

950 CMR 13.300: REGISTRATION OF AND NOTICE FILINGS FOR SECURITIES

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13.301: Registration Requirement (Reserved)

13.302: Registration by Coordination

(A) A person who seeks to register by coordination a security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering shall file Forms U-1 and U-2 (with U-2A, is applicable). A broker-dealer registered pursuant to M.G.L. c. 110A, § 202 may omit Form U-2 (and U-2A).

- (B) A person filing Form U-1 pursuant to 950 CMR 13.302(A) shall omit the following:
- (1) Second and third copies of the latest form of prospectus filed under the Securities Act of 1933; and
 - (2) A copy of the articles of incorporation and by-laws, or their substantial equivalents currently in effect, and a specimen or copy of the security.

(C) The Secretary waives the requirement specified in M.G.L. c. 110A, § 302(c)(3) that a registrant file a statement of the minimum proposed offering price two full business days prior to the moment the federal registration becomes effective.

(D) A registration statement filed on SEC Forms F-7, F-8, F-9 or F-10 becomes effective at the moment the federal registration statement becomes effective regardless of whether all of the conditions set forth in M.G.L. c. 110A, § 302(c)(2) or (3) have been satisfied.

13.303: Registration by Qualification

- (A) A person who is registering a security by qualification shall file with the Director Forms U-1 and U-2 (with U-2A, if applicable), and any one of the following:
- (1) A registration statement containing the information set forth in M.G.L. c. 110A, § 303(b).
 - (2) An offering statement which meets the requirements set forth in SEC Regulation A, Rule 252(a) (17 CFR 230.252(a)).
 - (3) A registration statement on Form U-7, the Small Company Offering Registration Form.

(B) A registration statement filed under 950 CMR 13.303(A) becomes effective when the Secretary so orders.

(C) Except as otherwise provided for in these Rules, anyone offering securities registered pursuant to M.G.L. c. 110A, § 303 shall deliver a prospectus, offering circular or disclosure document to each person to whom an offer is made before or concurrently with any subscription agreement or contractual commitment to purchase the security. This document must conform to that filed with the registration or offering statement.

13.304: Provisions Applicable to Registration Generally

((A) Reserved)

13.304: continued

(B) A person filing a registration statement under M.G.L. c.110A, § 302 or M.G.L. c.110A, § 303 shall pay a filing fee in the amount provided by 801 CMR 4.02, which fee is determined by the Executive Office for Administration and Finance. Such registration statement may cover one or more classes of the issuer's securities, unless the issuer is an investment company. NOTE: As of July 1, 1989, the fee for registering securities is 1/20 of 1% of the aggregate amount of the offering with a minimum of \$300 and a maximum of \$1500 annually. The fee for registering shares of an open-end investment company is \$2500, with an annual reporting fee of \$1250.

(C) A request for withdrawal of a registration statement should be made to the Director. The request will be deemed granted unless the person making the request is notified in writing to the contrary within five business days after receipt of the request.

(D)(1) A person filing a registration statement under M.G.L. c. 110A, § 302 or M.G.L. c. 110A, § 303 or a notification and offering circular under 950 CMR 13.303(A) shall file promptly with the Director all amendments to the prospectus (other than amendments which merely delay the effective date of the registration statement) or to the notification and offering circular previously filed, clearly marked so as to indicate the specific amendments.

(2) A person who seeks to register securities under the Act shall promptly provide to the Director or notify the Director of the following information or events:

(a) A change in any of the information or documents filed with the Director;

(b) Any adverse order, judgment, decree, permanent or temporary injunction which a state or federal agency or court entered concerning either the offering or other securities of the issuer or the person seeking the registration;

(c) A request by the issuer or person seeking the registration to withdraw an application pending before a state or federal agency to register the same security he seeks to register pursuant to M.G.L. c. 110A;

(d) Final notice from any state or federal administrative agency that the security or any information or document filed with it relating thereto fails to meet the agency's requirements; and

(e) Such additional information and documents concerning the security or the issuer as the Director may request.

If the registration statement is filed under M.G.L. c. 110A, § 302, notice of 950 CMR 13.304(D)(2)(a) through (e) shall be given prior to the effective date of the federal registration statement.

(E) Any registration statement which is pending effectiveness will be considered abandoned if no activity occurs with respect to such registration statement for a period of 120 days. If a registration statement is adjudged abandoned after such 120 day period, it can be reinstated only with the permission of the Associate Director.

((F) Reserved)

(G) The person filing a registration statement under M.G.L. c. 110A, § 302 or M.G.L. c. 110A, § 303 or a notification and offering circular under 950 CMR 13.303(A) shall promptly notify the Director in writing of the completion date of the initial distribution of a security registered under M.G.L. c. 110A, § 301 and 950 CMR 13.304 and the number of shares sold in Massachusetts.

(H) Upon the written request of the Director, the issuer of a security registered under M.G.L. c. 110A or under any predecessor statute shall furnish a balance sheet as of the close of the issuer's most recent fiscal year and an income statement for such fiscal year.

((I) Reserved)

13.305: Denial, Suspension and Revocation of Registration

(A) A registration statement in compliance with all applicable provisions of the statements of policy of the North American Securities Administrators Association listed below, in effect at the time of application, shall be deemed to be in compliance with M.G.L. c. 110A, § 305(a)(2)(E) and (F); provided, however, that any provisions of the registration statement covering aspects of the offering not covered by such statements still must comply with such Sections. Nothing contained herein shall preclude establishing compliance with M.G.L. c. 110A, § 305(a)(2)(E) and (F) in those instances where the registration statement does not comply with the applicable statement of policy.

- (1) Affiliated Transactions
- (2) Commodity Pool Programs
- (3) Corporate Securities Definitions
- (4) Debt Securities
- (5) Equipment Programs
- (6) Escrow Agreements
- (7) Impoundment of Proceeds
- (8) Mortgage Programs
- (9) Oil and Gas Programs
- (10) Omnibus Programs
- (11) Options and Warrants
- (12) Preferred Stock
- (13) Promoters' Equity Investment
- (14) Promotional Shares
- (15) Real Estate Investment Trusts
- (16) Real Estate Programs
- (17) Selling Expenses and Selling Security Holders
- (18) Use of Rankings or Ratings of Direct Participation Programs

(B) When a registration statement pertains to an entity not covered by any of the policy statements listed in 950 CMR 13.305(A), the Division will be guided by the principles underlying such policy statements in determining compliance with M.G.L. c. 110A, § 305(a)(2)(E) and (F).

(C) Roll-Up Transactions. A registration statement for a Direct Participation Investment Program may be deemed to be in compliance with the requirements of M.G.L. c. 110A, § 305(a)(2)(E) and M.G.L. c. 110A, § 305(a)(2)(F) with regard to roll-up transactions if it satisfies either 950 CMR 13.305(C)(1) or 950 CMR 13.305(C)(2):

- (1) The program's limited partnership agreement, by-laws, or other program agreement includes the dissenters' rights provisions required by the applicable statement of policy of the North American Securities Administrators Association.
- (2) The roll-up is approved by 80% in interest of the Direct Participation Investment Program's participants.

Direct Participation Investment Programs electing the option provided in 950 CMR 13.305(C)(2) must comply with all other pertinent parts of the applicable statements of policy of the North American Securities Administrators Association in order to meet the requirements of 950 CMR 13.305(A).

(3) Definitions.

Direct Participation Investment Program. A program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including but not limited to, oil and gas programs, real estate investment programs, real estate investment trusts, equipment leasing programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition is any company registered pursuant to the Investment Company Act of 1940.

Other Definitions. All other terms used in 950 CMR 13.305(C) shall have the meanings indicated in the applicable statements of policy of the North American Securities Administrators Association.

13.306: Notice Filings for Offerings of Investment Company Securities

(A) Initial Notice Filing Requirements. An open-end investment company, face amount certificate company or a unit investment trust shall file a notice with the Division in order to offer or sell an indefinite amount of securities. A separate notice shall be filed for each class, series or portfolio of investment company securities.

(1) The initial notice filing for an open-end investment company or face amount certificate company is effective from the date of receipt by the Division or its effective date with the Securities and Exchange Commission, whichever is later, until two months after the end of the issuer's current fiscal year. The notice filing shall include:

- (a) Uniform Form NF;
- (b) Form U-2 (U-2A, if applicable); and
- (c) \$2500 filing fee.

(2) The notice filing for a unit investment trust is effective from the date of receipt by the Division or its effective date with the Securities and Exchange Commission, whichever is later. The notice filing shall include:

- (a) Uniform Form NF;
- (b) Form U-2 (U-2A, if applicable); and
- (c) a one-time \$750 filing fee.

(3) The initial notice filing for a closed-end fund is effective for one year from the date of receipt by the Division or its effective date with the Securities and Exchange Commission, whichever is later. The notice filing shall include:

- (a) Uniform Form NF;
- (b) Form U-2 (U-2A, if applicable); and
- (c) A filing fee of 1/20 of 1% of total amount offered in Massachusetts for the closed-end fund (minimum \$300; maximum \$1500).

(B) Annual Notice Filing Requirements. An annual notice filing for an open-end investment company or a face amount certificate company shall be filed with the Division within two months after the end of its fiscal year. A separate notice shall be filed for each class, series or portfolio of investment company securities.

(1) The annual notice filing shall include:

- (a) Uniform Form NF;
- (b) Form U-2/U-2A (if there are any changes);
- (c) \$1250 filing fee.

(2) An investment company whose fiscal year end is within three months of the initial registration with the Division shall comply with its annual reporting requirements by filing the required materials within two months of the end of that investment company's next fiscal year.

(3) An investment company which changes its fiscal year end shall comply with its annual reporting requirements within two months of the end of the shortened fiscal year.

(C) Closed-end Fund Reporting Requirements. A closed-end fund whose securities will continue to be offered or distributed beyond the anniversary of its filing with the Division or its effectiveness with the Securities and Exchange Commission, whichever is later, shall file the following:

- (a) Uniform Form NF;
- (b) Form U-2 (U-2A, if applicable); and
- (c) A filing fee of 1/20 of 1% of total amount offered in Massachusetts for the closed-end fund (minimum \$300; maximum \$1500).

(D) Other Filings.

(1) Investment companies on file with the Division should notify the Division of any material changes to the information on file (including but not limited to name changes, mergers, acquisitions and terminations) by completing the applicable sections of Uniform Form NF and filing the same with the Division. There is no fee for such filings.

(2) An investment company that has made a notice filing under this section and is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the Director and within the time period set forth in the request, a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or part of an amendment to such federal registration statement.

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

13.306: continued

(3) The Division may adopt rules with respect to notice filings for investment companies other than open-end, closed-end, face amount certificate companies or unit investment trusts.

REGULATORY AUTHORITY

950 CMR 13.300: M.G.L. c. 110A, § 412(a).