



SUBJECT: The Accredited Investor Exemption under Section 203(t) and the Non-issuer exemptions contained in Section 203(a) and (b) of the Pennsylvania Securities Act of 1972 ("1972 Act") are not available for transactions which are part of a plan or scheme to circumvent the requirements of the registration provisions of the 1972 Act.

RELEASE NO.: 05-CF-1

DATE OF RELEASE: August 2, 2005

TYPE: Commission Staff Position

PRIOR RELEASES: 98-CF-2 (December 22, 1998); 00-CF-3 (June 20, 2000)

BACKGROUND

On January 25, 1999, Act 109 amending the 1972 Act became effective. Act 109 added Section 203(t) as a category of securities exempt from the registration requirement of Section 201 of the 1972 Act. Section 203(t) exempts offers where all sales would be made to Accredited Investors, as that term is defined in Rule 501 of SEC Regulation D. The exemption is available only if the offering is being made in reliance on Section 3(a)(11) of the Securities Act of 1933 ("1933 Act"), SEC Regulation A or Rule 504 of SEC Regulation D.

Over the last two years, Commission Staff has seen an exponential increase of Section 203(t) offerings, all of which have relied upon SEC Rule 504. Staff has learned that these securities are being sold to either a single accredited investor or a few accredited investors, individual and corporate, who shortly thereafter offer these securities for sale to the general public under the non-issuer exemptions in Section 203(a) and (b).

STAFF POSITION

Investors purchasing securities under Section 203(t) with a view to resell them within 12 months from the date of purchase are participating in a distribution and will be deemed to be underwriters as that term is defined in Section 102(v) of the 1972 Act. Consequently, any distribution to Pennsylvania residents must comply with the registration requirements of the 1972 Act, or be exempt therefrom.

The non-issuer exemption contained in Section (a) is not available because according to Regulation 203.011, "a transaction which is part of a single plan of distribution by an issuer of its securities to the public will not be deemed a non-issuer transaction for purposes of section 203(a) of the act." Furthermore, the exemption under Section 203(b) is not available for non-issuer transactions exempted from Section 5 of the 1933 Act pursuant to Sections 3(a)(11) or 3(b). Therefore, these distributions will be viewed as part of a plan or scheme to evade the registration provisions of the 1972 Act.

For more information on the SEC's position regarding Rule 504 resales, see SEC Release No. 33-7644, dated February 26, 1999 (Revision of Rule 504 of Regulation D, the "Seed Capital" Exemption). See also, Litigation Release No. 19311/July 26, 2005, SEC v. U.S. Wind Farming, Inc., William L. Telander, et al., Case No. 05 C 4259 (N.D. Ill. filed July 25, 2005).

FURTHER ASSISTANCE

Any questions concerning 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 on request. Call (717) 787-1165 or TTY Users: via AT&T Relay Center 1-800-654-5984.