

Act No. 355  
Public Acts of 2014  
Approved by the Governor  
October 21, 2014  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

**Introduced by Reps. Jenkins, Kurtz, Shirkey, Foster, Rendon, Lauwers, Graves, Jacobsen, Schor, Pettalia, Callton, Poleski, Zorn, Yonker, Muxlow, Schmidt, Kelly, Somerville, Kowall and Howrylak**

# **ENROLLED HOUSE BILL No. 5273**

AN ACT to amend 2008 PA 551, entitled "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 make uniform the law with reference to securities; and to repeal acts and parts of acts," by amending the title and sections 202, 401, and 501 (MCL 451.2202, 451.2401, and 451.2501), section 202 as amended by 2013 PA 264, and by adding article 4A.

*The People of the State of Michigan enact:*

## TITLE

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.

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).

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).

## ARTICLE 4A

### MICHIGAN INVESTMENT MARKETS

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 section 3(a)(11) of the securities act of 1933, 15 USC 77c(a)(11), and SEC rule 147, 17 CFR 230.147.

(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.

Sec. 453. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor