

(1) Agency  
PA Securities Commission

(2) I.D. Number (Governor's Office Use)  
#50-118

IRRC Number:

SE  
27 FEB - 3 PM 12:16 2321

(3) Short Title

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  
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

INVESTMENT ADVISER ACTIVITY  
REVIEW COMMISSION

(4) PA Code Cite

- 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 § 203.091
- 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

(5) Agency Contacts & Telephone Numbers

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(6) Type of Rulemaking(check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120 Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- 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 203.091 deletes the requirement to make a notice filing with the Commission in order to claim the Section 203(i) exemption.
- k. 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).
- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. 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.
- q. Commission Regulation 606.041 is being amended to permit the Assistant Director of Corporation Finance to exercise delegations in the absence of the Director.

**(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(i) and 70 P.S. § 1-609(a)
- j. 70 P.S. § 1-203(i.1) and 70 P.S. § 1-609(a)
- k. 70 P.S. § 1-203(p) and 70 P.S. § 1-609(a)
- l. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)
- m. 70 P.S. § 1-204(a) and 70 P.S. § 1-609(a)
- n. 70 P.S. § 1-207(l) and 70 P.S. § 1-609(a)
- o. 70 P.S. § 1-305(a) and 70 P.S. § 1-609(a)
- p. 70 P.S. § 1-606(a) and 70 P.S. § 1-609(a)
- q. 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. 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.
- k. 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.
- l. 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.
- m. As Act 109 of 1998 created an accredited investor exemption, the definition of "accredited investor" in Commission Regulation 204.010 is no longer needed.
- n. 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.
- o. 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.
- p. 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.
- q. 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.

**(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. Amendment of Commission Regulation 203.091 is necessary to conform the regulation to changes in Act 108 of 2002.
- k. It is necessary to amend Commission Regulation 203.161 to effect changes required by Act 108 of 2002.
- l. 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.
- m. 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.
- n. Commission Regulation 207.120 is being repealed in order to conform the Commission's regulations to the requirements of NSMIA.
- o. 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.
- p. Changes to Commission Regulation 606.011 are necessary in order to conform the regulation to the requirements of Act 108 of 2002.
- q. 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.

**(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. 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.
- k. 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.
- l. 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)).
- m. As Act 109 of 1998 created an accredited investor exemption, the definition of "accredited investor" in Commission Regulation 204.010 is no longer needed.
- n. Commission Regulation 207.120 has been deleted in order to conform the Commission's regulations with the provisions of NSMLA, which prohibits states from registering securities issued by registered investment companies.
- o. Pennsylvania-registered broker-dealers and investment advisers will benefit from the proposed changes in Commission Regulation 305.011, which, in accordance with NSMLA, 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.
- p. 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.
- q. 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.

**(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. 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.
- g. 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 NSMIA 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 203.091 eliminates the requirement for issuers proposing to sell securities under the exemption in Section 23(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)

RECEIVED  
2007 FEB -8 PM 12:45  
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REVIEW COMMISSION

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><i>Cristina S. Caputo</i></p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p><b>JAN 27 2003</b></p> <p>DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><b>PENNSYLVANIA SECURITIES COMMISSION</b> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>#50-118</u></p> <p>DATE OF ADOPTION: <u>November 12, 2002</u></p> <p>BY: <i>M. Joanna Cummings</i></p> <p>TITLE: <u>Secretary</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agency</p> <p><i>William J. ...</i></p> <p>BY: _____</p> <p><u>November 12, 2002</u></p> <p>DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**PROPOSED RULEMAKING  
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**

**PROPOSED RULEMAKING  
PENNSYLVANIA SECURITIES COMMISSION**

***Statutory Authority***

Notice is hereby given that the Pennsylvania Securities Commission (Commission), pursuant to 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, as amended, Act of December 5, 1972 (P.L. 1280 No. 284) (70 P.S. §§1-101 *et seq.*) (Act), proposes to adopt and amend regulations concerning the subject matter of the Act as set forth in Annex A to this notice and further described under the Summary of Regulations.

***Summary and Purpose of Regulations***

- §102.041. This proposal will (1) indicate that a “bank,” as defined under the Act, does not include a person organized as a holding company; and (2) codify the Commission’s published interpretation of when a “bank-in-organization” becomes a “bank” for purposes of the Act.
- §102.112. The Commission’s published position on when this definition would include IRAs, SEPs and KEOGHs will be codified into a separate regulation.
- §102.202. This regulation will be amended to (1) include an affirmative statement of when the offer and sale of real property would be a “security” under the Act; (2) delete references to the Unit Property Act; and (3) follow U. S. Securities & Exchange Commission (SEC) No Action Letters which base the existence of a security on participation in a mandatory rental pool arrangement.
- §102.241. This regulation will be amended to make the definition similar to the federal securities laws.
- §202.010. The amendment to this regulation would make it clear that all securities that are exempt securities under Section 3(a)(2) of the federal Securities Act of 1933 (1933 Act) would be exempt under Section 202(a) of the Act except where a separate security exists by application of SEC Rule 131.
- §202.030. The regulation will be amended to (1) state 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; (2) define “prime quality” as being in one of the three highest ratings of a nationally recognized statistical rating organization; (3) prohibit use of public media advertising and mass mailings; and (4) 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.

**PROPOSED RULEMAKING  
PENNSYLVANIA SECURITIES COMMISSION**

- §202.051. The regulation will be amended to correct a mis-citation.
- §202.092. The regulation will be amended to (1) define the term guaranty and (2) include only issuers located in Pennsylvania or any issuer where the guaranty would be deemed a separate security under SEC Rule 131.
- §203.091. As required by Act 108 of 2002, the regulation will be amended to delete the filing requirement and Form 203-I.
- §203.161. The regulation 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.
- §203.189. The Commission proposes to repeal the definition of accredited investor in §204.010 as being obsolete as the General Assembly enacted a specific statutory accredited investor exemption in Act 109 of 1998. However, a definition of accredited investor is necessary for operation of the exemption created by this section and therefore, this regulation will be amended to include the definition of accredited investor as set forth in SEC Rule 510(a).
- §204.010. Since Act 109 of 1998 enacted an accredited investor exemption in Section 203(t) of the Act, the definition in Regulation 204.010 is no longer required. Therefore, the regulation will be amended to delete the accredited investor definition.
- §207.120. The National Securities Markets Improvement Act of 1996 (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 will be 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 rules of the National Association of Securities Dealers (NASD) which are subject to SEC approval. The regulation will be amended to mirror the 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.

**PROPOSED RULEMAKING  
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- §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 will be amended accordingly.
- §606.041 It is proposed that this regulation be amended to permit the Assistant Director of the Division of Corporation Finance to exercise authority delegated to the Director in his or her absence.

***Persons Affected by these Regulations***

Pennsylvania issuers of municipal securities and issuers of commercial paper will be affected by these proposed amendments. Registered broker-dealers will be affected by the proposed 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 proposed regulatory actions 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 rules.

***Paperwork***

The Commission proposes to eliminate 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.

***Effective Date***

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

**PROPOSED RULEMAKING  
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***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 these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the committee comment period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations 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, at (717) 787-6828.

***Contact Person***

Interested persons are invited to send comments concerning the proposed amendments 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. Mr. Rutledge also is the contact person for an explanation of the proposed amendments and regulations.



**BY ORDER OF THE COMMISSION**

  
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 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 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 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; or

(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 purchase 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 [.] ; or.

(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 the maintenance of an auction market for the purchase or sale of securities] For purposes of the act (70 P.S. §§1-101 et seq.), 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).

#### **§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 pursuant to United States Securities and Exchange Commission Rule 131 (17 CFR §230.131).

[(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. §77c(2) (1992)), concerning industrial development bonds or an opinion or 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 thereof 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 must 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) The commercial paper is [Issued] 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 such 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 rating categories as determined by Standard and 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, building or machinery nor used for speculative transactions or transactions in securities or for loans or capital to subsidiaries or affiliates for those purposes] Where commercial paper is being issued by a holding company for a bank, as that term is defined 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 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 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 not be applicable to a proposed offering of nondebt securities by an issuer where:

\* \* \*

**§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 [for 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:**

**(i) An audited balance sheet and statement of income of the guarantor dated within 120 days prior to the commencement of the offering in the Commonwealth.**

**(ii) Both of the following:-**

**(A) An audited balance sheet and statement of income of the guarantor for the most recent completed fiscal year; or if the fiscal year of the guarantor ended within 90 days prior to commencement of the offering in this Commonwealth, an audited balance sheet and statement of income for the prior most recent completed fiscal year.**

**(B) A statement by a certified public accountant or the guarantor as to whether there have been adverse material changes in the financial condition of the guarantor from the date of the audited balance sheet submitted in compliance with clause (A) within 5 days prior to the commencement of the offering in this Commonwealth.**

**[(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:**

**(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in 26 U.S.C.A. §501(c)(3) or has received an opinion of counsel that it is so exempt, and where the combined net assets of the user and guarantor is not less than 25% of the amount of the securities being offered.**

**(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under 26 U.S.C.A. §501(c)(3), and where the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.**

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

**(i) File with the trustee for the bondholders a copy of its audited balance sheet and statement of income within 120 days after the completion of its fiscal year.**

**(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:**

**(i) Maintain a current list of the names and addresses of all of the bondholders.**

**(ii) Provide, to a bondholder, within 30 days of receipt of a written request from a bondholder, a copy of the guarantor's most recent audited balance sheet and statement of income.**

**(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 a list:**

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



(b)(3)(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure as that term is defined in §609.032(a)(relating to definitions).

(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) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to audited balance sheets and statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants and accompanied by a review report as that term is defined in §609.032(a).

[(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)) where 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 where 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).

(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 – Any 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(a).

[(2)] (5) *Trustee for the bondholders* – The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.

**§203.091. Equity securities issued by a 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)] (a) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

[(2)] (b) Nontransferable warrants to purchase any of the foregoing.

[(3)] (c) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

[ DELETE FORM 203-I ]

**§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 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) 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 (0) 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.]

#### **§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)).

(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)).

\* \* \*

**§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).]

\* \* \*

**§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 purposes of section 207(l) of the act (70 P.S. §1-207(l)) and this chapter.]

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

#### **§606.011. 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 1-203(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.] 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.





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA SECURITIES COMMISSION

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Robert M. Lam  
Chairman

February 3, 2003

Honorable John R. McGinley  
Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

**RE: SECURITIES COMMISSION  
64 Pa. Code, Chs. 102, 202-204, 207, 305 and 606  
General Revisions  
PROPOSED FORM  
#50-118**

Dear Chairman McGinley:

Enclosed is a copy of the above-referenced Proposed Form regulations and a Regulatory Analysis Form for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act.

Chief Counsel Philip Rutledge will provide the Commission with any assistance necessary to facilitate a thorough review of these Proposed Form rules. He may be contacted at 783.5130.

Very truly yours,

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

Robert M. Lam  
Chairman

RML:gpr  
Enclosures

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 50-118

SUBJECT: General Revisions

AGENCY: Pennsylvania Securities Commission

RECEIVED  
INDEPENDENT REGULATORY REVIEW COMMISSION  
JUL 24 2003  
9:12:16

TYPE OF REGULATION

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		<b>HOUSE COMMITTEE ON</b>
2/3/03	<i>Ray Orzin</i>	Commerce and Economic Development
2/3/03	<i>Judy Merice</i>	<b>SENATE COMMITTEE ON</b> Banking and Insurance
2/3/03	<i>A. Delaney</i>	<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b>
		<b>ATTORNEY GENERAL</b>
2/3/03	<i>C. Lee - Brown</i>	<b>LEGISLATIVE REFERENCE BUREAU</b>