



SUBJECT: Securities Offerings on the Active Capital System and the Pennsylvania Securities Act of 1972 (1972 Act)

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TYPE: Staff Position

PRIOR REFERENCE: 96-CF-5; 99-CF-3

At its October 23, 2007 meeting, the Pennsylvania Securities Commission (Commission) permitted staff to publish this superseding Release to update previous releases which dealt with facilitating access to capital by small Pennsylvania businesses through an Internet-based electronic system then known as the Angel Capital Electronic Network (ACE-Net).

BACKGROUND

In 1995, the Office of Advocacy of the US Small Business Administration (SBA) created ACE-Net, an Internet-based electronic system providing small companies with exposure, at a reasonable cost, to sophisticated and high net worth individuals, commonly known as "angels". In 2000, the SBA spun off ACE-Net into a nonprofit corporation based out of universities and education centers and in December 2004, ACE-Net spawned Active Capital in order to upgrade its operation and create new alliances. The Active Capital system operates and functions in the same manner as ACE-Net, which is basically a matching service for investors and entrepreneurs.

THE ACTIVE CAPITAL SYSTEM

Through a password system, corporate offerings included on Active Capital are available only to Accredited Investors and not to the general public. A listing on Active Capital 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.

How does Active Capital operate?

Active Capital is operated through regional non-profit groups, universities or state-based entrepreneurial development centers that have established programs for educating and mentoring new businesses. Active Capital employs local operators to assist entrepreneurs in translating their business plans into a lawfully acceptable form, and when appropriate provide counseling and mentoring to entrepreneurs. Once an entrepreneur's application for equity funding has been accepted, it is sent to one of Active Capital's not-for-profit local operators situated near the entrepreneur's business. To facilitate the process, Active Capital maintains numerous "local operators".

What information is available on Active Capital?

Active Capital 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 Active Capital 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 Active Capital.

Access to listings on Active Capital is restricted to persons who certify themselves as Accredited Investors and pay an annual fee. Access to Active Capital is regulated through a password system. Before a password is issued to an investor, the investor must complete a form 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 Active Capital. *As a regulator, the Commission has a password and Commission staff periodically monitor offerings listed on Active Capital.*

Offers and sales of securities listed on Active Capital.

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

What Active Capital will not do.

As a condition of receipt of an SEC Staff No-Action Letter dated October 26, 1996,

Active Capital will not: (1) provide advice about the merits of particular opportunities or ventures; (2) receive compensation from Active Capital 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 Active Capital; (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 Active Capital, participants in Active Capital and employees and participating university officers, directors and employees with direct or indirect operating or supervisory control over Active Capital will not participate as entrepreneurs or investors in any company listed on Active Capital, except in compliance with the securities laws and unless such participation is disclosed to users of Active Capital, and such 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.

ACTIVE CAPITAL 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 Active Capital may rely on Section 203(t) of the 1972 Act.

Section 203(t) requirements.

Filing Requirement. A company must file an application for the exemption on Form E, together with a copy of any offering document or literature used in connection with the offers and sales, prior to the sales taking place. A sale has occurred when 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 must forward to the Commission a check payable to the "Commonwealth of Pennsylvania" in the amount set forth under Section 602 of the 1972 Act, relating to Fees.

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 Active Capital may be found on the Internet at <http://activecapital.org> .

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.