

***** DRAFT - NOT YET FILED *****

1301:6-3-03

Exempt transactions.

(A) Definitions. For the purposes of this rule and section 1707.03 of the Revised Code:

- (1) "Bank" shall have the meaning specified in division (O) of section 1707.01 of the Revised Code.
- (2) "Escrow Agreement" shall mean a written instrument established by a dealer registered with the securities and exchange commission in accordance with the standards set forth in 17 CFR 15c2-4(b), as amended, or a written instrument signed by the issuer and the bank, the deposits of which are insured by the federal deposit insurance corporation and which is not an affiliate, subsidiary, or parent of the issuer, which instrument provides for the establishment of an escrow account with the bank, establishes procedures for the prompt deposit into the escrow account of funds received from purchasers, specifies that no funds will be disbursed from the escrow account until a minimum stated amount of the securities have been sold and the proceeds have been deposited into the escrow account, and specifies a termination date when the proceeds held in the escrow account will be returned without deduction to the purchasers if the proceeds for a minimum stated amount of the securities have not been deposited in the escrow account.
- (3) "Mortgage-backed security" shall mean indebtedness, a participation in indebtedness, or other interest in indebtedness secured by a mortgage lien upon real estate, or a participation in or other interest in a syndicate, pool, trust, or other entity consisting of indebtedness secured by a mortgage lien upon real estate.
- (4) "Retail repurchase agreement" shall mean indebtedness arising from the sale of a security or pool of securities that is a direct obligation of or is fully guaranteed by the United States government or an agency thereof, or indebtedness collateralized by an interest in a security or pool of securities that is a direct obligation of or is fully guaranteed by the United States government or an agency thereof.
- (5) "Ten per cent of the initial offering price" shall mean an amount equal to ten percent of the offering price of the securities actually sold.

(B) Claims of exemption in accordance with division (Q) of section 1707.03 of the Revised Code.

- (1) The issuer or dealer shall file with the division a report of sales on a manually executed form 3-Q not later than sixty days after each sale of any security in reliance on division (Q) of section 1707.03 of the Revised Code. All sales within any sixty-day period which have not been reported on a prior form 3-Q may be included on a single form 3-Q.
 - (2) When the division receives a form 3-Q which appears to be defective, the division shall notify the claimant and shall allow not more than thirty days for the amendment of the form. If the defects are remedied by amendment in a timely manner, the form shall be deemed filed as of the date of the original filing. If the defects are not remedied by proper amendment, the division shall note on its records that the form is defective and that no effective claim of exemption has been made.
 - (3) Where the division determines by examination or otherwise that the information reported on a form 3-Q is inaccurate or incomplete, the division shall notify the claimant and shall afford the claimant an opportunity to present proof to establish that the exemption was properly claimed. In the absence of satisfactory proof to the division that claimant was entitled to claim the exemption, the division shall make a finding that the facts necessary for claiming the exemption did not exist at the time such exemption was claimed and that the claim of exemption is void and was of no effect when made. The division shall thereupon order its records endorsed in accordance with that finding. If the division determines that an exemption has been improperly claimed, it may take action in accordance with Chapter 1707. of the Revised Code.
- (C) Claims of exemption in accordance with division (O) of section 1707.03 of the Revised Code and division (Q) of section 1707.03 of the Revised Code.
- (1) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (O) of section 1707.03 of the Revised Code or under division (Q) of section 1707.03 of the Revised Code for a period of five years from the date of the last sale by the issuer under the claim of exemption.
 - (2) For the purpose of determining the date of sale for division (O) or (Q) of section 1707.03 of the Revised Code, a sale shall be deemed to have occurred on the later of:
 - (a) The date that a subscription agreement or its equivalent, signed by the purchaser, is received by the issuer or the dealer, or the purchaser

transfers or loses control of the purchase funds, whichever is earlier; or

(b) The first date of disbursement of any proceeds of the sale of the securities which have been deposited directly into an escrow account established pursuant to an escrow agreement as defined in paragraph (A)(2) of this rule.

(3) No salesperson shall sell securities in reliance on an exemption under division (O) or (Q) of section 1707.03 of the Revised Code other than through or with the salesperson's employing dealer.

(D) Claims of exemption in accordance with division (O) of section 1707.03 of the Revised Code.

(1) An issuer shall be presumed to have established that a purchaser is purchasing for investment, in the absence of information to the contrary, when the issuer obtains a written declaration signed by the purchaser which includes;

(a) A statement that the purchaser is aware that no market may exist for the resale of the securities;

(b) A statement that the purchaser is purchasing for investment and not for the distribution of the securities; and

(c) A statement that the purchaser is aware of any and all restrictions imposed by the issuer on the further distribution of the securities, including, but not limited to, any restrictive legends appearing on the certificate, required holding periods, stop transfer orders, or buy-back rights of the corporation or the holders of its securities.

(2) For the purpose of computing the total number of purchasers under division (O)(2) of section 1707.03 of the Revised Code, successive sales by an issuer to a single purchaser shall not be considered to be sales to additional purchasers.

(E) Additional exemptions in accordance with division (V) of section 1707.03 of the Revised Code.

(1) The sale by a bank, a subsidiary of a bank, or a service corporation owned by and organized to provide services to one or more banks of retail repurchase agreements is exempt pursuant to division (V) of section 1707.03 of the Revised Code.

- (2) The sale by a bank, a subsidiary of a bank, or a service corporation owned by and organized to provide services to one or more banks of mortgage-backed securities is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
- (3) The sale of any security representing directly or indirectly a fractional interest in a pool of FHA-insured or VA-guaranteed first mortgage loans guaranteed by the full faith and credit of the United States government (commonly referred to as GNMA-backed securities or GNMA pass-through securities), is exempt pursuant to division (V) of section 1707.03 of the Revised Code. The assets of a security sold in reliance on this paragraph may also include cash or other obligations backed by the full faith and credit of the United States government to a maximum of twenty per cent of the total assets of the security.
- (4) The sale of any security representing directly or indirectly a fractional interest in a certificate of deposit or a pool of certificates of deposit is exempt pursuant to division (V) of section 1707.03 of the Revised Code, provided that:
 - (a) The certificates of deposit are issued by a bank with assets of two billion dollars or more;
 - (b) If a pool, no more than ten per cent of the pool's assets may be invested in the certificates of deposit of any one bank; and
 - (c) The total expenses of sale, issuance and distribution of the securities do not exceed three per cent of the gross proceeds of the sale of the securities.
- (5) The sale of any security pursuant to a pension plan, stock plan, profit-sharing plan, compensatory benefit plan, welfare plan, or similar plan is exempt pursuant to division (V) of section 1707.03 of the Revised Code if:
 - (a) The security is sold pursuant to a plan qualified under sections 401 to 425 of the Internal Revenue Code of 1986, 26 U.S.C.A. 1, as amended;
 - (b) The sale of the security is exempt from the provisions of section 5 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, because it meets the exemption set forth in rule 701 of the Securities Act of 1933, 15 U.S.C.A. 77 a, as amended, and any commission, discount or other remuneration paid or given for the sale of the security in this state is paid or given only to dealers or salespersons licensed by the division;

- (c) The security is effectively registered under sections 6 to 8 of the Securities Act of 1933, as amended, and is offered and sold in compliance with the provisions of section 5 of the Securities Act of 1933 as amended; or
 - (d) The security is sold pursuant to a contributory employee welfare benefit plan and trust that are qualified under section 501(c)(9) of the Internal Revenue Code of 1986, 26 U.S.C.A. 1, as amended.
- (6) The sale of a warrant, subscription right, or option to purchase a security exempted by division (E) of section 1707.02 of the Revised Code or the sale of a unit consisting of a warrant, subscription right, or option to purchase a security exempted under division (E) of section 1707.02 of the Revised Code and a security which is exempt under division (E) of section 1707.02 of the Revised Code is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
- (7) Any guarantee, letter of credit, standby purchase agreement, or other credit enhancement that is offered and sold in conjunction with a security that is exempt under division (B) of section 1707.02 of the Revised Code and which is not traded separately is exempt under division (V) of section 1707.03 of the Revised Code.
- (8) The offer of securities by an issuer on the internet, or similar electronic medium, is exempt pursuant to division (V) of section 1707.03 of the Revised Code, provided that:
- (a) The offer of securities indicates, directly or indirectly, that securities are not being offered to any person in this state and the issuer does not otherwise attempt to sell securities in this state;
 - (b) The offer of securities is not specifically directed to any person in this state by, or on behalf of, the issuer; and
 - (c) No sales of securities are made in this state as a result of the offer of securities until the securities have been registered by description, qualification or coordination, or are the subject matter of a transaction that has been registered by description, or are otherwise exempt or are subject matter of an exempt transaction, and a final prospectus, offering circular or form U-7, if required under the Ohio Securities Act or division regulations, has been delivered to persons in this state prior to such sale.

- (9) The sale of any security, including the issuance of securities in mergers, consolidations, combinations or conversions, by an issuer formed primarily to provide professional services as such term is defined in division (A) of section 1785.01 of the Revised Code is exempt pursuant to division (V) of section 1707.03 of the Revised Code provided that:
- (a) No commission or other remuneration is paid directly, or indirectly, in connection with the sale of the security; and
 - (b) Ownership of the securities of the issuer is limited to:
 - (i) Employees, partners, officers, directors, shareholders, members or managers who perform professional services for the issuer;
 - (ii) Retired employees, partners, officers, directors, shareholders, managers or members who have performed professional services for the issuer;
 - (iii) Employee benefit plans holding securities for the benefit of employees, partners, officers, directors, shareholders, members or managers who perform, or who have performed, professional services for the issuer;
 - (iv) The estate of any individual described in paragraph (E)(9)(b)(i), (E)(9)(b)(ii), or (E)(9)(b)(iii) of this rule; or
 - (v) Any other person who acquired such ownership interest by reason of the death of an individual described in paragraph (E)(9)(b)(i), (E)(9)(b)(ii), or (E)(9)(b)(iii) of this rule.
- (10) The sale of a security that is exempt from the provisions of section 5 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, because it meets an exemption in rule 801 or 802 of the Securities Act of 1933, 15 U.S.C.A. 77a, as amended, and any commission, discount or other remuneration paid or given for the sale of the security in this state is paid or given only to dealers or salespersons licensed by the division is exempt pursuant to division (V) of section 1707.03 of the Revised Code.
- (11) The sale of any security to a Canadian resident temporarily in Ohio or to a self-directed, tax-advantaged retirement plan where the holder or contributor is a Canadian resident, by a Canadian broker or dealer meeting the

requirements of paragraph (J) of rule 1301:6-3-01 of the Administrative Code, is exempt.

- (F) The issuer shall maintain or cause to be maintained books and records which reflect all material transactions involving the sale of securities under division (W) of section 1707.03 of the Revised Code or under division (Y) of section 1707.03 of the Revised Code for a period of five years from the date of the last sale by the issuer under the claim of exemption.
- (G) An issuer making a filing with the division under division (Q), (W), ~~(X)~~ or (Y) of section 1707.03 of the Revised Code shall file an irrevocable consent to service of process on either a form 11 or a form U-2, if required under section 1707.11 of the Revised Code.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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