



SUBJECT: Effect of October 11, 1999, on issuers that fail to remit proper filing fees in connection with investment company filings on Form NF and Rule 506 filings on SEC Form D

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TYPE: Commission Advisory

PRIOR RELEASES: 98-CF-2; 96-CF-3

I. Background

There appears to be some confusion among the regulated community as to the effect of October 11, 1999, on the ability of states to continue to receive notice filings and filing fees from investment companies and issuers offering and selling securities in reliance on Rule 506 of Securities and Exchange Commission ("SEC") Regulation D ("Rule 506 Issuers") under the National Securities Markets Improvement Act of 1996 ("NSMIA"). This Release explains the operative effect of October 11, 1999, under NSMIA and re-affirms the authority of the Commission under NSMIA and the Pennsylvania Securities Act of 1972 ("1972 Act") to continue to require notice filings and filing fees from investment companies and Rule 506 Issuers.

Between October 11, 1996, and October 11, 1999, an investment company or a Rule 506 Issuer that refused to pay a filing fee to a state could be forced to comply with the securities registration provisions of that state's securities laws pursuant to Section 18(c)(2)(C)(i) of the Securities Act of 1933 ("1933 Act").

October 11, 1999, marks the end of the effectiveness of this "penalty" provision. After October 11, 1999, an investment company or Rule 506 Issuer that sells securities in a state that requires a notice filing and a fee payment and refuses to pay a filing fee may be subject to the issuance of a state order suspending the offer or sale of securities in the state as permitted by Section 18(c)(3) of the 1933 Act.

II. Requirements of the Pennsylvania Securities Act of 1972

Section 211 of the 1972 Act, enacted by Act 109 of 1998 and effective January 25, 1999, provides for a notice filing and a fee payment by investment companies and Rule 506 Issuers.

Section 211(a). Investment companies are required by this section to file a notice and remit the filing fee specified in Section 602(b.1)(iv) of the 1972 Act and, if applicable, the administrative assessment in Section 602.1(a)(5). The filing fee varies from \$350.00 to \$4,000.00 depending upon the aggregate offering amount of securities the investment company intends to sell.

Section 211(b). Section 211(b) provides that Rule 506 Issuers must make a notice filing on SEC Form D and pay the filing fee specified in Section 602(b.1)(vii) of the 1972 Act. Under Section 602(b.1)(vii) of the 1972 Act, a filing fee of \$500.00 is required of every Rule 506 Issuer wishing to sell securities in Pennsylvania.

III. Commission Action under Section 18(c)(3) of the 1933 Act

For an investment company or Rule 506 Issuer that files a notice with the Pennsylvania Securities Commission ("Commission") after October 11, 1999, for which the requisite filing fee was not included or which included a fee payment in an amount which is less than the fee due, the Division of Corporation Finance ("Division") will utilize the following procedures:

1. By the close of business on the day on which the notice is filed with the Commission, the Division will issue a "Notice of Refusal to Pay Fees Under the National Securities Markets Improvement Act of 1996" by fax and certified mail, return receipt requested ("Fee Deficiency Letter").
2. If, within 10 days of the issuer's receipt of the Fee Deficiency Letter, the Division has not received payment from the issuer of the fee or fee deficiency or, if an investment company, an amended Form NF harmonizing the amount of securities on the Form NF to the fee amount originally submitted, a Summary Order to Suspend the Offer and Sale of Securities ("Summary Order") will be issued.
3. The Summary Order will prohibit the issuer from prospectively offering or selling securities in Pennsylvania that are the subject of the fee-deficient notice filing. By its own terms, the Summary Order will expire when the Commission receives the correct filing fee. Upon issuance of the Summary Order, an investment company will not be able to amend its Form NF to harmonize the securities amount with the original fee submitted, but will have to pay the fee owing based upon the securities amount contained in the original Form NF.

Questions regarding this Release may be directed to staff of the Division of Corporation Finance at (717) 787-8059.

Alternative formats of this document may be available upon request. Call (717) 787-1165 or TTY Users: via AT&T Relay Center 1-800-654-5984.