



**SUBJECT:** Use of the Uniform Investment Company Notice Filing Form by investment companies to file a notice with the Commission concerning the offer and sale of securities in Pennsylvania and filing of documents with the Commission that also are filed with the SEC

**RELEASE NO.:** **97-CF-1**

**DATE:** May 21, 1997

**TYPE:** Staff Position

**PRIOR REFERENCE:** None

### **BACKGROUND**

At its May 21, 1997 meeting, the Pennsylvania Securities Commission ("Commission") permitted the publication of the following positions of the Division of Corporation Finance ("Staff") with respect to notices filed with the Commission by open and closed-end investment companies, face amount certificate companies, and unit investment trusts ("Investment Companies") as permitted by §102 of the National Securities Markets Improvement Act ("NSMIA") using the Uniform Investment Company Notice Filing Form adopted by the North American Securities Administrators Association, Inc. on April 27, 1997 or successor form thereto ("Form NF").

#### **I. Use of Form NF**

In lieu of the face page to Form U-1, the Commission will accept Form NF for notice filings by Investment Companies relating to initial filings, renewal filings and amendments thereto.

The issuer should refer to the instructions in completing Form NF and should provide all information appropriate to the purpose of the filing. In Pennsylvania, the issuer, for purposes of Item 1 of Form NF, always is the fund or the trust. It is never a portfolio or a class of shares within a portfolio.

## **II. Initial Notice Filings in Pennsylvania**

An initial notice filing in Pennsylvania on Form NF should be accompanied by a copy of the registration statement filed under Section 5 of the Securities Act of 1933 ("Registration Statement") and appropriate fees as specified in section 602 (b.1)(iv) of the Pennsylvania Securities Act of 1972 ("1972 Act"). Exhibits not contained in the Registration Statement need not be filed. For effectiveness of initial notice filings, please see Section IV. Please be advised that, if an open or closed-end investment company or face amount certificate company changes its fiscal year-end during the initial notice period, such action will result in a shortened notice period for the renewal notice filing.

## **III. Renewal Notice Filings in Pennsylvania**

A renewal notice filing in Pennsylvania on Form NF should be accompanied by an updated prospectus. If an updated prospectus is not available at the time of filing the notice, the issuer shall file it with the Commission at the same time it is filed with the U.S. Securities and Exchange Commission ("SEC"). All issuers making a renewal notice filing must check box 2 of Item 7 on Form NF and the renewal notice filing will become effective at the end of the issuer's current notice period. Please be advised that, if an open closed-end investment company or face amount certificate company changes its fiscal year-end during the previous renewal notice period, such action will result in a shortened notice period for the very next renewal notice period.

## **IV. Notice Period**

The length of the notice period is governed by Section 207(j.1) of the 1972 Act with respect to open and closed-end investment companies and face amount certificate companies and Regulation 207.140 with respect to unit investment trusts.

If the Registration Statement filed by the issuer is not effective with the SEC when filed in Pennsylvania and the issuer elects to have the initial notice period begin concurrently with SEC effectiveness, the issuer must check box 3 of Item 7 on Form NF and provide prompt written notice to the Commission when the SEC declares the Registration Statement effective. Notice to the Commission of SEC effectiveness may be provided by letter, telegram, or facsimile transmission. **If the issuer fails to complete Item 7, the notice period will begin on the date the filing is received by the Commission.**

If the Registration Statement filed by the issuer is effective with the SEC when filed in Pennsylvania, the initial notice period will begin on the date the filing is received by the Commission.

The only time the issuer needs to check and complete box 1 of Item 7 on Form NF is when Form NF is being used to submit information to the Commission during a notice period. When this is the case, the issuer should insert the dates which

appear on the Commission's written acknowledgment of the issuer's most recent initial or renewal notice filing.

## **V. Fiscal Year End**

It is imperative that all issuers provide the fiscal year end in Item 4. A change in the fiscal year-end which occurs after an initial or renewal notice filing is made on Form NF **will not** act to extend the initial or renewal notice period set forth in the Commission's written acknowledgment letter.

## **VI. Amendments to Form NF**

Issuers should file Form NF to notify the Commission of any changes to information previously filed with the Commission. The post-effective amendment or supplement to the SEC Registration Statement reflecting the change should be filed with Form NF.

*A. Name Changes.* In order to be responsive to research inquiries from the public concerning Investment Company compliance with the 1972 Act, it is important that the Commission's records reflect any changes to names of Funds, portfolios or classes of shares within portfolios.

*B. Addition or Deletion of Portfolio/Classes.* Again, in order to provide accurate information to the public on Investment Company compliance with the 1972 Act, it is important that the Commission's records reflect deletions or additions of portfolios or classes of shares within a portfolio.

*C. Change in the Fiscal Year-end of a Fund.* As this date is crucial in determining the proper notice period, it is imperative that the Commission be notified promptly of any change. A change in the fiscal year-end which occurs after an initial or renewal notice filing is made on Form NF will not act to extend the notice period set forth in the Commission's written acknowledgment letter. Furthermore, a change in the fiscal year-end of an open or closed-end investment company or face amount certificate company will result in a shortened notice period for a renewal notice filing.

*D. Mergers of Portfolios or Classes.* If an issuer merges one or more of its portfolios or classes of shares within a portfolio, it should notify the Commission on Form NF and file a copy of any amendment or supplement to the SEC Registration Statement.

*E. Mergers and Reorganizations of Investment Companies.* If an issuer will be subject to a merger or reorganization with another issuer, the surviving issuer should notify the Commission on Form NF and file a copy of any Registration Statement filed with the SEC pertaining to the merger or reorganization. The non-surviving issuer should file Form NF to indicate its termination and provide a final sales report. No exhibits to the SEC Registration Statement need be filed.

*F. Termination.* An amendment filed on Form NF to terminate an initial or renewal notice filing is effective upon receipt.

## **VII. Federal ID and SEC Registration Numbers**

Issuers should provide their Federal ID Number and their SEC Registration Number in Item 6 of Form NF.

## **VIII. Consent to Service of Process**

Pennsylvania law does not require the filing of a consent to service of process. Therefore, all issuers should check box 3 of Item 12 on Form NF and explain that Pennsylvania law does not require the filing of a consent to service of process.

## **IX. Filings to Increase Dollar Amount of Securities to be Offered in Pennsylvania**

Prior to selling securities in Pennsylvania which would exceed, during the notice period, the cumulative dollar amount of securities indicated in Item 10(3) on the latest Form NF on file with the Commission, an issuer should notify the Commission of its intent to sell additional securities in Pennsylvania during the current notice period by filing Form NF to increase the dollar amount of securities and paying additional fees, if any, to cover the increase in the dollar amount.

## **X. Acknowledgment of Filings**

For initial and renewal filings and any notices reflecting an increase in the dollar amount of securities to be offered for sale in Pennsylvania, the Commission will issue a written acknowledgment that Form NF has been received. The acknowledgment will reference the dollar amount of securities and the notice period to which the filing pertains.

No written acknowledgment will be issued by the Commission for any other information filed by the issuer on Form NF. The Commission, however, will honor requests to acknowledge receipt of any filing by date-stamping a duplicate of the material filed, provided that the request is accompanied by a self-addressed, stamped envelope or postcard.

## **XI. Sales Reports**

Issuers required to file a sales report under Section 209 of the 1972 Act shall file such report using Form NF. The dates for the "Period Covered" portion of Item 11 on Form NF should coincide with the dates on the Commission's acknowledgment letter which relates to the period covered by the sales report. Issuers should insert on the line in Item 11 entitled "Balance at Beginning of Period" the dollar amount of securities which was provided on the initial or renewal notice filing made with the Commission. The amount inserted on the line "Increases During Period" in Item 11

should reflect the cumulative total of all increases filed with the Commission during the notice period covered by the sales report.

In order for the issuer not to have oversold securities in Pennsylvania, the amount inserted on the line "Amount Available for Sale" in Item 11 (i.e., the sum of the Balance and all the Increases) must equal or exceed that amount inserted on the line "Sales During the Period" of Item 11 which represents the total dollar amount of securities that the issuer actually sold in Pennsylvania during the notice period. Also, Pennsylvania does not provide credit to an issuer for any redemptions made during the relevant notice period nor does it permit the amount in the line "Unsold Balance at the End of Period" to be carried forward to a succeeding renewal notice period.

A sales report covering sales made during the most recent notice period must be filed no later than 120 days after the fiscal year-end for open and closed-end investment companies and face amount certificate companies. Reports of sales made by unit investment trusts should be filed within 60 days of one year from the date the Registration Statement filed with the SEC relating to the securities sold in Pennsylvania became effective with the SEC.

## **XII. Failure to Pay Filing Fees for Notice of Prospective Sales of Securities**

Until October 11, 1999, the filing of Form NF without a filing fee or an incorrect filing fee will be deemed a refusal to pay under NSMIA and the issuer will be required to register the securities to be offered under section 205 or 206 of the 1972 Act. An issuer will not be deemed to have refused to pay the filing fee if the filing fee is received or the correct amount of the filing fee is received by the Commission within **10 business days** of receipt of notification to the issuer that no filing fee was paid or that an incorrect filing fee was submitted. Notification may be made by any means used in the ordinary course of business including, without limitation, telephone, facsimile, e-mail or first class mail. Continued refusal to pay the filing fees or register the securities under Section 201 of the 1972 Act may result in enforcement action, including an order suspending the offer or sale of the issuer's securities in Pennsylvania.

## **XIII. Failure to Pay a Filing Fee for Oversales Made During a Notice Period**

Until October 11, 1999, it is the position of Staff that an issuer, which failed to pay a filing fee that was due because the issuer sold securities in Pennsylvania during the notice period in excess of the amount set forth in Item 9 or the cumulative dollar amount of securities set forth in Item 10 of the latest Form NF filed with the Commission and did not remedy the failure to pay the filing fee within **10 business days** of the sale of those securities in Pennsylvania, has sold securities that would be subject to the registration provisions of Section 201 of the 1972 Act. The issuer, however, may avail itself of Section 210 of the 1972 Act and Regulation 210.010 to register these securities retroactively by paying an appropriate assessment. After retroactively registering these securities, an issuer may file a notice on Form NF to sell additional securities in Pennsylvania pursuant to the notice filing.

#### **XIV. Failure to File**

If an issuer sells securities in Pennsylvania without having filed a notice with the Commission for the period during which the securities were sold in Pennsylvania, the Commission may initiate an enforcement action which could result in the issuance of an order suspending the offer and sale of the issuer's securities in Pennsylvania. An issuer, however, may be eligible to enter into an informal settlement described in Commission Release 89-CF-7 issued December 19, 1989.

**Questions concerning this Release may be directed to staff of the Division of Corporation Finance at (717) 787-5401. *Alternative formats of this document may be available on request. Call (717) 787-1165 or TDD Users: via AT&T Relay Center 1-800-654-5984.***