



SUBJECT: Securities Offerings on the Angel Capital Electronic Network and the Pennsylvania Securities Act of 1972 (1972 Act)

RELEASE NO.: 99-CF-3

DATE: December 21, 1999

TYPE: Staff Position

PRIOR RELEASES: 96-CF-5

BACKGROUND

On December 23, 1996, the Pennsylvania Securities Commission (Commission) adopted Release No. 96-CF-5 in order to facilitate access to capital by small Pennsylvania businesses by providing regulatory relief for corporate offerings of securities made through the Angel Capital Electronic Network (ACE-Net). This Release supersedes Release No. 96-CF-5.

ACE-Net, developed by the US Small Business Administration, is an Internet-based electronic system that provides small companies with exposure, at a reasonable cost, to sophisticated and high net worth individuals, commonly known as "Angels" in entrepreneurial literature. In Pennsylvania, ACE-Net is administered by the Ben Franklin Technology Center of Southeastern Pennsylvania located in Philadelphia.

Through a password system, corporate offerings included on ACE-Net are available only to Accredited Investors and not to the general public. A listing on ACE-Net is not available for persons with previous disciplinary history in the securities industry or for sole proprietorships, partnerships, limited liability partnerships, "blank check" companies (companies that raise money to invest in future ventures not yet identified), development stage companies that have no specific business plan or purpose, development stage companies whose business plan is to merge or be acquired by an unidentified company, investment companies registered or required to register under the Investment Company Act or companies involved in oil, gas or other mineral or extractive interests.

The ACE-NET SYSTEM

How does ACE-Net operate?

ACE-Net is operated by universities and non-profit entities that have established programs for mentoring new businesses by providing capital, technology, technical and training assistance. The Network Operators receive information from companies seeking to have their offerings listed on ACE-Net.

What information is available on ACE-Net?

ACE-Net consists of listings of corporate offerings of securities that are exempt from registration with the Securities and Exchange Commission (SEC) under SEC Regulation A or Rule 504 of SEC Regulation D. If the offering is exempt from registration with the SEC and sales of the securities will be made in reliance on a state exemption from registration for sales made only to Accredited Investors, the company may complete the ACE-Net Short Form. The listing for other offerings includes an offering circular that utilizes the SCOR disclosure format. No listing is accepted that falls within the disqualification provisions adopted by the North American Securities Administrators Association in its April 28, 1996 Statement of Policy on SCOR offerings.

Access to ACE-Net.

Access to listings on ACE-Net is restricted to persons who certify themselves to the Network Operators as Accredited Investors and pay an annual fee. Access to ACE-Net is regulated through a password system. Before a password is issued to an investor, the investor must complete a form and mail it to a Network Operator self-certifying that the person meets the definition of Accredited Investor. An annual re-certification of Accredited Investor status is required as part of the renewal subscription to ACE-Net. As a regulator, the Commission has a password and Commission staff periodically monitor offerings listed on ACE-Net.

Offers and sales of securities listed on ACE-Net.

The Network Operators do not participate in any transaction involving the sale of securities listed on ACE-Net. All negotiations and sale transactions occur outside of ACE-Net. It is the responsibility of the listing company to insure that all offers and sales of securities that are listed on ACE-Net are effected in full compliance with state and federal securities laws. Furthermore, it is the company's responsibility to determine, independently of ACE-Net and before its sale, that the prospective investor satisfies the criteria for an Accredited Investor.

What ACE-Net will not do.

As a condition of receipt of a SEC Staff No-Action Letter dated October 26, 1996, ACE-Net and the Network Operators will not: (1) provide advice about the merits of particular opportunities or ventures; (2) receive compensation from ACE-Net users other than nominal flat fees to cover administrative costs and such fees will not be made contingent upon the outcome or completion of any securities transaction resulting from a listing on ACE-Net; (3) participate in any negotiations between investors and listing companies; (4) directly assist investors or listing companies with the completion of any transaction including, for example, providing closing

documentation or paying referral fees to attorneys or other professionals; (5) handle funds or securities involved in completing a transaction; or (6) hold themselves out as providing any securities-related services other than a listing or matching service.

Further, officials of the Network Operators, participants in ACE-Net and employees and participating university officers, directors and employees with direct or indirect operating or supervisory control over Network Operators will not participate as entrepreneurs or investors in any company listed on ACE-Net, except in compliance with the securities laws and unless such participation is disclosed to users of ACE-Net, and such other persons will not discuss any matters with listing companies, investors, or other persons that might require familiarity with securities or the exercise of judgment concerning securities activities.

ACE-NET AND THE 1972 ACT

Section 203(t) of the 1972 Act.

Section 203(t) of the 1972 Act provides an exemption from registration for any offer and any sale resulting from such offer where the securities being offered are sold, whether in or out of Pennsylvania, only to Accredited Investors. For the purposes of making offers and sales to Pennsylvania residents, a company that has listed its offering on ACE-Net may rely on Section 203(t) of the 1972 Act.

Section 203(t) requirements.

Filing Requirement. A company must file a notice with the Commission on Form E, together with a copy of any offering document or literature used in connection with the offers and sales, no later than the day on which the company receives from any person an executed subscription agreement or other contract to purchase the securities being offered or receives consideration from any person therefor, whichever is earlier.

Fee Requirement. At the time Form E is filed with the Commission, the company should forward to the Commission a check payable to the "Commonwealth of Pennsylvania" in the amount of \$500.

No Compensation to Promoters or Affiliates of Promoters. No commission may be given or paid, directly or indirectly, to any person in connection with a sale unless the compensation is given or paid in connection with a sale made by a broker-dealer who is registered under Section 301 of the 1972 Act. A *promoter*, under the 1972 Act, includes any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of the issuer or any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both, 10% or more of the proceeds from the sale of any class of securities.

Disqualifications. If the company or a predecessor of the company, affiliated company, officer, director or general partner of the company, promoter of the

company presently connected with the company in any capacity, beneficial owner of 10% or more of any class of equity securities of the company, within five years of filing Form E, has been the subject of certain disciplinary proceedings, the company is disqualified from relying on Section 203(t).

A development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person may not rely on Section 203(t). An investment company, as defined in the Investment Company Act of 1940 also is prohibited from relying on Section 203(t).

Legend Requirements. The company must specify in any advertisement, communication, sales literature or other information publicly disseminated in connection with the offering, including by means of electronic transmission or broadcast media, that the securities will be sold only to Accredited Investors. Additionally, the company must place a legend on the cover page of the disclosure document to be used in connection with the offering that the securities will be sold only to Accredited Investors.

Telephone Solicitation. The company may not engage in any solicitation of prospective purchasers by telephone until it has reasonable grounds to believe that the person to be solicited is an Accredited Investor.

Acknowledgment. Providing nothing has come to the attention of Commission staff that would render the Section 203(t) exemption unavailable, the company will receive a letter acknowledging receipt of the filing.

Further assistance. Questions concerning the Release may be directed to the Division of Corporation Finance at (717) 787-5401.

Information concerning the operation of ACE-Net may be found on the Internet at <http://activecapital.org> or by calling the US Small Business Administration at (202) 205-6532.

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