORDS; OR EXCESSIVE TRADE CORRECTIONS, EXTENSIONS, LIQUIDATIONS, OR VARIABLE CONTRACT REPLACEMENTS.

(i) [The obligation of diligent supervision required by this section may require that one or more locations in this Commonwealth receive more than one inspection per year and that one or more of these inspections be unannounced] An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and non-branch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer's written supervisory procedures.

(ii) It is the responsibility of the broker-dealer or investment adviser to [determine the required number of] ensure through inspections of each location [is to receive each year to ensure] in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(iv) For purposes of this section, the terms "office of supervisory jurisdiction" and "branch office" shall have the same meaning as those terms are defined in NASD Conduct Rule 3010(g) or any successor thereto. The term "non-branch location" means any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

**§606.041. Delegation and substitution.**

**\* \* \***

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

**\* \* \***

(5) THE POWER TO INSTITUTE A PROCEEDING UNDER SECTIONS 512 – 514 OF THE ACT (70 P.S. §§1-512 – 1-514) TO:

(i) IMPOSE A STATUTORY BAR UNDER SECTION 512 OF THE ACT (70 P.S. §1-514);

(ii) MANDATE A RESCISSION OFFER UNDER SECTION 513 OF THE ACT (70 P.S. §1-513); OR

(iii) COMPEL THE RETURN OF SALES COMMISSIONS UNDER SECTION 514 OF THE ACT (70 P.S. §1-514).

**\* \* \***

(e) The Commission authorizes the [Chief Counsel or Deputy Chief Counsel to exercise delegations given in this section in the absence of the Director of the Division of Corporation Finance or the Director of the Division of Licensing.] the following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.

accordance with section 8328(b) and (c) of the Retirement Code (relating to actuarial cost method). ]

(b) Retirement Code reference: Section [ 8301 ] 8326 of the Retirement Code.

[Pa.B. Doc. No. 08-266. Filed for public inspection February 14, 2003, 9:00 a.m.]

## SECURITIES COMMISSION

[64 PA. CODE CHS. 102, 202, 203, 204, 207, 305 AND 606]

### Banking and Savings and Loan Institutions

The Securities Commission (Commission), under the authority contained in sections 102(d), (k) and (t), 202(a), (c), (e) and (i), 203(i.1), (p) and (r), 204(a), 207(l), 305(a)(ix), 606(a) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-102(d), (k) and (t), 1-202(a), (c), (e) and (i), 1-203(i.1), (p) and (r), 1-204(a), 1-207(l), 305(a)(ix), 1-606(a) and (d) and 1-609(a)), proposes to amend regulations concerning the subject matter of the act to read as set forth in Annex A.

#### Summary and Purpose of Regulations

*Section 102.041.* This proposed rulemaking will indicate that a "bank," as defined under the act, does not include a person organized as a holding company and codify the Commission's published interpretation of when a "bank-in-organization" becomes a "bank" for purposes of the act.

*Section 102.112.* The Commission's published position on when the definition of "institutional investor" would include IRAs, SEPs and KEOGHs will be codified into a separate regulation.

*Section 102.202.* This section will be amended to include an affirmative statement of when the offer and sale of real property would be a "security" under the act; delete references to the Unit Property Act; and follow United States Securities and Exchange Commission (SEC) No Action Letters which base the existence of a security on participation in a mandatory rental pool arrangement.

*Section 102.241.* This section will be amended to make the definition of "exchange" similar to the Federal securities laws.

*Section 202.010.* The amendment to this section would make it clear that all securities that are exempt securities under section 3(a)(2) of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77c(a)(2)) would be exempt under section 202(a) of the act except when a separate security exists by application of SEC Rule 131.

*Section 202.030.* The section will be amended to state that all section 3(a)(3) of the 1933 Act exempt securities, as interpreted by SEC Release 33-4412, are eligible for the section 202(c) of the act exemption; define "prime quality" as being in one of the three highest ratings of a Nationally recognized statistical rating organization; prohibit use of public media advertising and mass mailings; and require that commercial paper issued by bank holding companies contain disclosures that the paper is not issued by a "bank" and, therefore, is not covered by FDIC insurance.

*Section 202.051.* The section will be amended to correct a miscitation.

*Section 202.092.* The section will be amended to: define the term guaranty; and include only issuers located in this Commonwealth or an issuer where the guaranty would be deemed a separate security under SEC Rule 131.

*Section 203.091.* As required by Act 108 of 2002, the section will be amended to delete the filing requirement and Form 203-I.

*Section 203.161.* The section will be amended to permit issuers relying on this section to comply with the trust indenture and offering circular requirements of section 203(p) of the act by satisfying Parts V—VII of the Statement of Policy of the North American Securities Administrators Association Regarding Church Bonds.

*Section 203.189.* The Commission proposes to delete the definition of "accredited investor" in § 204.010 as being obsolete as the General Assembly enacted a specific statutory accredited investor exemption in the act of November 24, 1998 (Act 109) (P. L. 829, No. 109). However, a definition of "accredited investor" is necessary for operation of the exemption created by this section and therefore, this section will be amended to include the definition of "accredited investor" as set forth in SEC Rule 501(a).

*Section 204.010.* Since Act 109 enacted an accredited investor exemption in section 203(t) of the act, the definition of "accredited investor" in § 204.010 (relating to increasing number of purchasers and offerees) is no longer required. Therefore, the section will be amended to delete the definition of "accredited investor."

*Section 207.120.* The National Securities Markets Improvement Act of 1996 (NSMIA) prohibits states from registering securities issued by registered investment companies. This section relates to registration of investment company securities and, under NSMIA, is no longer applicable. Therefore, the section will be reserved.

*Section 305.011.* NSMIA prohibits states from maintaining rules governing recordkeeping, or financial or operational reporting requirements for broker-dealers that are inconsistent with rules established by the SEC under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk). These generally are rules of the National Association of Securities Dealers (NASD) which are subject to SEC approval. The section will be amended to mirror the inspection requirements for broker-dealers of their offices of supervisory jurisdiction, branch offices and nonbranch locations in accordance with criteria set forth in NASD Rule 3010(g) and NASD Notice to Members 98-38.

*Section 606.011.* Act 108 gave the Commission authority to require, by rule, that persons purchasing securities from a nonprofit issuer under section 203(p) of the act receive annual financial information from the issuer. The section will be amended accordingly.

*Section 606.041.* It is proposed that this section be amended to permit the Assistant Director of the Division of Corporation Finance to exercise authority delegated to the Director in his absence.

#### Persons Affected by the Proposed Rulemaking

Commonwealth issuers of municipal securities and issuers of commercial paper will be affected by the proposed rulemaking. Registered broker-dealers will be affected by the proposed amendments to inspection requirements for various offices maintained by the

broker-dealer. Nonprofit organizations issuing debt securities secured by a first lien mortgage shall comply with certain disclosure requirements in the use of an offering circular and in annual financial information to be given to security holders in this Commonwealth.

#### *Fiscal Impact*

The proposed rulemaking reduces compliance costs by eliminating the filing of Form 203-I. The only new compliance cost is that nonprofit organizations which sell debt securities to Commonwealth residents that are secured by a first lien mortgage on property owned by the issuer must provide annual financial information to those purchasers. The Commission does not believe the compliance cost to be unreasonable when balanced against an investor's need to know the financial health of the issuer and the security of bonds the investor purchased. No additional compliance cost is envisioned for broker-dealer inspection of their offices as the regulatory requirement mirrors that which already exists in NASD rules.

#### *Paperwork*

The Commission proposes to eliminate Form 203-I. The only new paperwork requirement is the provision of annual financial information to Commonwealth residents who have purchased debt securities from a nonprofit organization which are secured by a first lien mortgage on property owned by the organization.

#### *Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 3, 2003, 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. 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. A copy of this material is available to the public 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 Committees' review period. The notification shall specify the regulatory review criteria that 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 Cheryl Krchnar, ADA Coordinator, (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.

M. JOANNA CUMMINGS,  
*Secretary*

**Fiscal Note:** 50-118. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 64. SECURITIES

#### PART I. SECURITIES COMMISSION

#### Subpart A. DEFINITIONS

#### CHAPTER 102. DEFINITIONS

§ 102.041. [Banking institution; savings and loan institution] Bank holding companies; banks in organization.

(a) [For the purpose of section 102(d) of the act (70 P. S. § 1-102(d)), the term "banking institution" means an institution organized under the applicable State or Federal law:

(1) The business of which is substantially confined to the business of banking.

(2) Supervised and examined as a bank by the appropriate State or Federal authorities having supervision over the institution. For the purpose of this subsection, the "banking business" is deemed to be borrowing and lending and the receipt of deposits. The term "banking institution" does not include a bank holding company or a bank in organization.] The definition of "bank" in section 102(d) of the act (70 P. S. § 1-102(d)) does not include a holding company for a bank.

(b) [For the purpose of section 102(d) of the act (70 P. S. § 1-102(d)), the term "savings and loan institution" means an institution organized under the applicable State or Federal law:

(1) The business of which is substantially confined to the savings association business.

(2) Examined and supervised as a savings association by the appropriate State or Federal authorities having supervision over an institution. For the purpose of this subsection, the term "savings association business" is deemed to be the receipt of deposits from and the making of loans to members of the association. The term "savings and loan institution" does not include a savings and loan holding company or a savings and loan in organization.] The definition of "bank" in section 102(d) of the act does not include a bank-in-organization. Whether an entity is a "bank" or a "bank-in-organization" should be determined in accordance with the interpretation of the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.

§ 102.112. SEPs, IRAs and KEOGHs as institutional investors.

Institutional investor, as defined in section 102(k) of the act (70 P. S. § 1-102(k)), includes a Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal Revenue Code of 1986 (KEOGH), an Individual Retirement Account under section 408 of the Internal Revenue Code of

1986 (IRA) and a Simplified Employee Pension under section 408(k) of the Internal Revenue Code of 1986 (SEP) if the KEOGH, IRA or SEP has one of the following:

- (1) Plan assets of \$5 million or more.
- (2) Retained, on an ongoing basis, the services of a person knowledgeable and experienced in financial and business matters to render professional investment management advice and has investments of \$500,000 or more in securities.

§ 102.202. Real property [ units ].

(a) For purposes of section 102(t) of the act (70 P.S. § 1-102(t)), the term "security" is deemed to include the offer and sale of real property [ units ("unit" or "units") where ] when one of the following exists:

(1) [ The purchaser of a unit is offered a rental pool arrangement in connection with the offer of the unit.

(2) [ The purchaser of [ a unit ] the property is required by the terms of the purchase or by reason of acquiring title [ to a unit ] either:

(i) To use the seller to perform services in connection with a sale, lease or license of the [ purchased unit ] property purchased.

(ii) To hold [ his unit ] the property available to persons other than the purchaser for the other person's lease, license or other use for a specified period of time or for a period of time when the [ unit ] property is not in use by the owner.

(2) The purchaser is required by the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

[ (3) One or more units (other than the purchased unit) or all or part of the common elements are to be used for activities which are intended to generate income for the purchasers as a group, either directly or indirectly by reason of a reduction in the common expenses payable by the unit owners and the seller represents, or otherwise gives the purchaser reason to believe or expect, that the income during a 1-year period will equal or exceed 20% of the actual or anticipated common expenses for the period.

(4) The purchaser of a unit is offered, as part of the offer or in connection therewith, a property interest which would itself be deemed to be a security under section 102(t) of the act or this section.

(b) For purposes of this section, the term "seller" means every beneficial owner of two or more units who offers the units for sale or longterm lease, and affiliates of those persons.

(c) For purposes of this section, the terms "unit," "common elements" and "common expenses" are defined as in the Unit Property Act (68 P.S. §§ 700.101—700.805). Additionally, where one or more parcels of real property have been developed so as to make portions thereof capable of separate, exclusive ownership by different persons and the owners will also own one or more portions thereof in common and will share the expenses relating to the common portions, the portions capable of separate, exclusive ownership shall be deemed "units", the common portions shall be deemed "common elements" and the expenses shall be deemed "common expenses" for purposes of this section, notwithstanding that the real estate cannot be or has not been submitted to the Unit Property Act (68 P.S. §§ 700.101—700.805).

(d) (b) For purposes of this section, the term "rental pool arrangement" constitutes either:

(1) A device whereby a person, whether or not the seller, undertakes to rent [ units ] the property on behalf of [ their owners ] the owner during periods of time when [ a unit ] the property is not in use by its owner, the rents received from all [ units ] properties participating in the pool and the expenses attributable to the rents being combined with each [ unit ] property owner receiving a ratable share of the rental proceeds regardless of whether his particular [ unit was ] property actually was rented.

(2) Other devices having like attributes. [ The term "rental pool arrangement" includes voluntary arrangements wherein the unit owner places his unit in a rental pool when and if he chooses to do so. ]

§ 102.241. Exchange.

[ The term "exchange" means an organization or association, whether incorporated or unincorporated, which constitutes, maintains or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange, specifically including the maintenance of an auction market for the purchase or sale of securities. ] For purposes of the act, the term "exchange" includes a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. § 78f) (1934 Act) or a National quotation system operated by a National securities association registered with the SEC under section 15A of the 1934 Act (15 U.S.C. § 78o-3).

## Subpart B. REGISTRATION OF SECURITIES

### CHAPTER 202. EXEMPT SECURITIES

§ 202.010. [ Private activity bonds ] Securities issued by a governmental unit.

[ (a) ] The [ availability of the ] exemption contained in section 202(a) of the act (70 P.S. § 1-202(a)) is [ not limited to an issuer or guarantor of a private activity bond ] available for any security described in that section which is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77c(2)) except for any part of an obligation evidenced by a bond, note, debenture or other evidence of indebtedness issued by any governmental unit specified in section 3(a)(2) that is deemed to be a separate security under United States Securities and Exchange Commission Rule 131 (17 CFR 230.131 (relating to definition of security issued under governmental obligations)).

[ (b) ] A private activity bond, or industrial development bond, as defined in the Internal Revenue Code of 1986 (IRC), shall be deemed to have been

issued or guaranteed by a governmental instrumentality and therefore exempt under section 202(a) if the issuer has obtained one of the following:

(1) A ruling from the Internal Revenue Service or an opinion of counsel, experienced in matters relating to taxation, that the interest paid on the security is excludable from gross income under section 103(a)(1) of the IRC (26 U.S.C.A. § 103(a)(1)), except during a period when it is held by a substantial user of the facilities to be financed by the proceeds of the securities or by a related person of the substantial user, as those terms are defined in section 147(a) of the IRC (26 U.S.C.A. § 147(a)) and regulations adopted thereunder.

(2) A "No action Letter" from the United States Securities and Exchange Commission indicating that the sale of the securities is exempt from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e (1992)) by reason of section 3(a)(2) thereof (15 U.S.C.A. § 77(c)(2) (1992)), concerning industrial development bonds or an opinion of counsel, experienced in matters relating to securities, to the effect that the exemption is available. ]

#### § 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P. S. § 1-202(c)) [ shall be applicable only with respect to prime quality, unsecured short-term promissory notes or a renewal thereof, or a guarantee of the notes or of a renewal which are the following ] is available for any security which is a Federally covered security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C. § 77c(3)) as interpreted by Release 33-4412 (26 Fed. Reg. 9158 (1961)) issued by the United States Securities and Exchange Commission which provides that:

(1) [ Payable on a stated maturity date ] The commercial paper shall be prime quality of a type not ordinarily purchased by the general public.

(2) [ Issued in units of not less than \$5,000 provided that there may be no sales of fractional interests in units ] The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.

(3) [ Issued with a maturity not exceeding nine months exclusive of days of grace from the date of issuance ] The commercial paper is not payable on demand and does not contain a provision for an automatic "rollover."

(4) [ Issued ] The commercial paper is issued to facilitate current operational business [ transactions ] requirements.

(5) [ Marketed without the use of any public media advertisement or any mass mailing. ] The proceeds of the commercial paper are not used to:

(i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.

(ii) Purchase or construct a plant facility.

(iii) Purchase durable machinery or equipment.

(iv) Fund commercial real estate development or financing.

(v) Purchase real estate mortgages or other securities.

(vi) Finance mobile homes or home improvements.

(vii) Purchase or establish a business enterprise.

(b) [ "Prime quality" for ] For purposes of this section, "prime quality" means [ one of the following:

(1) That the issuer of such notes must be rated within the three highest ratings as determined by Standard & Poor's (A-1, A-2 or A-3) or Moody's Investors Service (P-1, P-2 or P-3) or the two highest ratings as determined by Fitch Investors Service (F-1 or F-2) or have an equivalent rating by a national rating service which the Commission may by order specify.

(2) That upon application to the Commission the issuer of the notes has been determined by the Commission to have credit characteristics equivalent to comparable issuers so rated, the determination by the Commission to be made upon a review of the net worth of the issuer, liquidity position, recent financial performance, aggregate indebtedness and access to additional channels of borrowing ] that the commercial paper has been rated in one of the top three rating categories by a Nationally recognized statistical rating organization.

(c) [ The proceeds of short-term promissory notes shall be deemed used to finance current operational business expenses of the issuer if they are used for short-term business activities of the issuer. They may not be used for permanent or fixed investments such as land, buildings or machinery nor used for speculative transactions or transactions in securities or for loans or capital to subsidiaries or affiliates for those purposes. ] When commercial paper is being issued by a holding company for a bank, as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)), the commercial paper shall bear a prominent legend in bold face type of at least 12 points in size indicating that the commercial paper:

(1) Has not been issued by the bank for which the issuer is the holding company.

(2) Is not a deposit of the bank covered by Federal deposit insurance.

(d) No public media advertisement or mass mailing may be made in connection with soliciting offers or sales of [ the notes ] commercial paper; provided, that nothing in this section [ shall limit ] limits mailings to institutional investors or broker-dealers, as those terms are defined in the act and this subpart.

#### § 202.032. [ Commercial paper issued by bank holding companies ] (Reserved).

[ (a) Where a bank holding company or any subsidiary of a bank holding company which is not itself a banking institution, proposes to offer or sell securities in this Commonwealth in reliance upon section 202(c) of the act (70 P. S. § 1-202(c)), any note, certificate or other evidence of indebtedness to be issued shall bear a conspicuous legend in

roman type at least as large and as legible as ten-point modern type in writing, stating:

(1) That the securities are commercial paper.

(2) That the securities have not been issued or guaranteed by any banking institution.

(3) that the securities are not guaranteed or insured by any agency or instrumentality of any state or the Federal government; provided that such legend shall be omitted either where the subject securities are guaranteed as to payment of principal and interest by an irrevocable letter of credit issued by a banking institution or where the subject securities are sold in units of not less than \$100,000.

(b) For the purposes of this regulation, the term "bank holding company" shall mean a corporation registered under 12 U.S.C.A. § 1841 et seq. (1969) (relating to Bank Holding Companies).

(c) For the purposes of this regulation, the term "banking institution" shall have the meaning as set forth in this Title.]

§ 202.051. Equity securities of nonprofit organizations.

(a) For the purpose of section [ 203(e) (70 P. S. § 1-203(e)) ] 202(e) of the act (70 P. S. § 1-202(e)), the exemption [ shall ] is not [ be ] applicable to a proposed offering of nondebt securities by an issuer [ where ] when:

\* \* \* \* \*

§ 202.092. Guaranties of certain debt securities exempt.

(a) The exemption established by this section applies to a guaranty of a bond, as those terms are defined in subsection (d)(1) and (2), that is offered or sold in this Commonwealth.

(b) 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 the registration under section 201 of the act (70 P. S. § 1-201) of the guaranty [ of payment of interest, principal or premium on bonds—guaranty—when ] of a bond if all of the following conditions are met:

(1) [ The bonds are exempt from the registration requirements of section 201 of the act (70 P. S. § 1-201) by virtue of section 202(a) of the act (70 P. S. § 1-202(a)).

(2) The issuer of the guaranty—the guarantor—or an affiliate of the guarantor is obligated to make payments to the issuer of the bonds under a lease, sublease, loan agreement, installment sale agreement or similar arrangement sufficient to carry the debt service requirements on the bonds.

(3) Under the trust indenture, mortgage, deed of trust or similar agreement, the guaranty is entered into between the guarantor and the trustee for the bonds, and the guarantor unconditionally guarantees payment of interest, principal and premium, on the bonds in the event of default by the issuer of the bonds or on the obligation set forth in paragraph (2).

(4) ] The official statement or other disclosure document being utilized in connection with the offer and sale of the bonds contains either of the following:

\* \* \* \* \*

[ (5) The guaranty may not be bought, sold or traded as a security or otherwise realized upon by a securityholder separately from the securityholder's interest in the bonds.

(6) ] (2) The proceeds from the sale of the bonds [ shall ] are to be utilized for the benefit of a facility which is owned or operated—user—by either of the following:

\* \* \* \* \*

[ (7) ] (3) Under the guaranty [ agreement ], the guarantor is required to do the following:

\* \* \* \* \*

(ii) Be responsible for expenses incurred by the Trustee for the Bondholders in complying with paragraph [ (8) ] (4)(ii) and (iii) unless there are specific provisions to the contrary in the relevant financing documents.

(iii) Notify the Trustee for the Bondholders within 24 hours after it becomes insolvent as that term is defined in subsection [ (c)(1) ] (d)(4).

[ (8) ] (4) Under the trust indenture, mortgage, deed of trust or other similar agreement, the trustee for the bondholders, as that term is defined in subsection [ (c)(2) ] (d)(5), is required to do the following:

\* \* \* \* \*

(iii) Notify the bondholders of the occurrence of any of the following events no later than 30 days after an occurrence and inform the bondholders that a copy of the bondholders list described in subparagraph (i) will be provided within 30 days of receipt of a written request for the list:

(A) The date the guarantor failed to comply with subsection [ (a)(7)(i) ] (b)(3)(i).

\* \* \* \* \*

(C) The date on which the trustee is informed that the guarantor is insolvent as that term is defined in subsection [ (c)(1) ] (d)(4). There is no independent duty on the part of the trustee to determine the insolvency of the guarantor.

[ (b) ] (c) \*\*\*

[ (c) ] (d) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) *Bond*—This includes only the following:

(i) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77c(2)) when the issuer of the security is located in this Commonwealth.

(ii) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. § 77c(2)) but when the guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is deemed to be a separate security pursuant to United States Securities and Exchange Commission Rule 131 (17 CFR § 230.131 (relating to definition of security issued under governmental obligations)).

(2) *Guaranty*—A duly executed written agreement wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption prior to maturity or otherwise, and premium, if any, when and as the principal and interest shall become due and the guaranty cannot not be bought, sold or traded as a security or otherwise realized upon by a bondholder separately from the bondholder's interest in the bonds.

(3) *Guarantor*—A person who executes a guaranty.

(4) *Insolvent*—The inability of a guarantor to pay debts as they fall due in the usual course of business, or having liabilities in excess of the fair market value of assets. For purposes of this paragraph, a guarantor may not be considered insolvent if the auditor's report to the guarantor's audited balance sheet and statement of income did not contain a going concern disclosure as that term is defined in § 609.032(b).

[ (2) ] (5) \*\*\*

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.091. Equity securities issued by reporting company.

[ (a) A person proposing to sell securities under section 203(i.1) of the act (70 P. S. § 1-203(i.1)) shall complete and file with the Commission Form 203-I, which follows this section.

(b) Form 203-I may be accompanied by two copies of a preliminary prospectus or offering circular in order to comply with section 203(h) of the act (70 P. S. § 1-203(h)).

(c) ] For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P. S. § 1-203(i.1)), the term "equity security" includes:

- (1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.
- (2) Nontransferable warrants to purchase any of the foregoing.
- (3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

*(Editor's Note: As part of this proposal, the Commission is proposing to delete the text of Form 203-I, which appears at 64 Pa. Code pages 203-12—203-16, serial pages (262388)—(262392).)*

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P. S. § 1-203(p)) shall complete and file with the Commission two copies of the following notice, designated by the Commission as Form 203-P not later than 5 business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

\* \* \* \* \*

(b) Except in cases [ where ] when the delivery of [ a complete offering circular, before or concurrently with any offer of securities, ] an offering document

is not required by order of the Commission [ as a condition of qualification under section 203(p) of the act (70 P. S. § 1-203(p)) ], every offering of debt securities pursuant to [ this ] section 203(p) of the act shall be made by an offering [ circular ] document containing [ complete ] all material information about the securities being offered and the issuer [ , including the following: ]. In preparing an offering document to meet the requirements of this section, the Commission suggests that issuers include information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by the North American Securities Administrators Association, Inc. and any successor policy thereto ("NASAA Guidelines") and in the format suggested therein. A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) shall be filed with the Commission at the same time the notice required by subsection (a) shall be filed.

[ (1) The name, address and date of formation of the issuer.

(2) The date of the offering circular.

(3) The risk factors including by way of illustration and not limitation the following, if applicable, ability of issuer to pay interest and repay indebtedness; fluctuation in issuer's income; limited experience of chief executive officer or operating personnel; limited experience of underwriter or other persons or both assisting in the offering, or of both; amount of commissions, consulting fees and underwriting compensation; lack of marketability of the securities and lack of loan value of the securities.

(4) Activities engaged in by the issuer.

(5) Financial statements, prepared in accordance with section 609(c) (70 P. S. § 1-609(c)) and the regulations adopted thereunder.

(6) Membership figures for the three year period preceding the date of the offering.

(7) Use of proceeds and purpose of the offering; alternative plans if all securities are not sold; escrows of proceeds to be raised in the offering until a stated percentage of estimated project or operational costs are raised.

(8) Education and prior employment background of chief executive officer, or operating personnel, officer, directors, trustees or organizers and all remuneration paid or proposed to be paid; directly or indirectly, to each of such persons in connection with the issuer's activities or in connection with the offering and any relationship or affiliation between any such person and any vendor, contractor, developer, or any other person who proposes to engage in any material transaction with the issuer or who has at any time within the past five years engaged in any material transaction with the issuer.

(9) Detailed information about the security including information with respect to: interest, subordination, call or redemption privileges, lien priorities, amortization, maturity, sinking fund, retirement, and default including the type of event which constitutes a default and whether or not periodic evidence is required to be furnished as to



the absence of any default in compliance with the terms of the indenture or other trust instrument.

(10) Name and address of trustee, if any, and the nature of any material relationship with the issuer or any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action in the event of a default and what indemnification the trustee may require before proceeding to enforce any lien referred to in paragraph (9) of this subsection; if there is no trustee, the issuer should undertake to notify all investors in the event of a default in the issuer's obligations. The issuer must undertake to notify all security holders of the existence of such default, and of the steps to be taken to assert their rights under the terms of the securities.

(11) Name and address of any underwriter, the amount being underwritten, any relationship between the underwriter and the issuer or any affiliate of the issuer; all commissions or other consideration to be paid, directly or indirectly, to any underwriter in connection with the offering.

(12) Name and address of any person assisting the issuer by way of preparation of offering literature, instructing representatives on selling techniques, pricing the offering, acting as a finder or otherwise consulting with the issuer with respect to the offering; the amount of any compensation to be paid, directly or indirectly, to such person; whether any such person, or any affiliate, will enter into any consulting, construction or other agreement with the issuer, or any affiliate of the issuer, in furtherance of the issuer's activities; and whether such person is licensed as a broker-dealer, agent or investment adviser (or equivalent) in any jurisdiction.

(13) A breakdown of total expenses of the offering including, without limitation, legal and accounting fees, printing costs, fees referred to in paragraphs (11) and (12) of this subsection, finders' fees and other anticipated expenses.

(14) Any terms on which purchases may be made, such as periodic payments and any arrangements to be made by the issuer or any person described in paragraphs (11) and (12) of this subsection to secure financing for purchasers of the securities.

(15) A notice describing the provisions of section 207(m)(2) (70 P. S. § 1-207(m)(2)) and informing an offeree or purchaser of the method of exercising the rights created by that section and the regulations promulgated thereunder.

(16) A description of any legal proceedings pending against the issuer.

(17) An indication that an annual report containing a balance sheet and income statement of the issuer for the preceding fiscal year, prepared by an independent public accountant or certified public accountant and including an opinion of the accountant as to the financial condition, will be distributed to investors not more than 120 days after the end of the issuer's fiscal year; and

(18) Other information as the issuer may deem material, such as the status of the securities for personal property taxation in the Commonwealth. ]

(c) [ The issuance of debt securities in an amount exceeding \$100,000 under section 203(p) (70 P. S.

§ 1-203(p)) must be pursuant to an indenture or other trust instrument complying with the provisions of the Trust Indenture Act of 1939, 15 U.S.C. § 77aaa et seq. (1971). ] The offering document required by subsection (b) shall meet the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m) of the act (70 P. S. § 1-207(m)).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000.

[ (d) Include with the offering circular described in subsection (b) of this section an opinion of counsel with respect to the lien priority granted to purchasers of the securities, the validity and effect of the securities when issued and paid for and the availability of the section 203(p) (70 P. S. § 1-203(p)) exemption with respect to the particular offering. Also, include ]

(4) Include whatever data may be necessary to establish that investors will receive a first lien on real estate of the issuer, that the issuer has not defaulted on prior obligations and that the total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities [ , less the unpaid amount of any unpaid special assessment taxes ].

[ (e) Describe supplementally, if applicable, any provisions made for escrowing the proceeds of the offering until the first lien described in subsection (d) of this section is established. ]

§ 203.189. Isolated transaction exemption.

\* \* \* \* \*

(b) Waivers.

\* \* \* \* \*

(2) Subsection (a)(3) does not apply if the following criteria are met:

\* \* \* \* \*

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in [ § 204.010 ] Rule 501(a) of Regulation D promulgated by the United States Securities and Exchange Commission (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in [ § 204.010 ] Rule 501(a) of Regulation D promulgated by the United States Securities and Exchange Commission (17 CFR 230.501(a)).

\* \* \* \* \*

**CHAPTER 204. EXEMPTION PROCEEDINGS**

§ 204.010. Increasing number of purchasers and offerees.

\* \* \* \* \*

(d) *Definitions.* For purposes of this section, the following terms have the following meanings:

\* \* \* \* \*

[ (4) *Accredited investor.* A person who meets the definition of accredited investor in SEC Rule 501(a) (17 CFR 230.501(a)). ]

\* \* \* \* \*

**CHAPTER 207. GENERAL REGISTRATION PROVISIONS**

§ 207.120. [ Continuous offering ] (Reserved).

[ The offer of securities, under a registration statement filed with the Commission under section 205 of the act (70 P. S. § 1-205) or section 206 of the act (70 P. S. § 1-206), by an open-end investment company, face amount certificate company or unit investment trust, as such terms are defined in the Investment Company Act of 1940 (15 U.S.C. §§ 80a-1—80a-52), shall constitute a “continuous offering” for the purpose of section 207(1) of the act (70 P. S. § 1-207(1)) and this chapter. ]

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

**CHAPTER 305. DENIAL, SUSPENSION, REVOCATION AND CONDITIONING OF REGISTRATION**

§ 305.011. Supervision of agents, investment adviser representatives and [ employees ] employees.

\* \* \* \* \*

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

\* \* \* \* \*

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced.

(i) [ The obligation of diligent supervision required by this section may require that one or more locations in this Commonwealth receive more than one inspection per year and that one or more of these inspections be unannounced. ] An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and nonbranch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer’s written supervisory procedures.

(ii) It is the responsibility of the broker-dealer or investment adviser to [ determine the required number of ] ensure through inspections of each location [ is to receive each year to ensure ] in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

\* \* \* \* \*

(iv) For purposes of this section, the terms “office of supervisory jurisdiction” and “branch office” shall have the same meaning as those terms are defined in NASD Conduct Rule 3010(g) or any successor thereto. The term “nonbranch location” means any location at which a broker-dealer is conducting a securities business that does not come within the definition of “office of supervisory jurisdiction” or “branch office.”

\* \* \* \* \*

**Subpart F. ADMINISTRATION**

**CHAPTER 606. MISCELLANEOUS POWERS OF COMMISSION**

§ 606.011. Financial reports to security holders.

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

\* \* \* \* \*

§ 606.041. Delegation and substitution.

\* \* \* \* \*

(e) The Commission authorizes the [ Chief Counsel or Deputy Chief Counsel to exercise delegations given in this section in the absence of the Director of the Division of Corporation Finance or the Director of the Division of Licensing. ] following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.

[Pa.B. Doc. No. 03-267. Filed for public inspection February 14, 2003, 9:00 a.m.]



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION

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Robert M. Lam  
Chairman

May 15, 2003

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

**RE: SECURITIES COMMISSION  
64 Pa. Code, Chs. 102, 202-204, 207, 305 and 606  
Banking and Savings and Loan Institutions  
FINAL-FORM REGULATIONS  
#50-118**

Dear Chairman McGinley:

Enclosed is a copy of the above-referenced Final-Form Regulations for review pursuant to the Regulatory Review Act and a copy of the Regulatory Analysis.

By letter dated April 17, 2003, the Independent Regulatory Review Commission (IRRC) provided several comments aimed at clarifying certain of the regulations. In the Final-Form Regulations, the Commission adopted clarifying amendments which it believes meet the comments made by IRRC.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Bob", with a long horizontal flourish extending to the right.

Robert M. Lam  
Chairman

RML:gpr  
Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: #50-118
SUBJECT: Banking and Savings and Loan Institutions
AGENCY: Pennsylvania Securities Commission

2003 MAY 15 PM 12:33
INDEPENDENT REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
Final Regulation (marked with X)
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 Tolloed Regulation
a. With Revisions
b. Without Revisions

FILING OF REGULATION

Table with 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.