



pennsylvania

DEPARTMENT OF BANKING
AND SECURITIES

Instructions and Guidelines
For Registration of Finance Company
Debt Securities

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I. Introduction

These instructions and guidelines are applicable to finance companies and consumer discount companies wishing to register debt securities under Sections 205 and 206 of the Pennsylvania Securities Act of 1972 (“1972 Act”). They should be used in conjunction with the Pennsylvania Securities Commission’s (“Commission’s”) publications, Information Required in Prospectus.

These instructions and guidelines reflect the informal standards which have been authorized by the Commission to be utilized by the staff in its analysis and review pursuant to Section 207(j) and Sections 208(a)(v) of the registration statements filed pursuant to Section 205 and 206 of the 1972 Act for the debt securities of a corporation.

In the case of Sections 205 registration statements, which meet the criteria set forth in these guidelines, as well as the other provisions contained in Sections 205, 207 and 208 of the 1972 Act, the staff will generally not recommend that the Commission impose any conditions or issue a denial order with respect to the registration statement. In such instances, the registration statement will generally become automatically effective in Pennsylvania in that coordination filings under Section 205 become effective without any affirmative action by the Commission to specifically register the securities.

Where the filing does not meet these guidelines, the staff may recommend the issuer withdraw without prejudice. In such a situation, should the issuer request to have the filing reviewed by the Commission itself, the staff would recommend to the Commission that the filing be denied pursuant to Section 208(a)(v). Should the Commission determine to issue a denial order, the staff will generally not recommend that the applicant be given the opportunity to voluntarily withdraw without prejudice.

With respect to Section 206 registration statements, the staff follows review procedures analogous to those described for Section 205 offering in making its recommendation to the Commission. However, a registration statement filed pursuant to Section 206 will not become effective until an order is issued by the Commission registering the securities.

Although the guidelines relate to Section 207(j) and Sections 208(a)(v), all of the other applicable provisions contained in Sections 207 and 208 are analyzed by the staff in its review of Section 205 and Section 206 registration statements by corporate issuers of debt securities.

These guidelines are not necessarily the standards that the Commission itself would apply in making a final determination on the effectiveness of a registration statement, but merely constitute the procedures followed by the staff in reviewing Section 205 and Section 206 registration statements. Sections II, III and IV of these guidelines set forth criteria for reviewing various aspects of the filing under Section 207(j) and Section 208(a)(v). Although each section has independent criteria, the decision on staff recommendations to the Commission are generally made on the basis of the totality

of the offering and not necessarily on the basis of any single component in these guidelines. These guidelines, however, do not exhaust the possible indices that the staff may deem relevant in its review of registration statements of corporate debt offerings of consumer discount companies and finance companies.

II. Financial Statements

Financial statements included in the prospectus should be in accordance with Regulations 609.031, 609.32, 609.033, and 609.034.

Section 609(c) of the 1972 Act requires, among other things, that all financial statements shall be prepared reflecting conformity with generally accepted accounting principles (“GAAP”) consistently applied. The specialized accounting principles for finance companies appear in the 1988 AICPA Audit and Accounting Guide, Audits of Finance Companies (“1988 Guide”). GAAP and practices which are used for commercial enterprises are also used in reporting for finance companies. The 1988 Guide includes descriptions and recommendations regarding specialized accounting and reporting practices for finance companies and AICPA members may have to justify departures from recommendations contained in the 1988 Guide if their work is challenged. FASB Statement No. 91, Accounting for Nonrefundable Fees and Costs Associated With Originating or Acquiring Loans and Initial Direct Costs of Leases, covers nonrefundable origination fees and costs associated with lending (including leasing) activities.

III. Supplemental Information

Re: Allowance for Doubtful Accounts and Income Recognition

The staff will generally conclude that the securities offering will violate Section 208(a)(i) or Section 609, and the regulations promulgated thereunder, if the allowance for doubtful accounts or unearned discount is materially understated. In order to assist the staff in its review process of these elements, the Commission requires the following information (if not included in the prospectus) to be provided in the registration statement or as an exhibit thereto:

1. Aging Schedules of Receivables

Aging schedules must be filed both on a recency of payment basis and on a contractual basis. The schedules should be as of the dates of the balance sheet included in the financial statements.

The recency of payment schedules must be in the following format:

	<u>No.</u> <u>Accts.</u>	<u>Unpaid</u> <u>Balances</u>	<u>%</u>
Current loans (current accounts and accounts on which more than 50% of an original contract payment was made in the last 59 days)	_____	\$_____	_____
60 – 89 days	_____	_____	_____
90 – 179 days	_____	_____	_____
180 – 269 days	_____	_____	_____
270 days or more	_____	_____	_____
Subtotal	_____	\$_____	_____

Interest only accounts

Accounts on which only interest, deferment, extension and/or default charges were received in the last 60 days

_____	\$_____	_____
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Partial Payment accounts

Accounts on which the total received in the last 60 days was less than 50% of the original contractual monthly payment ('total received' to include interest on simple interest accounts, as well as late charges on deferment charges on precomputed accounts.)

_____	\$_____	_____
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Total

_____	\$_____	_____
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The aging schedule on a contractual basis must be in the following format:

	<u>No.</u> <u>Accts.</u>	<u>Unpaid</u> <u>Balances</u>	<u>%</u>
Contactual Terms – All current Direct Loans and Sales Finance Contracts with installments past due less than 60 days from due date.	_____	\$ _____	_____
60 – 89 days (3 payments in arrears)	_____	_____	_____
90 – 179 days (4 to 6 payments in arrears)	_____	_____	_____
180 – 269 days (7 to 9 payments in arrears)	_____	_____	_____
270 days or more (10+ payments in arrears)	_____	_____	_____
Total Outstanding	_____	\$ _____	_____

The above schedules should be presented separately for discount loans and interest bearing loans.

2. Allowance for Credit Losses

An analysis or detailed explanation of how the allowance for credit losses is reached must be filed. General subjective statements such as “accounts are charged off on an individual basis by management after taking into consideration such factors as delinquency, collateral and knowledge of each borrower’s situation” must be avoided. The explanation should be explicit with respect to how old an account must be before it is charged off. Accordingly, the analysis or detailed explanation shall be based on the “timely” method rather than the “judgmental” method.

The analysis or detailed explanation should include the amount included in the allowance for credit losses for potential uncollectibility of interest income that has been accrued on finance receivables before the recognition of interest income was suspended, since the potential uncollectibility of such amounts should be taken into consideration in the computation of the allowance for credit losses. (See Paragraph 2.15 of the 1988 Guide.)

3. Finance Income Recognition

The 1988 Guide recommends changes in accounting practices including, the recognition of interest income on finance receivables using the interest (actuarial) method; the use of the accrual with suspension basis for recording interest income; and the inclusion of interest as a holding cost in determining the carrying amount of repossessed collateral expected to be held for more than a brief period.

A statement explaining in detail how interest income is calculated should be filed. The explanation should include the following information:

- a. Disclosure of the company's accounting practice with respect to the use of the accrual with suspension basis for recording interest income on finance receivables where the collectability of principal or interest is not probable.
- b. Disclosure of the company's accounting practices for origination fees, commitment fees, delinquency fees, prepayment penalties, extension fees, loan origination costs, and rebates.
- c. Explanation for any material differences between unearned finance income (as a percentage of discount basis finance receivables) at two successive balance sheet dates.

A statement disclosing the company's accounting practices for insurance premium or commission income, repossessed assets acquired in the liquidation of finance receivables, dealer reserves and holdbacks, and sales and purchases of finance receivable if the company's financial statements present these types of transactions.

4. Senior Creditor Status of Account Information

A copy of the agreement with the senior creditor should be filed. The following information from the senior creditor, if not included in the agreement, should also be included:

- i. Maximum amount of credit line;
- ii. Amount presently outstanding;
- iii. Rate;
- iv. Amount of ineligible accounts (indicate whether net or gross);
- v. Status of accounts (current-overdue);
- vi. Compensating balance required;

- vii. Certification that the borrower is in compliance with all debt agreement covenants.

5. Robert Morris Direct Cash Lending Questionnaire

If the issuer or its consumer discount company affiliates uses the Robert Morris Reporting System, the most recent copy, along with other required financial data, should be filed.

IV. Conditions, Restrictions and Miscellaneous Matters

1. Rates and Terms

- a. Rates may be set at the issuer’s option. (But see Section IV (3) of these guidelines relating to demand notes.)
- b. Interest may be compounded. However, additional securities may not be issued in lieu of accrued interest unless such securities are registered or issued under an exemption. Interest should be paid annually, semiannually, quarterly, monthly, at maturity or time of redemption.

2. Restrictions

Finance companies and consumer discount companies other than: (1) those companies which have a debt to tangible equity ratio of no more than 6 to 1, and (2) a history of profitable operations for the average of the three most recent fiscal years should be subject to the following restrictions and limitations:

- a. Senior Borrowings Limitation – The total of senior debt should not exceed 75% of gross loans outstanding plus the greater of:
 - i. The amount of the senior creditor’s listing of ineligible accounts, or
 - ii. The excess of delinquencies computed in accordance with subparagraph (d) below, over the allowance for credit losses per the company’s balance sheet, should not exceed 75% of gross loans outstanding.
- b. For purposes of this section, delinquencies should be computed by applying the following percentages to delinquencies computed on a recency of payment basis:

<u>Delinquencies</u>	<u>Percentage</u>
90 – 179 days	25%
180 – 269 days	50%
270 days and over	100%

- c. For purposes of this paragraph, tangible equity is defined as tangible net worth increased by subordinated loans from the issuer's officers, directors or controlling persons, the terms of which have been fully disclosed in the registration statement, provided that the subordination period extends beyond the maturity date and any of the debt securities being offered. Also, for purposes of this paragraph, receivables delinquent for a period of ninety (90) days (less applicable unearned discount and allowance for credit losses) shall not be included in the computation of net worth.
- d. Treasury Stock Restrictions – Except for redemption by life insurance proceeds, corporate stock should not be redeemed or acquired by the corporation from officers, directors, controlling person or owners of 50% or more of the corporation's stock without the prior written approval of the Commission.
- e. Dividends – Dividends on preferred stock payable to officers, directors or controlling persons, plus dividends on common stock should not exceed 50% of the most recent fiscal year's net income (after taxes) without prior written authorization of the Commission.
- f. Salaries, Fees, Bonuses, and Other Forms of Compensation for Officers and/or Directors – Increases in total compensation of full time operating officers and/or directors should not be made without the prior written approval of the Commission, if the aggregate of such increases exceeds 20% of the most recent prior year's net income (after taxes). Nonoperating or part-time operating officers and/or directors may be compensated only at fair value for actual services rendered to the corporation.
- g. Trust Indenture – A trust indenture containing sinking fund provisions or other applicable requirements, the provisions of which are not inconsistent with the Trust Indenture Act of 1939, should be imposed for any offering where the debt/tangible equity ratio is greater than 8:1.

3. Demand Notes and Restricted Demand Notes Required Special Qualifications

The term demand notes shall be used for unsubordinated notes which are payable on demand by the holder. The term restricted demand notes relates to demand notes containing a condition in which redemption is limited to a percentage based upon gross monthly revenues, and/or a percentage of outstanding debt securities to be redeemed. Demand notes and restricted demand notes should meet all of the following requirements:

- a. Issuer has at least three (3) most recent consecutive years of profitable operations.

- b. Issuer continues to maintain profitable operations during the period between the end of the most recent fiscal year and the date of the sale of demand notes.
- c. Total liabilities does not exceed net stockholder equity by more than 500%.
- d. All outstanding senior borrowings, which shall include the proposed demand offering, plus ineligible senior creditor accounts or estimated losses in excess of loan allowance does not exceed 70% of the gross consumer loans outstanding.
- e. Issuer maintains an available unused line of credit covering at least 90% of all outstanding demand notes. This credit line and its purpose should be in written contractual form between the issuer and an appropriate financial institution or entity.
- f. Issuer maintains at least 10% of the demand note outstandings in cash and/or a liquid reserve composed of short term government securities and/or a fund placed in an insured commercial bank or insured savings and loan association.
- g. The board of directors of an issuer of demand notes must provide the Commission with an irrevocable resolution which shall state that the issuer shall agree to comply with these special qualifications and every restriction of these guidelines; and that should the issuer fail at any time to comply with these special demand note qualifications or any restrictions imposed on the issuer by the Commission, then the issuer shall cease immediately any further sales of demand notes. Once such sales have ceased either voluntarily or by order of the Commission, the sales shall not be resumed without prior written approval of the Commission.

4. Redemption by Issuer

The issuer may call securities for premature redemption subject to the following conditions:

- a. The security instrument must contain a written call provision.
- b. A written notice must be sent by registered mail to each holder thirty (30) days prior to initiating the call redemptions.
- c. Interest must be paid to the date of redemption.
- d. The issuer shall pay to the holder an interest premium of at least $\frac{1}{2}$ of 1% per year compounded annually as of the date of the redemption.
- e. The issuer must retain all registered mail receipts for inspection by the Commission.

5. Transactions with Promoters, Officers, Directors or other Controlling Persons

The staff will generally conclude that the securities offering involves excessive promoters' profits or participations or tends to work a fraud or would so operate within the meaning of these terms in Section 208(a)(v) where any of the following relationships exist:

- a. The promoters, officers, directors or other controlling persons have made loans to the corporation and the terms of the loan arrangements exceed the lesser of (1) the amount which the corporation would have paid for such credit from non-affiliated parties or (2) the amount the lender would be receiving for such funds from generally available loan investments. However, such loan arrangements would not be deemed violative to Section 208(a)(v), where such person have borrowed funds in order to lend funds on the same terms to the corporation and where the cost of such funds is comparable to what the corporation would be paying for such funds from non-affiliated parties.
- b. There are or will be outstanding loans by the corporation to promoters, officers, directors or other controlling persons except when such loans are on the same terms as loans made by the corporation to its customers and when such terms are for the following purposes: travel, the corporation's business expenses, relocation and similar ordinary expenses.
- c. There are business transactions with the promoters, officers, directors or other controlling persons, such as vendor/vendee and lessor/lessee relationships, except (1) where the cost paid by the corporation does not exceed the fair market value or the payment, services, product, etc., received by the corporation is not less than the fair market value and (2) where it is in the best interests of the corporation to engage in such business relationships with these persons as opposed to unaffiliated parties.
- d. The promoters, officers, directors or other controlling persons are receiving compensation and remuneration including, but not limited to, salaries, perquisites, long-term employment contracts and appreciation rights, which (1) exceed the compensation being paid for similar services for persons with similar qualifications in comparable corporations, (2) exceed the ability of the issuer to reasonably afford such compensation, and (3) which have arbitrarily been increased on the basis of the proceeds to be raised from the sale of the securities of the registration statement.
- e. Substantial portion of the proceeds are to be used to the personal benefit of the promoters, officers, directors or other controlling persons, i.e., payment of back salaries and retirement of outstanding debt to the promoters, officers, directors or controlling persons.

6. Tends to Work a Fraud or so Operate

Except in certain instances, these guidelines do not set forth the criteria to be utilized with respect to the determination of whether the offering tends to work a fraud on the investors. For purposes of this section, the term “fraud” is not limited to common law deceit, but is designed to be so broad as to establish a sound business standard. For purposes of these guidelines where an issuer is either insolvent or is otherwise unable to or unlikely to meet its debt service or the securities of the offering will be deemed to (a) work a fraud upon the investors and (b) be denied pursuant to Section 208(a)(v).

7. Escrow of Proceeds

The prospectus must be explicit with respect to how the proceeds of the offering are to be used.

Pursuant to Section 207(g), the staff will generally recommend the proceeds of the offering to be escrowed where it appears that a minimum amount of funds are needed to be raised in order for the issuer to be sufficiently capitalized for the purposes set forth in the prospectus or in order to prevent the offering from tending to work a fraud on investors. Further, no expenditures (including commissions, selling expenses, or salaries) may be deducted from the escrowed funds if the minimum proceeds are not raised. If the minimum proceeds are not raised, all funds shall be returned to the investors (with interest from the date of the receipt of the funds in the case of offering exceeding 90 days).

Where a significant portion of the proceeds of the offering are to be used for specific purposes, such as the acquisition of specific properties, the staff will request that those portions of the offering be escrowed to be used solely for those purposes.