

**UNIFORM SECURITIES ACT (2002)**  
**Act 551 of 2008**

AN ACT to enact the uniform securities act (2002) relating to the issuance, offer, sale, or purchase of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to regulate Michigan investment markets; to make uniform the law with reference to securities; and to repeal acts and parts of acts.

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

*The People of the State of Michigan enact:*

ARTICLE 1  
GENERAL PROVISIONS

**451.2101 Short title.**

Sec. 101. This act shall be known and may be cited as the "uniform securities act (2002)".

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

**451.2102 Definitions; A to G.**

Sec. 102. As used in this act, unless the context otherwise requires:

(a) "Administrator" means the office of financial and insurance regulation of the department of energy, labor, and economic growth.

(b) "Agent" means an individual other than a broker-dealer who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. The term does not include a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, unless the individual otherwise comes within the term. The term does not include an individual excluded by rule or order under this act. The term does not include a person acting solely as a finder and registered as a broker-dealer under this act or acting as a finder in a transaction exempt under section 202(1)(r).

(c) "Bank" means any of the following:

(i) A banking institution organized under the laws of the United States.

(ii) A member bank of the federal reserve system.

(iii) Any other banking institution that meets all of the following:

(A) It is doing business under the laws of a state or of the United States.

(B) A substantial portion of its business consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to 12 USC 92a.

(C) It is supervised and examined by a state or federal agency having supervision over banks.

(D) It is not operated for the purpose of evading this act.

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (i), (ii), or (iii).

(d) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include any of the following:

(i) An agent.

(ii) An issuer.

(iii) A bank or savings institution if its activities as a broker-dealer are limited to those specified in section 3(a)(4) and 3(a)(5) of the securities exchange act of 1934, 15 USC 78c, or a bank that satisfies the conditions described in section 3(a)(4)(E) of the securities exchange act of 1934, 15 USC 78c.

(iv) An international banking institution.

(v) A person excluded by rule or order under this act.

(e) "Depository institution" means a bank; or a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive

deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by federal statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law; or a bank that does not receive deposits because of a limitation in its charter, articles of incorporation, or articles of association. The term does not include any of the following:

- (i) An insurance company or other organization primarily engaged in the business of insurance.
- (ii) A Morris Plan bank.
- (iii) An industrial loan company that is not an insured depository institution, as that term is defined in section 3(c)(2) of the federal deposit insurance act, 12 USC 1813(c)(2).
- (f) "Federal covered investment adviser" means a person registered under the investment advisers act of 1940.
- (g) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the securities act of 1933, 15 USC 77r, or rules or regulations adopted under that provision.
- (h) "Filing" means the receipt under this act of a record by the administrator or a designee of the administrator.
- (i) "Finder" means a person who, for consideration, participates in the offer to sell, sale, or purchase of securities by locating, introducing, or referring potential purchasers or sellers. Finder does not include a person whose actions are solely incidental to a transaction exempt pursuant to section 202(1)(r). The administrator may by rule or order exclude other persons from this definition.
- (j) "Fraud," "deceit," and "defraud" include, but are not limited to, common law deceit.
- (k) "Guaranteed" means guaranteed as to payment of all principal and all interest.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2102a Definitions; I.**

Sec. 102a. As used in this act, unless the context otherwise requires:

- (a) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
  - (i) A depository institution or international banking institution.
  - (ii) An insurance company.
  - (iii) A separate account of an insurance company.
  - (iv) An investment company as defined in the investment company act of 1940.
  - (v) A broker-dealer registered under the securities exchange act of 1934.
  - (vi) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$2,500,000.00 or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.
  - (vii) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$2,500,000.00 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.
  - (viii) A trust, if it has total assets in excess of \$2,500,000.00, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (vi) or (vii), regardless of size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.
  - (ix) An organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$2,500,000.00.
  - (x) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958, 15 USC 681, with total assets in excess of \$2,500,000.00.
  - (xi) A business development company as defined in section 202(a)(22) of the investment advisers act of 1940, 15 USC 80b-2, with total assets in excess of \$2,500,000.00.

- (xii) A federal covered investment adviser acting for its own account.
- (xiii) A "qualified institutional buyer" as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933, 17 CFR 230.144A.
- (xiv) A "major U.S. institutional investor" as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934, 17 CFR 240.15a-6(b)(4)(i).
- (xv) Any other person, other than an individual, of institutional character with total assets in excess of \$2,500,000.00 not organized for the specific purpose of evading this act.
- (xvi) Any other person specified by rule or order under this act.
- (b) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.
- (c) "Insured" means insured as to payment of all principal and all interest.
- (d) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.
- (e) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:
  - (i) An investment adviser representative.
  - (ii) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession.
  - (iii) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice.
  - (iv) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.
  - (v) A federal covered investment adviser.
  - (vi) A depository institution.
  - (vii) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser.
  - (viii) Any other person excluded by rule or order under this act.
  - (ix) A finder registered as a broker-dealer under this act.
- (f) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who meets any of the following:
  - (i) Performs only clerical or ministerial acts.
  - (ii) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and does not receive special compensation for investment advisory services.
  - (iii) Is employed by or associated with a federal covered investment adviser, unless the individual meets any of the following:
    - (A) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is an "investment adviser representative" as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3.
    - (B) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 15 USC 80b-2.
  - (iv) Is excluded by rule or order under this act.
- (g) "Issuer" means a person that issues or proposes to issue a security, subject to the following:
  - (i) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions, is

the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(ii) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used, or to which the property or equipment is or will be leased or conditionally sold, or that is otherwise contractually responsible for assuring payment of the certificate.

(iii) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2102b Definitions; N to R.**

Sec. 102b. As used in this act, unless the context otherwise requires:

(a) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(b) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of title I of the securities exchange act of 1934, 15 USC 78n.

(c) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, limited liability partnership, association, joint venture, or government; a governmental subdivision, agency, or instrumentality; a public corporation; or any other legal or commercial entity.

(d) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means any of the following:

(i) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients.

(ii) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice, or solicits, meets with, or otherwise communicates with customers or clients.

(e) "Predecessor act" means former 1964 PA 265.

(f) "Price amendment" means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(g) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(h) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2102c Definitions; S.**

Sec. 102c. As used in this act, unless the context otherwise requires:

(a) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include any of the following:

(i) A security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

(ii) A gift of assessable stock involving an offer and sale.

(iii) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(b) "Securities and exchange commission" means the United States securities and exchange commission.

(c) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the following apply to the term security:

(i) The term includes a contractual or quasi-contractual arrangement that meets all of the following:

(A) A person furnishes capital, other than services, to an issuer under the arrangement.

(B) A portion of the capital furnished under sub-subparagraph (A) is subjected to the risks of the issuer's enterprise.

(C) The furnishing of capital under sub-subparagraph (A) is induced by representations made by an issuer, promoter, or the issuer's or promoter's affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise.

(D) The person furnishing the capital under sub-subparagraph (A) does not intend to be actively involved in the management of the enterprise in a meaningful way.

(E) At the time the capital is furnished, a promoter or its affiliates anticipate that financial gain may be realized as a result of the furnishing.

(ii) The term includes both a certificated and an uncertificated security.

(iii) The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.

(iv) The term does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974.

(v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.

(vi) The term may include, as an investment contract, an interest in a limited partnership, a limited liability company, or a limited liability partnership.

(d) "Self-regulatory organization" means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rule-making board established under the securities exchange act of 1934.

(e) "Sign" means, with present intent to authenticate or adopt a record, either of the following:

(i) To execute or adopt a tangible symbol.

(ii) To attach or logically associate with the record an electronic symbol, sound, or process.

(f) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2103 Additional definitions.**

Sec. 103. (1) Subject to subsection (2), as used in this act:

(a) "Commodity exchange act" means the commodity exchange act, 7 USC 1 to 27f.

(b) "Electronic signatures in global and national commerce act" means the electronic signatures in global and national commerce act, 15 USC 7001 to 7031.

(c) "Employee retirement income security act of 1974" means the employee retirement income security act of 1974, Public Law 93-406.

(d) "Internal revenue code" means the internal revenue code of 1986, 26 USC 1 to 9833.

(e) "Investment advisers act of 1940" means the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.

(f) "Investment company act of 1940" means the investment company act of 1940, 15 USC 80a-1 to

80a-64.

(g) "National housing act" means the national housing act, 12 USC 1701 to 1750g.

(h) "Public utility holding company act of 1935" means the public utility holding company act of 1935, 15 USC 79 to 79z-6.

(i) "Securities act of 1933" means the securities act of 1933, 15 USC 77a to 77aa.

(j) "Securities exchange act of 1934" means the securities exchange act of 1934, 15 USC 78a to 78nn.

(k) "Securities investor protection act of 1970" means the securities investor protection act of 1970, 15 USC 78aaa to 78lll.

(l) "Securities litigation uniform standards act of 1998" means the securities litigation uniform standards act of 1998, Public Law 105-353, 112 Stat. 3227.

(m) "Small business investment act of 1958" means the small business investment act of 1958, Public Law 85-699.

(2) A reference in this act to a federal statute defined in subsection (1) includes that statute and the rules and regulations adopted under that statute. The administrator may, by rule or order, adopt an amendment or successor to a federal statute defined in subsection (1) or rules and regulations adopted under a federal statute defined in subsection (1), a federal statute that is similar to a federal statute defined in subsection (1), or a rule or regulation that is similar to a rule or regulation adopted under a federal statute defined in subsection (1).

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2104 Reference to agency or department.**

Sec. 104. Any reference in this act to an agency or department of the United States is also a reference to any successor agency, department, or entity of that agency or department.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2105 Applicability of act.**

Sec. 105. This act modifies, limits, and supersedes the electronic signatures in global and national commerce act, but does not modify, limit, or supersede section 101(c) of that act, 15 USC 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 USC 7003. This act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule or order under this act, in a manner consistent with section 104(a) of that act, 15 USC 7004.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

## ARTICLE 2

### EXEMPTIONS FROM REGISTRATION OF SECURITIES

#### **451.2201 Securities exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.**

Sec. 201. The following securities are exempt from the requirements of sections 301 to 306 and 504:

(a) A security, including a revenue obligation or a separate security as defined in rule 131 adopted under the securities act of 1933, 17 CFR 230.131, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of 1 or more states; by a political subdivision of 1 or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing.

(b) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(c) A security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by, any of the following:

(i) An international banking institution.

(ii) A banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of either receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a

successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to 12 USC 92a.

(iii) Any other depository institution, unless by rule or order the administrator proceeds under section 204.

(d) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

(e) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

(i) Regulated in respect to its rates and charges by the United States or a state.

(ii) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

(iii) A public utility holding company registered under the public utility holding company act of 1935 or a subsidiary of a registered holding company within the meaning of that act.

(f) A federal covered security specified in section 18(b)(1) of the securities act of 1933, 15 USC 77r, or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract; warrant; a subscription right on or with respect to those securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the securities exchange act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the securities exchange act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the securities exchange act of 1934, 15 USC 78i.

(g) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the investment company act of 1940, 15 USC 80a-3. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in this subdivision, the administrator by rule or order may limit the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (ii) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to meet 1 or more of the following:

(i) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

(ii) To file a request for exemption authorization for which a rule under this act may specify the scope of the exemption; the requirement of an offering statement; the filing of sales and advertising literature; the filing of consent to service of process complying with section 611; and grounds for denial or suspension of the exemption.

(iii) To register under section 304.

(h) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

(i) An equipment trust certificate in respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2202 Securities exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.**

Sec. 202. (1) The following transactions are exempt from the requirements of sections 301 to 306 and 504:

(a) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not.

(b) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if all of the following are met at the date of the transaction:

(i) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(ii) The security is sold at a price reasonably related to its current market price.

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution.

(iv) A nationally recognized securities manual or its electronic equivalent designated by rule or order under this act or a record filed with the securities and exchange commission that is publicly available contains all of the following:

(A) A description of the business and operations of the issuer.

(B) The names of the issuer's executive officers and the names of the issuer's directors, if any.

(C) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger, and when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined entity.

(D) An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement.

(v) Any of the following requirements are met:

(A) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934, 15 USC 78f, or designated for trading on the national association of securities dealers automated quotation system.

(B) The issuer of the security is a unit investment trust registered under the investment company act of 1940.

(C) The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years.

(D) The issuer of the security has total assets of at least \$2,000,000.00 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet as of a date within 18 months before the date of the transaction, a pro forma balance sheet for the combined entity.

(c) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system.

(d) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m or 78o.

(e) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that meets 1 or more of the following:

(i) Is rated at the time of the transaction by a nationally recognized statistical rating organization in 1 of its 4 highest rating categories.

(ii) Has a fixed maturity or a fixed interest or dividend, if both of the following are met:

(A) A default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years, in the payment of principal, interest, or dividends on the security.

(B) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(f) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase.

(g) A nonissuer transaction executed by a bona fide pledgee without any purpose of evading this act.

(h) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting in the exercise of discretionary authority in a signed record for the account of others.

(i) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for 1 or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the



fairness of the terms and conditions have been approved by the administrator at a hearing.

(j) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(k) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following are met:

(i) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

(ii) A general solicitation or general advertisement of the transaction is not made.

(iii) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent.

(l) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(m) A sale or offer to sell to any of the following:

(i) An institutional investor.

(ii) A federal covered investment adviser.

(iii) Any other person exempted by rule or order under this act.

(n) A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following are met:

(i) There are not more than 50 purchasers in this state during any 12 consecutive months, other than those designated in subdivision (m).

(ii) There is no general solicitation or general advertising used in connection with the offer to sell or sale of the securities.

(iii) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state.

(iv) The issuer reasonably believes that all the purchasers in this state other than those designated in subdivision (m) are purchasing for investment.

(o) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state.

(p) An offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if both of the following are met:

(i) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933, 17 CFR 230.165.

(ii) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and may culminate in a stop order is not known by the offeror to be pending.

(q) An offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if all of the following are met:

(i) A registration statement has been filed under this act, but is not effective.

(ii) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this act.

(iii) A stop order of which the offeror is aware has not been issued by the administrator under this act, and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(r) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties.

(s) A rescission offer, sale, or purchase under section 510.

(t) An offer or sale of a security to a person not resident in this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act.

(u) An offer or sale of a security pursuant to an employee's stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer,

its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including any of the following:

(i) Offers or sales of those securities to directors; general partners; trustees, if the issuer is a business trust; officers; or consultants and advisors.

(ii) Family members who acquire those securities from those persons through gifts or domestic relations orders.

(iii) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered.

(iv) Insurance agents who are exclusive insurance agents of the issuer, its subsidiaries or parents, or who derive more than 50% of their annual income from those organizations.

(v) A transaction involving any of the following:

(i) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

(ii) An act incident to a judicially approved reorganization in which a security is issued in exchange for 1 or more outstanding securities, claims, or property interests, or partly in exchange and partly for cash.

(iii) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933, 17 CFR 230.162.

(w) Subject to subsection (2), a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if both of the following are met:

(i) The issuer is a reporting issuer in a foreign jurisdiction designated in subsection (2)(a), or by rule or order of the administrator, and has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction.

(ii) The security is listed on the foreign jurisdiction's securities exchange that has been designated in subsection (2)(a), or by rule or order under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

(x) Any offer or sale of a security by an issuer under section 202a.

(y) Any offer or sale of a security that meets the requirements for the federal exemption for a regulation A offering under section 3(b) of the securities act of 1933, 15 USC 77c(b), and SEC rule 251, 17 CFR 230.251, if the offer or sale meets all of the following requirements:

(i) The issuer has filed SEC form 1A with the securities and exchange commission with respect to the regulation A offering, in a manner acceptable to the securities and exchange commission, and in that filing the issuer has satisfied all of the requirements of 17 CFR 230.251 to 230.263 inclusively, including the filing of the regulation A offering circular required under 17 CFR 230.253.

(ii) At least 10 days before commencing an offering of securities in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the administrator, in writing or in electronic form as specified by the administrator, that contains all of the following:

(A) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in reliance on a regulation A exemption, accompanied by a nonrefundable filing fee of \$100.00 for filing the exemption notice. The fees paid to the administrator under this sub-subparagraph shall be used to pay the costs incurred in administering and enforcing this act.

(B) A copy of the completed SEC form 1A and all of the accompanying documents filed with the securities and exchange commission, including the final regulation A offering circular to be provided to prospective purchasers in connection with the offering. Before filing SEC form 1A with the administrator, the issuer may advertise its intent to make a regulation A offering within the state and to solicit interest from prospective purchasers under 17 CFR 230.254.

(iii) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the amount set forth in subsection (b) of 17 CFR 230.251, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(iv) The issuer does not accept more than \$10,000.00 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer may rely on confirmation that the purchaser is an accredited investor from a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor. Every fifth year, the administrator shall

cumulatively adjust the \$10,000.00 limitation amount described in this subparagraph to reflect the change in the consumer price index for all urban consumers published by the federal bureau of labor statistics, rounding the dollar limitation to the nearest \$100.00.

(z) Any secondary offer, sale, purchase, or trade of securities facilitated by a Michigan investment market, if the Michigan investment market effects that transaction in accordance with article 4A and has made available to any secondary purchaser, within a reasonable period before effecting the transaction, general management and financial information concerning the issuer of the securities, including the issuer's financial documents for the preceding calendar or fiscal year and interim financial information as of the end of the issuer's most recent calendar or fiscal quarter.

(2) For purposes of subsection (1)(w), both of the following apply:

(a) Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange.

(b) After an administrative hearing in compliance with applicable state law, the administrator, by rule or order under this act, may revoke the designation of a securities exchange under subsection (1)(w) or this subsection if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(3) An issuer that sells securities in this state in reliance on this exemption described in subsection (1)(y) may advertise the offering in any manner, including advertising on website platforms that may be owned and controlled by nonissuer third parties, if no commissions are paid to either employees of the issuer for the sale of the securities or to third parties that facilitate the sale of the securities, unless those third parties are licensed broker-dealers authorized to conduct transactions described in subsection (1)(y).

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013;—Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2202a Offer or sale of security by issuer; exemption from MCL 451.2301 to 451.2306 and 451.2504; requirements; adjustment; report; limitations; rules; filing fee; website; violation; "controlling person" defined; exemption as "Michigan invests locally exemption."**

Sec. 202a. (1) Except as otherwise provided in this act, an offer or sale of a security by an issuer is exempt from the requirements of sections 301 to 306 and 504 if the offer or sale meets all of the following requirements:

(a) The issuer of the security is an entity that is incorporated or organized under the laws of this state, is a resident of this state under SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, and is authorized to do business in this state.

(b) The transaction meets the requirements for the federal exemption for intrastate offerings under 15 USC 77c(a)(11) and SEC rule 147, 17 CFR 230.147, including, but not limited to, the requirements for determining whether an offeree or purchaser is a resident of this state, or the federal exemption for intrastate offerings under 15 USC 77e and SEC rule 147A, 17 CFR 230.147A. All of the following apply concerning these requirements:

(i) Each of the following is prima facie evidence that an individual is a resident of this state:

(A) A valid operator's license, chauffeur's license, or official personal identification card issued by this state.

(B) A current Michigan voter registration.

(C) A signed affidavit as described in section 7cc(2) of the general property tax act, 1893 PA 206, MCL 211.7cc, that indicates that the purchaser owns and occupies property in this state as his or her principal residence.

(D) Any other record or documents issued by this state that establishes that the purchaser's principal residence is in this state.

(ii) The provisions of SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, as applicable, apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization.

(iii) If a purchaser of a security that is exempt under this section resells that security within 6 months after the closing of the particular offering in which the purchaser obtained that security to a person that is not a

resident of this state, the original investment agreement between the issuer and the purchaser is void. If an agreement to purchase, or the purchase of, a security is void under this subparagraph, the issuer may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subparagraph shall not exceed the amount of the person's investment in the security.

(c) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the following amounts:

(i) One million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has not made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(ii) Two million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(d) The issuer has not accepted more than \$10,000.00 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer may rely on confirmation that the purchaser is an accredited investor from a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor.

(e) At least 10 days before an offer of securities is made in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the administrator, in writing or in electronic form as specified by the administrator, that contains all of the following:

(i) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by the filing fee specified in this section.

(ii) A copy of the disclosure statement to be provided to prospective investors in connection with the offering. The disclosure statement must contain all of the following:

(A) A description of the issuer, including its type of entity, the address and telephone number of its principal office, its formation history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

(B) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer.

(C) The identity of the executive officers, directors, and managing members of the issuer, and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

(D) The terms and conditions of the securities being offered and of any outstanding securities of the issuer, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities.

(E) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offering and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this sub-subparagraph, a description of the consideration being paid to that person for that assistance.

(F) A description of any litigation or legal proceedings involving the issuer or its management.

(G) The name and address of any website that the issuer intends to use in connection with the offering, including its uniform resource locator or URL. If the issuer has not engaged a website described in this

sub-subparagraph at the time the issuer files the disclosure statement described in this subparagraph with the administrator under this subdivision but subsequently does engage a website for use in connection with the offering, the issuer shall provide the information described in this sub-subparagraph to the administrator by filing a supplemental notice.

(iii) An escrow agreement with a bank or other depository institution located in this state, in which the purchaser funds will be deposited, that provides that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and that all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The bank or other depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached.

(f) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the investment company act of 1940, 15 USC 80a-3, or an entity that would be an investment company but for the exclusions provided in subsection (c) of that section, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m and 78o(d).

(g) The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

"IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), OR SUBSECTION (E) OF SEC RULE 147A, 17 CFR 230.147A(E), AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(h) The issuer requires each purchaser to certify in writing, and to include as part of that certification his or her signature, and his or her initials next to each paragraph of the certification, as follows: "I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, that the securities are subject to possible dilution, that there is no ready market for the sale of those securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Michigan resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Michigan resident, within 6 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void."

(i) If the offer and sale of securities under this section is made through an internet website, all of the following requirements are met:

(i) Before any offer of an investment opportunity to residents of this state through the use of a website, the issuer provides to the website and to the administrator evidence that the issuer is organized under the laws of this state and that it is authorized to do business in this state.

(ii) The issuer obtains from each purchaser of a security under this section evidence that the purchaser is a

resident of this state and, if applicable, an accredited investor.

(iii) The website operator files a written notice with the administrator that includes the website operator's name, business address, and contact information and states that it is authorized to do business in this state and is being utilized to offer and sell securities under this exemption. Beginning 12 months after the date of the written notice, a website operator that has filed a written notice under this subparagraph shall annually notify the administrator in writing of any changes in the information provided to the administrator under this subparagraph.

(iv) The issuer and the website keep and maintain records of the offers and sales of securities made through the website and provide ready access to the records to the administrator on request. The administrator may access, inspect, and review any website described in this subdivision and its records.

(j) All payments for the purchase of securities are directed to and held by the bank or depository institution subject to the provisions of subdivision (e)(iii).

(k) Offers or sales of a security are not made through an internet website unless the website has filed the written notice required under subdivision (i)(iii) with the administrator.

(l) The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he or she is registered as a broker-dealer, investment adviser, or investment adviser representative under article 4. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the registration requirements under article 4 if he or she does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

(m) The issuer provides a copy of the disclosure statement provided to the administrator under subdivision (e)(ii) to each prospective purchaser at the time the offer of securities is made to the prospective purchaser. In addition to the information described in subdivision (e)(ii), the disclosure statement provided to the administrator and to prospective purchasers shall include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(n) The term of the offering does not exceed 12 months after the date of the first offer.

(2) Every fifth year, the administrator shall cumulatively adjust each of the following dollar amounts to reflect the change in the consumer price index for all urban consumers published by the federal bureau of labor statistics:

(a) The dollar limitations provided in subsection (1)(c), rounding each dollar limitation to the nearest \$50,000.00.

(b) The dollar limitation provided in subsection (1)(d) and section 201(1)(y)(iv), rounding that dollar limitation to the nearest \$100.00.

(3) If the offer and sale of a security of an issuer is exempt under this section, the issuer shall provide a quarterly report to the issuer's purchasers until none of the securities issued under this section are outstanding. All of the following apply to the quarterly report described in this subsection:

(a) The issuer shall provide the report free of charge to the purchasers.

(b) An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal quarter and remains available until the next quarterly report is issued.

(c) The issuer shall file each report with the administrator and must provide a written copy of the report to any purchaser on request.

(d) The report must include all of the following:

(i) The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) The exemption provided in this section shall not be used in conjunction with any other exemption under this article, except offers and sales to controlling persons shall not count toward the limitation in subsection (1)(c).

(5) The exemption described in this section does not apply if an issuer or person that is affiliated with the issuer or offering is subject to any disqualification established by the administrator by rule or contained in rule 262 as promulgated under the securities act of 1933, 17 CFR 230.262. However, this subsection does not

apply if both of the following are met:

(a) On a showing of good cause and without prejudice to any other action by the administrator, the administrator determines that it is not necessary under the circumstances that an exemption be denied.

(b) The issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(6) The administrator may adopt rules to implement the provisions of this section and to protect purchasers that purchase securities that are exempt from registration under this section.

(7) The administrator shall charge a nonrefundable filing fee of \$100.00 for filing an exemption notice required under subsection (1). The fees paid to the administrator under this subsection shall be used to pay the costs incurred in administering and enforcing this act.

(8) A website through which an offer or sale of securities under this section is made is not subject to the broker-dealer, investment adviser, or investment adviser representative registration requirements under article 4 if the website meets all of the following conditions:

(a) It does not offer investment advice or recommendations.

(b) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the website.

(c) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the website.

(d) It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

(e) It does not engage in any other activities that the administrator by rule determines are inappropriate for an exemption from the registration requirements under article 4.

(9) Except for section 504, article 5 applies to a violation of this section, including a violation concerning website operation.

(10) As used in this section, "controlling person" means an officer, director, partner, or trustee, or another individual who has similar status or performs similar functions, of or for the issuer or to a person that owns 10% or more of the outstanding shares of any class or classes of securities of the issuer.

(11) The exemption described in this section may be referred to as the "Michigan invests locally exemption".

**History:** Add. 2013, Act 264, Imd. Eff. Dec. 30, 2013;—Am. 2017, Act 141, Imd. Eff. Oct. 30, 2017.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2203 Rule or order; exemptions and waivers.**

Sec. 203. A rule or order under this act may exempt a security, transaction, or offer, or a rule or order under this act may exempt a class of securities, transactions, or offers, from any or all of the requirements of sections 301 to 306 and 504, and a rule or order under this act may waive any or all of the conditions for an exemption or offers under sections 201 and 202.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2204 Denial, suspension, revocation, condition, or limitation of exemption.**

Sec. 204. (1) Except with respect to a federal covered security or a transaction involving a federal covered security, an order of the administrator under this act may deny or suspend application of, condition, limit, or revoke an exemption created under section 201(c)(iii), (g), or (h) or 202 or an exemption or waiver created under section 203 with respect to a specific security, transaction, or offer. An order under this section may only be issued pursuant to the procedures in section 306(4) or 604.

(2) A person does not violate section 301, 303 to 306, 504, or 510 by an offer to sell, an offer to purchase, a sale, or a purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

### ARTICLE 3

#### REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED SECURITIES

#### **451.2301 Offer or sale of security; requirements.**

Rendered Wednesday, February 6, 2019

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Sec. 301. A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under sections 201 to 203.
- (c) The security is registered under this act.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2302 Notice filing.**

Sec. 302. (1) A rule or order under this act may require the filing of 1 or more of the following records with respect to a security issued by an investment company that is a federal covered security as defined in section 18(b)(2) of the securities act of 1933, 15 USC 77r, that is not otherwise exempt under sections 201 to 203:

(a) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933, a consent to service of process signed by the issuer, and a fee of \$500.00.

(b) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933.

(2) Any security issued by a unit investment trust that is registered or that has filed a registration statement under the investment company act of 1940 as an investment company may be offered for sale and sold into, from, or within this state for an indefinite period commencing upon the later of the trust's effectiveness with the securities and exchange commission or the administrator's receipt of a notice as prescribed by the administrator and a 1-time notice filing fee of \$500.00.

(3) Each of the following applies to a notice filing under subsection (1):

(a) A notice filing is effective for a period of 1 year, commencing upon the later of the effectiveness of the offering with the securities and exchange commission or the administrator's receipt of the notice filing.

(b) A notice filing may be renewed for an additional 1-year period by filing a current form NF and the fee required by subsection (8) before the expiration of the 1-year effective period. The renewal is effective upon the expiration of the prior notice period.

(c) A notice filing may be terminated by filing with the administrator a notice of termination as prescribed by the administrator. The termination is effective upon the administrator's receipt of the notice of termination.

(4) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933, 15 USC 77r, the issuer shall file all of the following:

(a) A notice on securities and exchange commission form D or a form approved by the administrator.

(b) A consent to service of process signed by the issuer, no later than 15 days after the first sale of a federal covered security in this state.

(c) A nonrefundable filing fee of \$100.00.

(5) The administrator, by rule or order, may require the filing of any document filed with the securities and exchange commission under the securities act of 1933 and a nonrefundable filing fee of \$100.00 with respect to any federal covered security.

(6) The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r, if it finds that the order is in the public interest and there is a failure to comply with this section.

(7) The administrator may waive any or all of the provisions of this section by rule or order.

(8) All of the following apply to the renewals of a notice filing under subsection (3):

(a) Subject to adjustment under subdivision (c), the fee for the renewal is 1 of the following:

(i) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of \$250,000.00 or less, \$100.00.

(ii) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$250,000.00 but not more than \$700,000.00, \$400.00.

(iii) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$700,000.00 but not more than \$1,000,000.00, \$800.00.

(iv) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$1,000,000.00, \$1,400.00.

(b) For purposes of subdivision (a), an issuer's projection of nonexempt sales of a security must be reasonable and based on any facts known to the issuer at the time of renewal that may affect sales of the security, including, but not limited to, nonexempt sales of the security in this state during the current 1-year



notice filing period.

(c) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period exceed the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for that 1-year notice filing period, the issuer is not required to amend its projections or pay an additional fee for that notice filing period. However, the fee for renewal of the notice filing shall be the greater of the following:

(i) The renewal fee determined under subdivision (a).

(ii) A renewal fee determined under subdivision (a), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.

(d) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period are less than the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for the 1-year notice filing period, the issuer is not entitled to a refund of any part of the renewal fee for that period or adjustment of the renewal fee for any renewal period.

(e) Upon written request of the administrator, an issuer shall provide sales reports showing the issuer's nonexempt sales of a security in this state for the current and 2 previous 1-year notice filing periods, but the issuer is not otherwise required to provide a sales report to the administrator in connection with a renewal of a notice filing.

(f) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer an administrative fine in the amount of the renewal fees the issuer would have paid under subdivision (a) if its projections had been accurate. This administrative fine is in addition to an increased fee for renewal under subdivision (c), if any.

(9) If the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state, except a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r. If the deficiency is corrected, the stop order is void as of the time of its issuance and no other charge or administrative or civil fine may be imposed by the administrator.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2303 Securities registration by coordination.**

Sec. 303. (1) A security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination under this section.

(2) A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in section 305 and a consent to service of process complying with section 611:

(a) A copy of the latest form of prospectus filed under the securities act of 1933.

(b) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreement with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen, copy, or description of the security that is required by rule or order under this act.

(c) Copies of any other information, or any other records, filed by the issuer under the securities act of 1933 requested by the administrator.

(d) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(3) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(a) A stop order under subsection (4) or section 306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under section 306.

(b) The registration statement has been on file for at least 20 days or a shorter period provided by rule or order under this act.

(c) The registrant has not consented to a later effective date.

(4) The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of a price amendment, if any, and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or

suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(5) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 306. The notice by the administrator does not preclude the institution of a proceeding under section 306.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2304 Securities registration by qualification.**

Sec. 304. (1) A security may be registered by qualification under this section.

(2) A registration statement under this section must contain the information or records specified in section 305, a consent to service of process complying with section 611, and, if provided by rule under this act, all of 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.

(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 thirtieth 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.

(c) With respect to persons covered by subdivision (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.

(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 subdivision (b) other than the person's occupation.

(e) With respect to a promoter if the issuer was organized within the previous 3 years, the information or records specified in subdivision (b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

(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.

(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.

(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 upon which the offering is to be made if otherwise than for cash, the estimated aggregate underwriting and selling discounts or commissions and finders' 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.

(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.

(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 subdivision (b), (d), (e), (f), or (h) and by any person that holds or will hold 10% or more in the aggregate of those options.

(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.

(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, including any litigation, action, or proceeding known to be contemplated by governmental authorities.

(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 202(q)(ii).

(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.

(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, which 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.

(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, which is used in connection with the registration statement.

(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.

(r) Any additional information or records required by rule or order under this act.

(3) A registration statement under this section becomes effective 30 days, or any shorter period provided by rule or order under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if any of the following apply:

(a) A stop order is not in effect and a proceeding is not pending under section 306.

(b) The administrator has not issued an order under section 306 delaying effectiveness.

(c) The applicant or registrant has not requested that effectiveness be delayed.

(4) 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.

(5) A rule or order under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (2) be sent or given to each person to which an offer is made, before or concurrently with the earliest of any of the following:

(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.

(b) The confirmation of a sale made by or for the account of the person.

(c) Payment pursuant to the sale.

(d) Delivery of the security pursuant to the sale.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

**451.2305 Registration statement; persons permitted to file; filing fee; information; incorporation by reference; nonissuer distribution; deposit of security in escrow; impoundment of proceeds; conditions; form of subscription or sale contract; duration of registration statement; reports; posteffective amendments.**

Sec. 305. (1) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(2) A person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 or more than \$1,250.00. If an application for registration is withdrawn before the effective date or a preeffective stop order is issued under section 306, the administrator shall retain a fee of \$100.00 if the initial review has not been commenced, and the full filing fee after review has been commenced.

(3) A registration statement filed under section 303 or 304 must specify all of the following:

(a) The amount of securities to be offered in this state.

(b) The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

(c) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(4) A record filed under this act or the predecessor act, within 5 years preceding the filing of a registration statement, may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(5) In the case of a nonissuer distribution, information or a record shall not be required under subsection (9) or section 304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made, or unless it can be furnished by those persons without unreasonable effort or expense.

(6) A rule or order under this act may require as a condition of registration that a security issued within the previous 5 years, or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash, be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule or order under this act, but the administrator shall not reject a depository institution solely because of its location in another state.

(7) A rule or order under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than 5 years.

(8) Except while a stop order is in effect under section 306, a registration statement is effective for 1 year after its effective date, or for a longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until 1 year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(9) While a registration statement is effective, a rule or order under this act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(10) A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee calculated in the manner specified in subsection (2). A posteffective amendment relates back to the date of the offering of the additional securities being registered if the amendment is filed and the additional registration fee is paid within 1 year after the date of the sale.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

**451.2306 Denying, suspending, or revoking effectiveness; stop order; publication of guidelines, rules, or orders; conditions prohibiting issuance of stop order; summary revocation, denial, postponement, or suspension of effectiveness; modifying or vacating stop order.**

Sec. 306. (1) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that 1 or more of the following apply:

(a) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 305(10) as of its effective date, or a report under section 305(9) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the administrator shall not institute a proceeding against an effective registration statement under this paragraph more than 1 year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

(d) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

(e) With respect to a security sought to be registered under section 303, there has been a failure to comply with the undertaking required by section 303(2)(d).

(f) The applicant or registrant has not paid the proper filing fee, but the administrator shall void the order if the deficiency is corrected.

(g) One or more of the following apply to the offering:

(i) The offering will work or tend to work a fraud upon purchasers or would so operate.

(ii) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, promoters' profits or participations, or unreasonable amounts or kinds of options.

(iii) The offering is being made on terms that are unfair, unjust, or inequitable.

(2) To the extent practicable, the administrator by rule or order under this act shall publish guidelines, rules, or orders that provide notice of conduct that violates subsection (1)(g).

(3) The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(4) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (5) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order

becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(5) The administrator shall not issue a stop order under this section until all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(b) An opportunity for hearing has been given to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(c) Findings of fact and conclusions of law in a record in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2307 Waiver or modification of requirements of MCL 451.2302, 451.2303, and 451.2304(2), or certain requirements of MCL 451.2305(9).**

Sec. 307. The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 302, 303, and 304(2) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 305(9).

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

### ARTICLE 4

#### BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

#### **451.2401 Broker-dealer registration; requirements; exemptions; limitation on employment or association; employment or association with certain individuals prohibited; rule or order.**

Sec. 401. (1) A person shall not transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (2) or (4).

(2) The following persons are exempt from the registration requirement of subsection (1):

(a) A broker-dealer if the broker-dealer does not have a place of business in this state and if the broker-dealer's only transactions effected in this state are with any of the following:

(i) The issuer of the securities involved in the transactions.

(ii) A broker-dealer registered as a broker-dealer under this act or not required to be registered as a broker-dealer under this act.

(iii) An institutional investor.

(iv) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record.

(v) A bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence.

(vi) A bona fide preexisting customer whose principal place of residence is in this state but who was not present in this state when the customer relationship was established, if both of the following are met:

(A) The broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.

(B) Within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for

good cause.

(vii) Not more than 3 customers in this state during the previous 12 months, in addition to those specified in subparagraphs (i) to (vi) and under subparagraph (viii), if the broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business.

(viii) Any other person exempted by rule or order under this act.

(b) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) A person licensed or registered as a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage loans as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a.

(d) A person that is registered as a Michigan investment market under article 4A and that deals in securities solely in its capacity as a Michigan investment market.

(3) A broker-dealer, or an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, shall not directly or indirectly employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known of the suspension, revocation, or bar. If requested by a broker-dealer or issuer and if good cause is shown, an order under this act may modify or waive, in whole or in part, the application of the prohibitions of this subsection.

(4) A rule or order under this act may permit any of the following:

(a) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(i) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(ii) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.

(iii) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(b) An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in subdivision (a).

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2402 Agent registration; requirements; exemptions; employment or association; acting as agent for more than 1 broker-dealer or issuer; exception.**

Sec. 402. (1) An individual shall not transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (2).

(2) Each of the following individuals is exempt from the registration requirement of subsection (1):

(a) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934, 15 USC 78o.

(b) An individual who represents a broker-dealer that is exempt under section 401(2) or (4).

(c) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(d) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 202, other than section 202(1)(k) or (n).

(e) An individual who represents an issuer who effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933, 15 USC 77r, is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(f) An individual who represents a broker-dealer registered in this state under section 401(1) or exempt from registration under section 401(2) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000.00 acting for the account of others pursuant to discretionary authority in a signed record.

(g) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(h) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts.

(i) An employee of a person licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage loans as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, when acting as an employee of the licensed or registered person.

(j) Any other individual exempted by rule or order under this act.

(3) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling, or purchasing its securities in this state.

(4) A broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, shall not employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (1) or exempt from registration under subsection (2).

(5) An individual shall not act as an agent for more than 1 broker-dealer or more than 1 issuer at a time, unless the broker-dealers or the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this act.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2403 Investment advisor registration; requirements; exemptions; employment or association with certain individuals prohibited; exception.**

Sec. 403. (1) A person shall not transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (2).

(2) The following persons are exempt from the registration requirement of subsection (1):

(a) A person that does not have a place of business in this state and that is registered under the securities act of the state in which the person has its principal place of business, if its only clients in this state are any of the following:

(i) Federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act.

(ii) Institutional investors.

(iii) Bona fide preexisting clients whose principal places of residence are not in this state, if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence.

(iv) Any other client exempted by rule or order under this act.

(b) A person that does not have a place of business in this state if the person has had, during the preceding 12 months and in addition to those described in subdivision (a), not more than 5 clients who are natural persons and residents of this state.

(c) A person that does not hold itself out to the general public as an investment adviser and that has had, during the preceding 12 months and in addition to those described in subdivision (a), not more than 5 clients who are natural persons, who are residents of this state, and who are accredited investors as defined in rule 501(a) under the securities act of 1933, 17 CFR 230.501.

(d) The person is an investment adviser who is not required to be registered as an investment adviser under the investment advisers act of 1940 if the investment adviser's only clients in this state are other investment advisers, federal covered advisers, broker-dealers, or institutional investors.



(e) Any other person exempted by rule or order under this act.

(3) An investment adviser shall not, directly or indirectly, employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked, or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. If the investment adviser request and good cause is shown, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection.

(4) An investment adviser shall not employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 404(1) or is exempt from registration under section 404(2).

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2404 Investment adviser representative; registration; requirements; exemption; employment or association; transacting business for more than 1 investment adviser; referral fees.**

Sec. 404. (1) An individual shall not transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (2).

(2) Each of the following individuals is exempt from the registration requirement of subsection (1):

(a) An individual who is employed by or associated with an investment adviser that is exempt from registration under section 403(2) or a federal covered investment adviser that is excluded from the notice filing requirements of section 405.

(b) Any other individual exempted by rule or order under this act.

(3) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under section 405.

(4) An individual may transact business as an investment adviser representative for more than 1 investment adviser or federal covered investment adviser unless a rule or order under this act prohibits or limits an individual from acting as an investment adviser representative for more than 1 investment adviser or federal covered investment adviser.

(5) An individual acting as an investment adviser representative shall not, directly or indirectly, conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the securities and exchange commission, a securities regulator of another state, or a self-regulatory organization. If a federal covered investment adviser requests and good cause is shown, the administrator, by order, may waive, in whole or in part, the application of the requirements of this subsection.

(6) An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under section 405, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under section 405, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2405 Federal covered investment adviser; filing requirements; exceptions; notice; effectiveness of filing.**

Sec. 405. (1) Except with respect to a federal covered investment adviser described in subsection (2), a federal covered investment adviser shall not transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (3).

(2) The following federal covered investment advisers are not required to comply with subsection (3):

(a) A federal covered investment adviser without a place of business in this state if its only clients in this state are any of the following:

(i) Federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act.

(ii) Institutional investors.

(iii) Bona fide preexisting clients whose principal places of residence are not in this state.

(iv) Other clients specified by rule or order under this act.

(b) A federal covered investment adviser that does not have a place of business in this state if the federal covered investment adviser has had, during the preceding 12 months, not more than 5 clients that are residents of this state in addition to those specified under subdivision (a).

(c) Any other person excluded by rule or order under this act.

(3) A person acting as a federal covered investment adviser, not excluded under subsection (2), shall file a notice, a consent to service of process complying with section 611, and those records that have been filed with the securities and exchange commission under the investment advisers act of 1940 that are required by rule or order under this act and pay the fees specified in section 410(5).

(4) A notice under subsection (3) is effective on filing.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2406 Registration by broker-dealer, agent, investment adviser, or investment adviser representative; application; fee; correcting amendment; effectiveness of registration; renewal; other conditions or waivers.**

Sec. 406. (1) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 611 and paying the fee specified in section 410 and any reasonable fees charged by the designee of the administrator for processing the filing. Each application must contain both of the following:

(a) The information or record required for the filing of a uniform application.

(b) If requested by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(2) If the information or record contained in an application that is filed under subsection (1) is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(3) If an order is not in effect and no proceeding is pending under section 412, registration becomes effective at 12 noon on the forty-fifth day after a completed application is filed unless the registration is denied. A rule or order under this act may set an earlier effective date or may defer the effective date until 12 noon on the forty-fifth day after the filing of any amendment completing the application.

(4) A registration is effective until 12 midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 412, a registration may be automatically renewed each year by filing the records required by rule or order under this act and paying the fee specified in section 410 and the costs charged by the designee of the administrator for processing the filings.

(5) A rule or order under this act may impose other conditions not inconsistent with the national securities markets improvement act of 1996, Public Law 104-290, or an order under this act may waive, in whole or in part, specific requirements in connection with registration if the imposition or waiver is appropriate in the public interest and for the protection of investors.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2407 Succession or change in registration of broker-dealer or investment adviser; change in organization, name, or control.**

Sec. 407. (1) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under section 401 or 403, or a notice under section 405, for the unexpired portion of the current registration or notice filing.

(2) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not

involve a material change in its financial condition or management. The amendment is effective when filed or on a date designated by the registrant in the filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. Any predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(3) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment is effective when filed or on a date designated by the registrant.

(4) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule or order under this act.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2408 Termination of employment or association of agent and investment adviser representative; notice; other employment or association; withdrawal of temporary registration; power of administrator to prevent transfer; cancellation or termination of registration or application; reinstatement.**

Sec. 408. (1) If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may file the notice.

(2) If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act or a federal covered investment adviser that has filed a notice under section 405 and begins employment by or association with another investment adviser registered under this act or a federal covered investment adviser that has filed a notice under section 405, then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of section 406(1) and payment of the filing fee required under section 410, 1 of the following applies to the registration of the agent or investment adviser representative:

(a) If the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months, the registration is immediately effective as of the date of the completed filing.

(b) If the agent's central registration depository record or the investment adviser representative's investment adviser registration depository record contains a new or amended disciplinary disclosure within the preceding 12 months, the registration is temporarily effective as of the date of the completed filing.

(3) If there are or were grounds for discipline under section 412, the administrator may withdraw a temporary registration within 30 days after the application is filed. If the administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the thirty-first day after filing.

(4) The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (2)(a) or (b) based on the public interest and the protection of investors.

(5) If the administrator determines that a registrant or applicant for registration is no longer in existence, has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, is the subject of an adjudication of incapacity, is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule or order under this act may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2409 Withdrawal of registration by broker-dealer, agent, investment adviser, or investment adviser representative.**

Sec. 409. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative is effective 60 days after an application to withdraw is filed or within a shorter period as provided by rule or order under this act, unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal is effective when and on conditions required by rule or order under this act. The administrator may institute a revocation or suspension proceeding under section 412 within 1 year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2410 Filing fees.**

Sec. 410. (1) Before October 1, 2019, a person shall pay a fee of \$300.00 when initially filing an application for registration as a broker-dealer and a fee of \$300.00 when filing a renewal of registration as a broker-dealer. After September 30, 2019, a person shall pay a fee of \$250.00 when initially filing an application for registration as a broker-dealer and a fee of \$250.00 when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(2) Before October 1, 2019, an individual shall pay a fee of \$65.00 when filing an application for registration as an agent, a fee of \$65.00 when filing a renewal of registration as an agent, and a fee of \$65.00 when filing for a change of registration as an agent. After September 30, 2019, an individual shall pay a fee of \$30.00 when filing an application for registration as an agent, a fee of \$30.00 when filing a renewal of registration as an agent, and a fee of \$30.00 when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(3) Before October 1, 2019, a person shall pay a fee of \$200.00 when filing an application for registration as an investment adviser and a fee of \$200.00 when filing a renewal of registration as an investment adviser. After September 30, 2019, a person shall pay a fee of \$150.00 when filing an application for registration as an investment adviser and a fee of \$150.00 when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(4) Before October 1, 2019, an individual shall pay a fee of \$65.00 when filing an application for registration as an investment adviser representative, a fee of \$65.00 when filing a renewal of registration as an investment adviser representative, and a fee of \$65.00 when filing a change of registration as an investment adviser representative. After September 30, 2019, an individual shall pay a fee of \$30.00 when filing an application for registration as an investment adviser representative, a fee of \$30.00 when filing a renewal of registration as an investment adviser representative, and a fee of \$30.00 when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain all of the filing fee.

(5) Before October 1, 2019, a federal covered investment adviser required to file a notice under section 405 shall pay an initial and annual notice fee of \$200.00. After September 30, 2019, a federal covered investment adviser required to file a notice under section 405 shall pay an initial and annual notice fee of \$150.00.

(6) A person that is required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order requires under this act.

(7) An investment adviser representative who is registered as an agent under section 402 and who represents a person that is both registered as a broker-dealer under section 401 and registered as an investment adviser under section 403 or required as a federal covered investment adviser to make a notice filing under section 405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2012, Act 307, Imd. Eff. Oct. 1, 2012;—Am. 2015, Act 67, Eff. Oct. 1, 2015.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2411 Financial requirements; reports; records; audits or inspections; custody and discretionary authority bond or insurance; furnishing information to clients; continuing education.**

Sec. 411. (1) Subject to section 15(h) of the securities act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a rule or order under this act may establish minimum

financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(2) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222(b) of the investment advisers act of 1940, 15 USC 80b-18a, a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file financial reports required by rule or order under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(3) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule or order of the administrator. The records required to be maintained under this subsection shall be maintained as follows:

(a) Broker-dealer records may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934, 15 USC 78q, if they are readily accessible to the administrator.

(b) Investment adviser records may be maintained in any form of data storage required by rule or order under this act.

(4) The records of a broker-dealer registered or required to be registered under this act and of an investment adviser registered or required to be registered under this act are subject to reasonable periodic, special, or other audits or inspections by a representative of the administrator, in or outside of this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(5) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, a rule or order under this act may require a broker-dealer and investment adviser that has custody of or discretionary authority over funds or securities of a client to obtain insurance or post a bond or other satisfactory form of security in an amount established by the administrator by rule or order. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if commenced within the time limitations in section 509(10)(b).

(6) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, or section 222 of the investment advisers act of 1940, 15 USC 80b-18a, an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or federal covered investment adviser. A rule or order under this act may prohibit, limit, or impose conditions on the custody of funds or securities of a customer by a broker-dealer and on the custody of securities or funds of a client by an investment adviser.

(7) With respect to an investment adviser registered or required to be registered under this act, a rule or order under this act may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(8) A rule or order under this act may require an individual registered under section 402 or 404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule or order under this act may require continuing education for an individual registered under section 404.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2412 Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration; discipline; examination; summary actions; liability of control person;**

### **limitation on proceeding.**

Sec. 412. (1) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may deny an application or condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or any person directly or indirectly in control of the broker-dealer or investment adviser.

(2) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, an order under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, of a partner, officer, or director, or a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not do any of the following:

(a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than 1 year after the date of the order on which it is based.

(b) Under subsection (4)(e)(i) or (ii), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (4) would authorize the action had the conduct occurred in this state.

(3) If the administrator finds that the order is in the public interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n) authorizes the action, an order under this act may censure, impose a bar, or impose a civil fine in an amount not to exceed a maximum of \$10,000.00 for a single violation or \$500,000.00 for more than 1 violation on a registrant and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, or director, a person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(4) A person may be disciplined under subsections (1) to (3) if any of the following apply to the person:

(a) The person filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) The person willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(c) The person was convicted of any felony or within the previous 10 years was convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(ii) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(iii) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.

(iv) A court adjudicating a United States postal service fraud.

(v) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.

(vi) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.

(f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the

commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

(g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.

(h) The person refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 411(4) or refuses access to a registrant's office to conduct an audit or inspection under section 411(4).

(i) The person has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years.

(j) The person has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this paragraph when the deficiency is corrected.

(k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:

(i) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(ii) The person was found to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(iii) The person was found to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(l) The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. If an application is made by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this subdivision if the individual has successfully completed all examinations required by subsection (5). The administrator may require an applicant for registration under section 402 or 404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(5) A rule or order under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order under this act may waive an examination as to an individual and a rule under this act may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(6) The administrator may suspend or deny an application summarily, restrict, condition, limit, or suspend a registration, or censure, bar, or impose a civil fine on a registrant pending final determination of an administrative proceeding. On the issuance of the order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested by a person subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(7) Except under subsection (6), an order shall not be issued under this section unless all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant.

(b) Opportunity for hearing has been given to the applicant or registrant.

(c) Findings of fact and conclusions of law have been made on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) A person who controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (1) to (3) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a basis for discipline under this section.

(9) The administrator shall not institute a proceeding under subsection (1), (2), or (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator actually knew the material facts.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2413 Broker-dealer acting as finder; prohibited conduct.**

Sec. 413. A broker-dealer acting as a finder shall not do any of the following:

(a) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(b) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of the broker-dealer's finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, and any beneficial interest, direct or indirect, of the broker-dealer, or a member of the broker-dealer's immediate family if the broker-dealer is an individual, in the issue of the securities that are the subject of services as a finder.

(c) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the broker-dealer makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, the broker-dealer's activities as a finder do not violate section 301.

(d) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This section does not require independent investigation or alteration of offering materials furnished to the broker-dealer.

(e) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of the broker-dealer's finding activities of any material information which the broker-dealer knows, or in the exercise of reasonable care should know based on the information furnished to the broker-dealer, is material in making an investment decision, until conclusion of the transaction.

(f) Locate, introduce, or refer persons that the broker-dealer knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

### ARTICLE 4A

#### MICHIGAN INVESTMENT MARKETS

#### **451.2451 Definitions.**

Sec. 451. As used in this article:

(a) "Intrastate offering exemption" means the exemption described in section 202a or any other exemption from federal securities regulation under 15 USC 77c(a)(11) and SEC rule 147, 17 CFR 230.147, 15 USC 77e and SEC rule 147A, 17 CFR 230.147A.

(b) "Michigan investment market" means a person that is a broker-dealer, is exempt from federal registration under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and provides a market or exchange at which transactions in securities that are sold or offered for sale in this state under an intrastate offering exemption take place. As used in this subdivision, "market or exchange" includes an online market or exchange or any other market or exchange operated through a web portal.

(c) "Online" means functioning on or over the internet.

(d) "Personal identifying information" means any information used to locate or accurately categorize an individual, household, or business.

(e) "Resident of this state" means 1 of the following, as applicable:



(i) If a person is an individual, his or her principal residence is located in this state.

(ii) If a person is a business that is a general partnership or other form of organization that is not incorporated or organized under the laws of this state, that person's principal office is located in this state.

(iii) If the person is a business that is a corporation, limited liability company, limited partnership, trust, or other form of legal entity that is incorporated or organized under state law, that person is incorporated or organized under the laws of this state.

(f) "Service" means to include securities issued by a person in or on a market or exchange for sale or to assist in facilitating securities transactions in or on a market or exchange.

(g) "Web portal" means an online entity through which persons are able to effect transactions in securities.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014;—Am. 2017, Act 141, Imd. Eff. Oct. 30, 2017.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2453 Transaction of business as Michigan investment market; registration required.**

Sec. 453. Beginning May 1, 2015, a person shall not transact business in this state as a Michigan investment market unless the person is registered under this article as a Michigan investment market.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014;—Am. 2014, Act 415, Imd. Eff. Dec. 30, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

Enacting section 1 of Act 415 of 2014 provides:

"Enacting section 1. By enactment of this amendatory act, it is the intent of the legislature to delay implementation of the requirements of article 4A of the uniform securities act (2002), 2008 PA 551, MCL 451.2451 to 451.2469, concerning Michigan investment markets, until May 1, 2015."

#### **451.2455 Michigan investment market; registration requirements.**

Sec. 455. (1) A person shall register as a Michigan investment market by filing a written application, filing a consent to service of process that complies with section 611, and paying the fee specified in section 457. Subject to section 461, if a person complies with this article and demonstrates by clear and convincing evidence that the person meets the requirements for registration under this article, the administrator shall register that person as a Michigan investment market. If a person fails to provide clear and convincing evidence that the person meets the requirements for registration, the registration of the person shall remain at the discretion of the administrator.

(2) An application for registration as a Michigan investment market must contain all of the following:

(a) The names, mailing addresses, and telephone numbers of all individuals who serve as executive officers of the Michigan investment market or who are direct or indirect owners of at least a 10% ownership interest in the Michigan investment market.

(b) The uniform resource locator (URL), if applicable, used primarily by the Michigan investment market to effect transactions online.

(c) Any other information requested by the administrator as necessary to make a determination regarding registration of the Michigan investment market under section 461.

(3) If the information contained in an application that is filed under subsection (1) is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

(4) A registration is effective until 12 midnight on December 31 of the year for which the application for registration is filed.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2457 Filing fees.**

Sec. 457. (1) A person shall pay a fee of \$500.00 when initially filing an application for registration as a Michigan investment market and a fee of \$250.00 when filing a renewal of registration as a Michigan investment market.

(2) If an initial or renewal registration application is denied or withdrawn, the administrator shall retain all of the filing fee for that application.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2459 Records; examination or inspection; report.**

Sec. 459. (1) A Michigan investment market that is registered or is required to register under this article must make a written or electronic record of each transaction conducted between users through the Michigan investment market, maintain that record for at least 7 years after the date of the transaction, and provide a written or electronic copy of the record for a particular transaction to each user involved in that transaction.

(2) In addition to the records described in subsection (1), a Michigan investment market that is registered or is required to register under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule or order of the administrator and shall maintain those records in a form of data storage established by the administrator by rule or order.

(3) The records of a Michigan investment market that is registered or is required to register under this article are subject to reasonable periodic, special, or other examinations or inspections by a representative of the administrator, in or outside of this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An examination or inspection may be made at any time and without prior notice. The administrator may reasonably request paper or electronic copies and remove for examination or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the examination or inspection. The administrator may assess a reasonable charge for conducting an examination or inspection under this subsection.

(4) In January of each year, the Michigan investment market must file a report with the administrator that includes a record of each transaction the Michigan investment market effected in the preceding calendar year.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2461 Registration application; notice of filing; duties of administrator; factors to be considered; order; sanctions; discipline; proceeding.**

Sec. 461. (1) When the administrator receives an application for registration as a Michigan investment market, the administrator shall publish notice of the filing on a website managed by the administrator, where interested persons are provided an opportunity to submit written information concerning the application. Within 60 days after the date of publication of the notice, or within any longer period to which the administrator and applicant agree, the administrator shall do 1 of the following:

(a) If the administrator finds that the requirements of this article and rules promulgated under this article are satisfied, issue an order granting registration.

(b) If subdivision (a) is not met, issue an order denying registration, or granting a conditional or limited registration.

(2) In considering an application for registration for purposes of subsection (1), the administrator shall consider all of the following:

(a) Whether the Michigan investment market has the capacity to facilitate the transactions contemplated in this article and complies with the provisions of this article, the rules and orders of the administrator under this article, and the rules established by the Michigan investment market.

(b) Whether the rules established by the Michigan investment market provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers and other persons using its facilities.

(c) Whether the structure established by the Michigan investment market is designed to protect against fraud and manipulative behavior; is, in general, designed to protect investors and the public interest by not attempting to regulate or administer actions, practices, or persons that are not placed under the purview of the Michigan investment market by this article; and ensures that the operations of the Michigan investment market do not foster unfair discrimination between users, issuers, or other persons that interact with the Michigan investment market.

(d) Whether the rules established by the Michigan investment market provide for appropriate discipline of users and persons associated with its users for a violation of the provisions of this article, the rules and orders of the administrator under this article, or the rules established by the Michigan investment market.

(e) Whether the rules established by the Michigan investment market impose any burden on competition or

obstruction to a liquid intrastate securities market that is not necessary or appropriate to further the purposes of this article.

(3) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, the administrator may issue an order to revoke, suspend, condition, or limit the registration of a registrant or censure, impose a bar, or impose a civil fine in an amount that does not exceed \$10,000.00 for a single violation of this act or rules promulgated under this act, or \$500,000.00 for multiple violations, on a registrant or other person.

(4) The administrator may impose a sanction described in subsection (3) if any of the following apply to the Michigan investment market or other person that is the subject of the administrator's order:

(a) The person filed an application for registration in this state under this act within the previous 5 years, that, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) The person willfully violated or willfully failed to comply with this act, or a rule or order issued by the administrator under this act, within the previous 10 years.

(c) The person was convicted of any felony or within the previous 10 years was convicted of a misdemeanor involving a security, a commodity futures or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) The person is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) The person is the subject of an order, issued after notice and opportunity for hearing by any of the following:

(i) The securities or other financial services regulator of a state, or the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

(ii) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

(iii) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.

(iv) A court adjudicating a United States postal service fraud.

(v) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.

(vi) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.

(f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

(g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.

(h) The person refuses to allow or otherwise impedes the administrator from conducting an examination or inspection under section 459(3) or refuses access to a registrant's office to conduct an examination or inspection under section 459(3).

(i) The person has failed to reasonably supervise an employee or other individual if he or she was subject to the person's supervision and committed a violation of this act, or a rule or order of the administrator under this act, within the previous 5 years.

(j) The person has not paid a proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this subdivision if the deficiency is corrected.

(k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:

(i) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

(ii) The person was found to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.

(iii) The person was found to have been suspended or expelled from membership by or participation in a self-regulatory organization operating under the securities laws of a foreign jurisdiction.

(l) The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

(m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business, as indicated by evidence presented at a hearing conducted for the purpose of reviewing the applicant's qualifications for registration.

(5) The administrator may suspend or deny an application summarily, may restrict, condition, limit, or suspend a registration, or censure, bar, or may impose a civil fine on a registrant, pending final determination of an administrative proceeding. When an order under this subsection is issued, the administrator shall promptly notify each person that is subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested by a person that is subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(6) Except under subsection (5), the administrator shall not issue an order under this section unless the administrator has met all of the following:

(a) Given appropriate notice to the applicant or registrant.

(b) Provided an opportunity for hearing to the applicant or registrant.

(c) Made findings of fact and conclusions of law on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) The administrator by order may discipline a person that controls, directly or indirectly, a person that is not in compliance with this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a basis for discipline under this section.

(8) The administrator shall not institute a proceeding under subsection (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator first became aware of the material facts.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2463 Servicing; requirements.**

Sec. 463. (1) A Michigan investment market may not service a business if the business has already utilized the services of a portal, market, or exchange that facilitates a secondary market for intrastate securities, rather than facilitates securities transactions for original purchasers of the business's intrastate securities of those purchasers' own securities. The business may not be or request to be serviced on 2 or more of those portals, markets, or exchanges at any given time.

(2) A Michigan investment market shall only service a business if that business meets, and the Michigan investment market verifies that the business meets, all of the following at the time the business conducts any offers, sales, or reselling of its intrastate securities:

(a) Is a resident of this state.

(b) Is doing business in this state at the time the business conducts any offers, sales, or reselling of its intrastate securities. For purposes of this subdivision, a business is considered to be doing business in this state if all of the following are met:

(i) If the business had gross revenues of more than \$5,000.00 from the sale of products or services or other

conduct of its business for its most recent 12-month fiscal period, it derived at least 80% of its gross revenues, and those of its subsidiaries on a consolidated basis, from the operation of a business or of real property located in or from the rendering of services in this state during 1 of the following time periods:

(A) In its most recent fiscal year, if the first offer of any part of the issue is made during the first 6 months of the issuer's current fiscal year.

(B) In the first 6 months of its current fiscal year, or during the 12-month fiscal period ending with that 6-month period, if the first offer of any part of the business's intrastate offering is made during the last 6 months of the business's current fiscal year.

(ii) At the end of its most recent semiannual fiscal period before the first offer of any part of the issue, the business had at least 80% of its assets and those of its subsidiaries on a consolidated basis located in this state.

(iii) The business intends to use and uses at least 80% of the net proceeds to the business from the sale or resale of intrastate securities in connection with the operation of a business or of real property in, the purchase of real property located in, or the rendering of services in this state.

(iv) The principal office of the business is located within this state.

(c) Is not insolvent. As used in this subdivision, "insolvent" means any of the following:

(i) The liabilities of the business exceed its assets.

(ii) The business is unable to pay its debts as they mature.

(iii) The business has filed for bankruptcy or made an assignment for the benefit of creditors.

(d) Is not subject to a current or pending disciplinary court order or injunctions.

(e) Is not a defendant in a pending court proceeding.

(f) Complies with the laws of this state applicable to the conduct of its business.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2465 Prohibited conduct.**

Sec. 465. (1) A Michigan investment market shall not do any of the following:

(a) Sell or otherwise distribute to any third party personal identifying information of an individual without his or her written consent.

(b) In confirming whether an individual is a resident of this state or meets any other requirement of relevant state or federal law, require an individual to provide any personal information except for 1 or more of the following:

(i) The address of his or her primary residence.

(ii) The number of a valid operator's license, chauffeur's license, or official personal identification card issued by this state.

(iii) A current Michigan voter registration.

(iv) An operator's or chauffeur's license, military identification card, Michigan identification card, passport, or other government-issued identification document that includes a photograph of the individual.

(c) Charge a fee for a securities transaction conducted through the Michigan investment market that exceeds 5% of the value of the transaction, as determined by the value passed from 1 user of the Michigan investment market to another in exchange for that security.

(d) Deal in securities options, or include securities from more than 1 class in an offering, without obtaining written acknowledgment from each person involved in that transaction of the nature of the securities transacted.

(2) A Michigan investment market must provide disclaimers and restrictive legends that conspicuously state that its transactions are limited to residents of this state under section 3(a)(11) of the securities act of 1933, 15 USC 77c, and must limit access to information about specific investment opportunities to individuals who confirm they are residents of this state, such as by providing a record or document described in section 202a(1)(b)(i)(A) to (D).

(3) The Michigan investment market may not use established, nondiscretionary methods, whether by providing a trading facility or by setting rules, in bringing together the orders for securities of multiple buyers and sellers.

(4) The Michigan investment market may, in exercising its discretion, elect to not effect any transaction that, in the opinion of the Michigan investment market, would be severely adverse or unconscionable as it relates to a party involved in the transaction or to a party involved in a transaction previously effected by the Michigan investment market.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2467 Individual shown to be out-of-state resident; prima facie evidence of residency.**

Sec. 467. (1) An individual's participation in a Michigan investment market in this state is considered a representation that he or she is a resident of this state. If it is subsequently shown that an individual was not a resident of this state at the time of his or her participation in a Michigan investment market, any transaction conducted by that individual while he or she was not a resident is void.

(2) A person that is not a resident of this state shall not secondarily purchase an intrastate security within 9 months of the completion of the offering through which the security was sold originally. For purposes of this section, each of the following is prima facie evidence that an individual is a resident of this state:

(a) A valid operator's license, chauffeur's license, or official personal identification card issued by this state.

(b) A current Michigan voter registration.

(c) A signed affidavit as described in section 7cc(2) of the general property tax act, 1893 PA 206, MCL 211.7cc, that indicates that the individual owns and occupies property in this state as his or her principal residence.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2469 Rules; compliance with state or federal statute, rule, or regulation.**

Sec. 469. (1) The department may promulgate any rules that the administrator considers necessary to administer this article if those rules are consistent with the provisions of this act.

(2) Nothing in this article exempts any person to which this article is subject from complying with any applicable state or federal statute, rule, or regulation that applies to that person or the conduct of that person's business.

**History:** Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

## ARTICLE 5 FRAUD AND LIABILITIES

#### **451.2501 Unlawful conduct; fraud.**

Sec. 501. It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:

(a) Employ a device, scheme, or artifice to defraud.

(b) Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(c) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

Enacting section 1 of Act 355 of 2014 provides:

"Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

#### **451.2502 Investment advice or publications; prohibited conduct; rule or order.**

Sec. 502. (1) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or

selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, to do any of the following:

(a) Employ a device, scheme, or artifice to defraud another person.

(b) Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(2) An investment adviser acting as a finder shall not do any of the following:

(a) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(b) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities that are the subject of services as a finder.

(c) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, his or her activities as a finder do not violate section 301.

(d) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This subdivision does not require independent investigation or alteration of offering materials furnished to the finder.

(e) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making an investment decision, until conclusion of the transaction. This subdivision does not require the finder to independently generate information.

(f) Locate, introduce, or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

(3) A rule or order under this act may do any of the following:

(a) Define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(b) Specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2503 Civil action or administrative proceeding; burden of proof.**

Sec. 503. (1) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.

(2) In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2504 Sales and advertising literature; filing.**

Sec. 504. (1) Subject to subsection (2), a rule or order under this act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act.

(2) This section does not apply to sales and advertising literature specified in subsection (1) relating to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by

section 201, 202, or 203 except as required under section 201(g) or 202(1)(x).

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2505 Misleading filings.**

Sec. 505. A person shall not make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2506 Misrepresentations concerning registration or exemption.**

Sec. 506. The filing of an application for registration, a registration statement, a notice filing under this act, or the registration of a person, the notice filing by a person, or the registration of a security under this act does not constitute a finding by the administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. A person shall not make or cause to be made to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2507 Immunity from liability.**

Sec. 507. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2508 Violations; penalties.**

Sec. 508. (1) A person that willfully violates this act or a rule adopted or order issued under this act, except section 504 or the notice filing requirements of section 302 or 405, or that willfully violates section 505 knowing the statement made to be false or misleading in a material respect, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) The attorney general or the proper prosecuting attorney may institute appropriate criminal proceedings under this act with or without a reference from the administrator.

(3) This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2509 Civil liability; joint and several liability; statute of limitations; violative contract; waiver prohibited; other rights or remedies.**

Sec. 509. (1) Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998.



(2) A person is liable to the purchaser if the person sells a security in violation of section 301, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. All of the following apply to an action under this subsection:

(a) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at 6% per year from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at 6% from the date of purchase, costs, and reasonable attorney fees determined by the court.

(3) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, if the seller did not know of the untruth or omission and the purchaser does not sustain the burden of proving that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. All of the following apply to an action under this subsection:

(a) The seller may maintain an action to recover the security, any income received on the security, costs, and reasonable attorney fees determined by the court, on the tender of the purchase price, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, interest at 6% from the date of sale of the security, costs, and reasonable attorney fees determined by the court.

(4) A person acting as a broker-dealer or agent that sells or buys a security in violation of section 401(1), 402(1), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (2) or, if a seller, a remedy as specified in subsection (3).

(5) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 403(1), 404(1), or 506 is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at 6% from the date of payment, costs, and reasonable attorney fees determined by the court.

(6) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct that gives rise to liability under this subsection, interest at 6% from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(7) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (2) to (6):

(a) A person that directly or indirectly controls a person liable under subsections (2) to (6), unless the controlling person sustains the burden of proving that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(b) An individual who is a managing partner, executive officer, or director of a person liable under

subsections (2) to (6), including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(c) An individual who is an employee of or associated with a person liable under subsections (2) to (6) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(d) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (2) to (6), unless the person sustains the burden of proving that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

(8) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(9) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(10) A person may not obtain relief if an action is not commenced within 1 of the following time limits, as applicable:

(a) Under subsection (2) for violation of section 301, or under subsection (4) or (5), unless the action is commenced within 1 year after the violation occurred.

(b) Under subsection (2), other than for violation of section 301, or under subsection (3) or (6), unless the action is commenced within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation occurred.

(11) A person that has made or engaged in the performance of a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(12) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(13) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 411(5).

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2510 Purchaser, seller, or recipient of investment advice; action prohibited; false representation; security as void; damages.**

Sec. 510. (1) A purchaser, seller, or recipient of investment advice may not maintain an action under section 509 if all of the following are met:

(a) The purchaser, seller, or recipient of investment advice receives in a record, before the action is commenced, an offer that does all of the following:

(i) States the respect in which liability under section 509 may have arisen and fairly advises the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, including financial or other information necessary to correct all material misstatements or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice.

(ii) If the basis for relief under this section may have been a violation of section 509(2), offers to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at 6% per year from the date of purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, offers to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at 6% from the date of purchase in cash equal to the damages computed in the manner provided in this subsection.

(iii) If the basis for relief under this section may have been a violation of section 509(3), offers to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at 6% from the date of the sale, or if the purchaser no longer owns the security, offers to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest

at 6% from the date of the sale.

(iv) If the basis for relief under this section may have been a violation of section 509(4), and if the customer is a purchaser, offers to pay as specified in subdivision (a)(ii) or, if the customer is a seller, offers to tender or to pay as specified in subdivision (a)(iii).

(v) If the basis for relief under this section may have been a violation of section 509(5), offers to reimburse in cash the consideration paid for the advice and interest at 6% from the date of payment.

(vi) If the basis for relief under this section may have been a violation of section 509(6), offers to reimburse in cash the consideration paid for the advice and the amount of any actual damages that may have been caused by the conduct, and interest at 6% from the date of the violation causing the loss.

(vii) States that the offer must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or within a shorter period of not less than 3 days that the administrator, by order, specifies.

(b) The offeror has the present ability to pay the amount offered or to tender the security under subdivision (a).

(c) The offer under subdivision (a) is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

(d) The purchaser, seller, or recipient of investment advice that accepts the offer under subdivision (a) in a record within the period specified under subdivision (a)(vii) is paid in accordance with the terms of the offer.

(2) If the legality or exempt status of a sale of a security made in accordance with this act is contingent on the intrastate nature of that transaction, a person's agreement to purchase, or the purchase of, that security is considered a representation that the person is a resident of this state at the time that agreement is made, and if this representation is subsequently shown to be false, the agreement for the sale of the security is void.

(3) If an agreement to purchase, or the purchase of, a security is void under subsection (2), the issuer of the security may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subsection shall not exceed the amount of the person's investment in the security.

**History:** 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

## ARTICLE 6

### ADMINISTRATION AND JUDICIAL REVIEW

#### 451.2601 Administration of act.

Sec. 601. (1) The administrator shall administer this act.

(2) The administrator or officer, employee, or designee of the administrator shall not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 607(2). This act does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 602, 607(3), or 608.

(3) This act does not create or diminish any privilege or exemption that exists at common law, by statute, by rule, or otherwise.

(4) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(5) The securities investor education and training fund is created in the state treasury. All of the following apply to the securities investor education and training fund:

(a) The state treasurer shall credit to the fund all civil fines, costs of investigations, and other administrative assessments received under this act and may receive money or other assets from any source for deposit into the fund.

(b) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(c) If the amount of money in the fund at the close of any fiscal year is \$1,000,000.00 or less, that money

shall remain in the fund and shall not lapse to the general fund. If the amount of money in the fund at the close of any fiscal year is more than \$1,000,000.00, \$1,000,000.00 shall remain in the fund and shall not lapse to the general fund, and the balance of the money shall be credited to the general fund.

(d) The administrator is the administrator of the fund for auditing purposes.

(e) The administrator shall use or disburse money appropriated from the fund for the education and training of Michigan residents in matters concerning securities laws and investment issues.

(6) All fees and civil or administrative fines received under this act shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2602 Investigation and subpoenas; powers and authority of administrator; failure to comply; privilege against self-incrimination; assistance to securities regulator of another jurisdiction.**

Sec. 602. (1) The administrator may do any of the following:

(a) Conduct public or private investigations in or out of this state that the administrator considers necessary or appropriate to determine whether any person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or the adoption of rules and forms under this act.

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be commenced.

(c) Publish a record concerning an action, proceeding, or investigation under, or a violation of, this act or a rule adopted or order issued under this act if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(2) For the purpose of an investigation under this act, the administrator or a designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(3) If a person fails to appear or refuses to testify, file a statement, produce records, or otherwise fails to obey a subpoena as required by the administrator under this act, the administrator may refer the matter to the attorney general or the proper prosecuting attorney, who may apply to the circuit court of Ingham county or a court of another state to enforce compliance. The court may do any of the following:

(a) Hold the person in contempt.

(b) Order the person to appear before the administrator.

(c) Order the person to testify about the matter under investigation or in question.

(d) Order the production of records.

(e) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

(f) Order a civil fine of not less than \$10,000.00 and not more than \$500,000.00 for each violation.

(g) Grant any other necessary or appropriate relief.

(4) This section does not preclude a person from applying to the circuit court of Ingham county or a court of another state for appropriate relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(5) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this act or in an action commenced or proceeding instituted by the administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, administrative or civil fine, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the circuit court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other information compelled under a court order obtained under this subsection shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury, contempt, or otherwise failing to comply

with the order.

(6) At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters which the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2603 Civil action; enforcement; authority of court; bond.**

Sec. 603. (1) If it appears to the administrator that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act, the administrator may maintain an action in the circuit court to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(2) In an action under this section and upon a proper showing, the court may do any of the following:

(a) Issue a permanent or temporary injunction, restraining order, or a declaratory judgment.

(b) Issue an order for other appropriate or ancillary relief, including any of the following:

(i) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, which may be the administrator, for the defendant or the defendant's assets.

(ii) An order to the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits, to collect debts, and to acquire and dispose of property.

(iii) The imposition of a civil fine of not more than \$10,000.00 for a single violation or \$500,000.00 for multiple violations.

(iv) An order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act.

(v) An order for the payment of prejudgment and postjudgment interest.

(c) Granting other relief that the court considers appropriate.

(3) The administrator shall not be required to post a bond in an action under this section.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2604 Enforcement; order and notice; procedure; final order; civil penalties; failure to comply; enforcement of order; petition; additional penalty.**

Sec. 604. (1) If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the administrator may do 1 or more of the following:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act.

(b) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 401(2)(a)(iv) or (vi) or an investment adviser under section 403(2)(a)(iii).

(c) Issue an order under section 204.

(2) An order under subsection (1) is effective on the date of issuance. Upon issuance of the order, the

administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil fine or costs of the investigation the administrator will seek, a statement of the reasons for the order, and notice that the matter will be scheduled for a hearing within 15 days after receipt of a request in a record from the person. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including any civil fine imposed or requirement for payment of the costs of investigation sought in a statement in that order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(3) If a hearing is requested or ordered pursuant to subsection (2), the hearing shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The final order may make final, vacate, or modify the order issued under subsection (1).

(4) In a final order issued under this section, the administrator may do any of the following:

(a) Impose a civil fine of not more than \$10,000.00 for a single violation of this act or a rule adopted or order issued under this act or \$500,000.00 for multiple violations.

(b) In addition to a civil fine imposed under subdivision (a), if the violation or violations of this act or a rule adopted or order issued under this act includes an act, practice, or course of business directed at, or that resulted in damage to, any of the following, the administrator may impose a civil fine of not more than \$10,000.00 for a single violation or \$500,000.00 for multiple violations:

(i) One or more individuals who are 60 years of age or older.

(ii) One or more individuals who the administrator determines were unable to protect their financial interests due to disability or illiteracy or an inability to understand the language of an agreement presented to them.

(c) Charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

(5) If a petition for judicial review of a final order is not filed in accordance with section 609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The filed order shall have the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(6) If a person fails to comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court shall not require the administrator to post a bond. If the court finds, after service and opportunity for hearing, that the person is not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose an additional civil fine against the person for contempt in an amount not less than \$10,000.00 or more than \$500,000.00 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2605 Forms; orders; rules; financial statement; interpretative opinions; conduct of hearing.**

Sec. 605. (1) The administrator may do any of the following:

(a) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act, and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

(b) By rule, define terms, whether or not used in this act, if the definitions are not inconsistent with this act.

(c) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(2) A rule or form shall not be adopted or amended or an order issued or amended under this act unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, section 608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including in the adoption of uniform rules, forms, and procedures.

(3) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, and section 222 of the investment advisers act of 1940, 15 USC 80b-18a, the administrator may require that a financial statement

filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule or order under this act. A rule or order under this act may establish any of the following:

(a) Subject to section 15(h) of the securities exchange act of 1934, 15 USC 78o, and section 222 of the investment advisers act of 1940, 15 USC 80b-18a, the form and content of financial statements required under this act.

(b) Whether unconsolidated financial statements must be filed.

(c) Whether required financial statements must be audited by an independent certified public accountant.

(4) The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule or order under this act may charge a reasonable fee for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this act.

(5) A civil or administrative fine under this act shall not be imposed and liability does not arise for conduct that is engaged in or omitted in good faith conformity with a rule, form, or order of the administrator under this act.

(6) A hearing in an administrative proceeding under this act shall be conducted in public unless the administrator for good cause consistent with the purposes intended by this act determines that the hearing not be public.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2606 Availability of filings to public.**

Sec. 606. (1) The administrator shall maintain, or designate a person to maintain, a register of all applications for registration of securities; registration statements; notice filings, applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no-action determinations issued under this act.

(2) The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(3) Upon request, the administrator shall furnish to a person a copy of a record that is a public record or a certification that the public record does not exist. A rule under this act may establish a reasonable charge for furnishing the record. A copy of the record certified or a certificate of its nonexistence by the administrator is prima facie evidence of a record or its nonexistence.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2607 Public records; confidentiality.**

Sec. 607. (1) Subject to subsection (2), records obtained by the administrator or filed under this act, including a record contained in or filed with any registration statement, application, notice filing, or report, are public records and are available for public examination.

(2) The following records are not public records and are not available for public examination under subsection (1):

(a) A record obtained by the administrator in connection with an audit or inspection under section 411(4) or an investigation under section 602.

(b) A part of a report filed in connection with a registration statement under sections 301 and 303 through 305, or a record under section 411(4), that contains trade secrets or confidential information when the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law.

(c) A record that is not required to be provided to the administrator or filed under this act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

(d) A nonpublic record received from a person specified in section 608.

(e) Any social security number, residential address unless used as a business address, or residential telephone number unless used as a business telephone number contained in a record that is filed.

(f) A record obtained by the administrator through a designee of the administrator that is determined by a

rule or order under this act to have been either of the following:

- (i) Appropriately expunged from the administrator's records by that designee.
- (ii) Appropriately determined to be nonpublic or nondisclosable by that designee if the administrator finds that this is in the public interest and for the protection of investors.

(3) The administrator may disclose a record obtained in connection with an audit or inspection under section 411(4) or a record obtained in connection with an investigation under section 602 if disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 608(1).

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2608 Uniformity and cooperation with other agencies.**

Sec. 608. (1) The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 607, share records and information with the securities regulators of 1 or more states, Canada or 1 or more of its provinces or territories, 1 or more foreign jurisdictions, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, federal or state banking and insurance regulators, and any governmental law enforcement agency, in order to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, and state and foreign governments.

(2) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the administrator shall, in the discretion of the administrator, take into consideration in carrying out the public interest the following general policies:

- (a) Maximizing effectiveness of regulation for the protection of investors.
- (b) Maximizing uniformity in federal and state regulatory standards.
- (c) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(3) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

- (a) Establishing or employing 1 or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act.
- (b) Developing and maintaining uniform forms.
- (c) Conducting a joint examination or investigation.
- (d) Holding a joint administrative hearing.
- (e) Instituting and prosecuting a joint civil or administrative proceeding.
- (f) Sharing and exchanging personnel.
- (g) Coordinating registrations under sections 301 and 401 through 404 and exemptions under section 203.
- (h) Sharing and exchanging records.
- (i) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.
- (j) Formulating common systems and procedures.
- (k) Notifying the public of proposed rules, forms, statements of policy, and guidelines.
- (l) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private organizations involved in capital formation, considered to be necessary or appropriate to promote or achieve uniformity.
- (m) Developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2609 Judicial review.**

Sec. 609. (1) Final orders issued by the administrator under this act are subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Rules adopted under this act are subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance



**451.2610 Applicability of sections; sales or offers to sell; purchases or offers to purchase; offer in this state; acceptance in this state; publications; radio, television, or electronic communication; prohibited or actionable conduct.**

Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1), 404(1), 501, 506, 509, and 510 apply to a person that sells or offers to sell a security if the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509, and 510 apply to a person that purchases or offers to purchase a security if the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if either of the following apply to the offer:

(a) It originates from this state.

(b) It is directed by the offeror to a place in this state and received at the place to which it is directed.

(4) For purposes of this section, an offer to purchase or to sell is accepted in this state whether or not either party is then present in this state, if both of the following apply to the acceptance:

(a) It is communicated to the offeror in this state, the offeree reasonably believes the offeror to be present in this state, and the acceptance is received at the place in this state to which it is directed.

(b) It has not previously been communicated to the offeror, orally or in a record, outside this state.

(5) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than 2/3 of its circulation outside this state during the previous 12 months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio, television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless any of the following are met:

(a) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

(b) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state.

(c) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

(d) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(6) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

**451.2611 Service of process.**

Sec. 611. (1) A consent to service of process complying with this section required by this act must be signed and filed in the form required by a rule or order under this act. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor, or personal representative under this act or a rule adopted or order issued by the administrator under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(2) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued by the administrator under this act and the person has not filed a consent to service of process under subsection (1), that act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person, the person's successor, or personal representative.

(3) Service under subsection (1) or (2) may be made by providing a copy of the process to the office of the

administrator, but it is not effective unless both of the following are met:

(a) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address given in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice.

(b) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court or the administrator in a proceeding before the administrator allows.

(4) Service as provided in subsection (3) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(5) If the process is served under subsection (3), the court or the administrator in a proceeding before the administrator shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

#### **451.2612 Severability clause.**

Sec. 612. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

## ARTICLE 7 TRANSITION

#### **451.2701 Effective date.**

Sec. 701. This act takes effect October 1, 2009.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

#### **451.2702 Repeal of MCL 451.501 to 451.818.**

Sec. 702. The uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, is repealed.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

#### **451.2703 Pending actions, prosecutions, or proceedings; predecessor act.**

Sec. 703. (1) The predecessor act exclusively governs all actions, prosecutions, or proceedings that are pending or may be maintained or instituted on the basis of facts or circumstances occurring before the effective date of this act, but a civil action shall not be maintained to enforce any liability under the predecessor act unless commenced within any period of limitation that applied when the cause of action accrued or within 3 years after the effective date of this act, whichever is earlier.

(2) All effective registrations under the predecessor act, all administrative orders relating to the registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and all conditions imposed upon the registrations under the predecessor act remain in effect for the same time period they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(3) The predecessor act exclusively governs any offer or sale made within 1 year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

**History:** 2008, Act 551, Eff. Oct. 1, 2009.

**Compiler's note:** For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.