

§16304. Securities registration by qualification

1. Registration permitted. A security may be registered by qualification under this section. [PL 2005, c. 65, Pt. A, §2 (NEW).]

2. Required records. A registration statement under this section must contain the information or records specified in section 16305, a consent to service of process complying with section 16611 and the following information or records:

A. With respect to the issuer and any significant subsidiary, its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. With respect to persons covered by paragraph B, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and all predecessors, parents, subsidiaries and affiliates of the issuer; [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. With respect to a person owning of record or owning beneficially, if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph B other than the person's occupation; [PL 2005, c. 65, Pt. A, §2 (NEW).]

E. With respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in paragraph B, any amount paid to the promoter within that period or intended to be paid to the promoter and the consideration for the payment; [PL 2005, c. 65, Pt. A, §2 (NEW).]

F. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected; and a statement of the reasons for making the offering; [PL 2005, c. 65, Pt. A, §2 (NEW).]

G. The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities; [PL 2005, c. 65, Pt. A, §2 (NEW).]

H. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate

underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter; [PL 2005, c. 65, Pt. A, §2 (NEW).]

I. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition; [PL 2005, c. 65, Pt. A, §2 (NEW).]

J. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph B, D, E, F or H and by any person that holds or will hold 10% or more in the aggregate of those options; [PL 2005, c. 65, Pt. A, §2 (NEW).]

K. The dates of, parties to and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years and a copy of the contract; [PL 2005, c. 65, Pt. A, §2 (NEW).]

L. A description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets and any litigation, action or proceeding known to be contemplated by governmental authorities; [PL 2005, c. 65, Pt. A, §2 (NEW).]

M. A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 16202, subsection 18, paragraph B; [PL 2005, c. 65, Pt. A, §2 (NEW).]

N. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered; [PL 2005, c. 65, Pt. A, §2 (NEW).]

O. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer; [PL 2005, c. 65, Pt. A, §2 (NEW).]

P. A signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public and that is used in connection with the registration statement; [PL 2005, c. 65, Pt. A, §2 (NEW).]

Q. A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and [PL 2005, c. 65, Pt. A, §2 (NEW).]

R. Any additional information or records required by rule adopted or order issued under this chapter. [PL 2005, c. 65, Pt. A, §2 (NEW).]
[PL 2005, c. 65, Pt. A, §2 (NEW).]

3. Conditions for effectiveness of registration statement. A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed if:

A. A stop order is not in effect and a proceeding is not pending under section 16306; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. The administrator has not issued an order under section 16306 delaying effectiveness; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. The applicant or registrant has not requested that effectiveness be delayed. [PL 2005, c. 65, Pt. A, §2 (NEW).]
[PL 2005, c. 65, Pt. A, §2 (NEW).]

4. Delay of effectiveness of registration statement. The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.
[PL 2005, c. 65, Pt. A, §2 (NEW).]

5. Prospectus or offering document distribution may be required. An order issued under this chapter may require as a condition of registration under this section that a prospectus or offering document containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of:

A. The first offer made in a record to the person otherwise than by means of a public advertisement by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution; [PL 2005, c. 65, Pt. A, §2 (NEW).]

B. The confirmation of a sale made by or for the account of the person; [PL 2005, c. 65, Pt. A, §2 (NEW).]

C. Payment pursuant to such a sale; or [PL 2005, c. 65, Pt. A, §2 (NEW).]

D. Delivery of the security pursuant to such a sale. [PL 2005, c. 65, Pt. A, §2 (NEW).]
[PL 2005, c. 65, Pt. A, §2 (NEW).]

6. Simplified statement. For purposes of simplifying the registration statement for smaller offerings and promoting uniformity with other states, the administrator may adopt, by rule, a form to be used as the registration statement for securities being registered under this section and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified in the rule. The form need not require all the information included in this section and may require information not included in this section.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

6-A. Short-form registration statement. The administrator may adopt by rule a form to be used as a short-form registration statement for securities being registered under this section and sold in offerings in which:

A. The issuer of the security is a corporation or other entity having its principal place of business in this State and registered with the Secretary of State as an entity formed under the laws of this State or authorized to transact business within this State; [PL 2013, c. 452, §1 (NEW).]

B. The aggregate amount of securities sold to all investors by the issuer within any 12-month period is not more than \$1,000,000; [PL 2013, c. 452, §1 (NEW).]

C. The aggregate amount of securities sold to any investor by the issuer, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed \$5,000, or a greater amount as the administrator may provide by rule or order, unless the investor is an accredited investor as defined in 17 Code of Federal Regulations, Section 230.501 (2013); [PL 2013, c. 452, §1 (NEW).]

D. The offering meets the requirements of the federal exemption for limited offerings and sales of securities not exceeding \$10,000,000 in 17 Code of Federal Regulations, Section 230.504 (2013); [PL 2023, c. 503, §2 (AMD).]

E. The issuer files with the administrator, provides to investors and makes available to potential investors an offering document setting forth the following:

- (1) The name, legal status, physical address and website address of the issuer;
- (2) The names of the directors, officers and any persons occupying a similar status or performing similar functions;
- (3) The name of each person holding more than 20% of the shares of the issuer;
- (4) A description of the business of the issuer and the anticipated business plan of the issuer;
- (5) A description of the financial condition of the issuer, including the following:
 - (a) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of \$100,000 or less:
 - (i) The income tax returns filed by the issuer for the most recently completed year, if any; and
 - (ii) The financial statements of the issuer certified by the principal executive officer of the issuer to be true and complete in all material respects;
 - (b) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than \$100,000 but not more than \$500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for the review or standards and procedures established by the administrator by rule; or
 - (c) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than \$500,000, audited financial statements;
- (6) A description of the stated purpose and intended use of the proceeds of the offering sought by the issuer;
- (7) The offering amount, the deadline to reach the offering amount and regular updates regarding the progress of the issuer in meeting the offering amount;

- (8) The price to the public of the securities or, if the price has not been determined, the method for determining the price as long as prior to the sale each investor is provided in writing the final price and all required disclosures with a reasonable opportunity to rescind the commitment to purchase the securities; and
- (9) A description of the ownership and capital structure of the issuer, including:
- (a) The terms of the securities being offered and all other classes of security of the issuer, including how those terms may be modified, and a summary of the differences between the classes of securities, including how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;
 - (b) A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;
 - (c) The name and ownership level of each existing shareholder who owns more than 20% of any class of the securities of the issuer;
 - (d) How the securities being offered are being valued and examples of methods for how those securities may be valued by the issuer in the future, including during subsequent corporate actions; and
 - (e) The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer and transactions with related parties; and [PL 2013, c. 452, §1 (NEW).]

F. The issuer sets aside in a separate bank account all funds raised as part of the offering to be held until such time as the minimum offering amount is reached. If the minimum offering amount is not met within one year of the effective date of the offering, the issuer must return all funds to investors. [PL 2013, c. 452, §1 (NEW).]

An issuer who elects to use a short-form registration statement pursuant to this subsection must comply with other requirements set forth by rule adopted or order issued under this chapter.

Notwithstanding section 16304, subsection 3, the administrator may provide by rule that a short-form registration statement filed under this subsection is immediately effective upon filing or becomes effective within some other stated period after filing, conditionally or otherwise.

[PL 2023, c. 503, §2 (AMD).]

7. Rulemaking. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 65, §A2 (NEW). PL 2013, c. 452, §1 (AMD). PL 2023, c. 503, §2 (AMD).

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