



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Robert M. Lam, *Acting Chairman*

Thomas A. Michlovic, *Commissioner*

Steven D. Irwin, *Commissioner*

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September 12, 2007

VIA E-MAIL: rule-comments@sec.gov

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**Re: Electronic Filing and Simplification of Form D
File Number S7-12-07, Release Nos. 33-8814; 34-2446; IC-27878**

Dear Ms. Morris:

The Pennsylvania Securities Commission ("PSC") appreciates the opportunity to comment on the above referenced Release ("Release"). We join the comments submitted by the North American Securities Administrators Association ("NASAA"), which expressed strong support for the proposed modernization and simplification of the form and process used to give notice of a private offering under Regulation D. PSC writes separately to emphasize three of NASAA's comments that are of particular significance to the PSC's efforts to protect Pennsylvania investors and promote an efficient market for capital formation.

1. The PSC strongly opposes the elimination of disclosure of the estimated expenses and uses of proceeds of the offering in the Form D.

The PSC strongly objects to the proposal to discontinue requiring issuers to disclose offering expenses and uses of proceeds on the Form D. As NASAA noted, the PSC often compares the information provided in issuers' offering documents with the information supplied to regulators on Form D as a means of detecting and investigating potential wrongdoing. In fact, the PSC uses the expense and use of proceeds disclosures in its screening of Form D filings to identify those issuers that may be engaged in fraudulent or at least unsound offerings.

This information is invaluable in achieving the PSC's twin goals of investor protection and efficient capital formation. Indeed, by reviewing the expenses and use of proceeds information, and by contacting and investigating only those issuers that exceed reasonable parameters, the PSC is able to allocate resources in the most productive manner.

The PSC urges the SEC to reconsider removal of this information requirement. Elimination of this information would seriously impact the PSC's regulatory efforts and unnecessarily jeopardize Pennsylvania

investors. The PSC agrees with NASAA's recommendation that, rather than eliminating this information altogether, the electronic Form D should be revised to require better disclosure, such as requiring the issuer to enter use of proceeds information in a series of checkboxes identifying the intended use of proceeds. NASAA's proposal would not unreasonably burden any issuer, and would continue to provide the PSC, and other state administrators, with the information so vital to our statutory mandate.

2. The PSC strongly opposes the proposed elimination of requiring disclosure of beneficial owners.

As NASAA indicated in its comments, states must be able to identify the beneficial owners of ten percent (10%) or more of an issuer's equity securities in order to determine whether such beneficial owners are disqualified from conducting an offering under Regulation D. These beneficial owners have the ability to exercise substantial control over the issuer's operations, and stand to benefit significantly from the success of the offering. Indeed, such beneficial owners are often promoters of the issuer. See 70 Pa. Con. Stat. § 102(o)(ii)(defining promoter under Pennsylvania law as a ten percent holder of an issuer's securities, where such securities are obtained during the formation or organization of the issuer). For those reasons, Pennsylvania's blue sky exemptions contain disqualification provisions that are triggered by enforcement history against, among others, certain beneficial owners of the issuer's equity. See 70 Pa. Cons. Stat. Ann. §§ 1-203(s), 1-203(t); 64 Pa. Code §§ 203.187, 203.189, 204.010.

The PSC Staff routinely reviews the enforcement history of related persons, including beneficial owners, listed on issuers' Form D. Where there is enforcement history, the PSC Staff requests additional information from the issuer to determine whether the subject of enforcement constitutes a related person, and to ensure that the issuer has made an adequate disclosure of the enforcement history and/or any associated risk of the enforcement history to the issuer. Where no enforcement history is presented, the PSC Staff does not require issuers to respond to such supplemental disclosure requests (provided the Form D exhibits no other anomalies). The elimination of this information from Form D would deprive the PSC of yet another important tool in screening and distinguishing potentially problematic offerings from legitimate efforts to raise capital.

3. The Form should accommodate contact information for additional issuers when more than one issuer is identified.

The proposed electronic Form D will provide space for multiple issuers, but only require one business address and telephone number to be provided for all issuers. The proffered reason for this arrangement is that issuers in multi-issuer transactions typically have the same business address. Moreover, the proposed rule indicates that only one address is necessary for the SEC's enforcement purposes.

Nonetheless, the proposed General Instructions for the revised Form D, under the heading "Who must file," indicate that:

If more than one issuer has sold its securities in the same transaction, all issuers should be identified in one filing with the SEC, but some states may require a separate filing for each issuer or security sold.

As the General Instructions contemplate, Pennsylvania requires each issuer in a multi-issuer transaction to file a Form D notice. The General Instructions indicate that states such as Pennsylvania may continue to require each issuer to file its own separate Form D. Accordingly, to accommodate states like Pennsylvania, the PSC requests

that the electronic Form D either require each issuer to file its own Form D, or that the Form D provide space for each issuer of a multi-issuer transaction to provide a separate business address and telephone number.

Thank you for considering the PSC's comments on the Release. Should you have any questions regarding the comments in this letter, please contact the undersigned or Michael Byrne, Esq., Chief Counsel for the Pennsylvania Securities Commission at 717-787-8061.

Sincerely,

/s/ Robert M. Lam
Robert M. Lam
Chairman

/s/ Thomas A. Michlovic
Thomas A. Michlovic
Commissioner

/s/ Steven D. Irwin
Steven D. Irwin
Commissioner