

**UNIFORM SECURITIES ACT (EXCERPT)**  
**Act 265 of 1964**

\*\*\*\*\* 451.502 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009  
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**451.502 Investment adviser; unlawful practices.**

Sec. 102. (a) Except as otherwise provided in this subsection, an investment adviser, a federally covered adviser, or a person who represents an investment adviser or a federally covered adviser shall not, directly or indirectly, do any of the following:

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

(2) Engage in an act, practice, or course of business that operates or could operate as a fraud or deceit upon a client or prospective client.

(3) Acting as principal for his or her own account, knowingly sell any security or purchase any security from an investment advisory client, or acting as a broker for a person other than that client, knowingly effect any sale or purchase of any security for the account of that client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client in writing to the transaction. The prohibitions of this subdivision do not apply to a federally covered adviser or to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an adviser in relation to the transaction.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

(2) That no assignment of the investment advisory contract may be made by the investment adviser without the consent of the other party to the contract.

(3) That the investment adviser, if a partnership, shall notify the other party to the investment advisory contract of any change in the membership of the partnership within a reasonable time after the change.

(c) It is unlawful for any investment adviser acting as a finder to do any of the following:

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

(2) 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.

(3) 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.

(4) 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 finder.

(5) 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.

(6) 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.

(d) The finder is not required to independently generate information.

(e) Unless waived by the administrator, an investment adviser registered or required to be registered under this act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement in a form established by the administrator by rule or order. An investment adviser shall deliver the disclosure statement required by this section to a client or prospective client not less than 48 hours prior to entering into an investment advisory contract with the client or prospective client, or at the time of entering into the investment advisory contract if the advisory client has a

right to rescind the investment advisory contract without penalty within 5 business days of entering into the investment advisory contract.

(f) An investment adviser shall annually and without charge deliver or offer to deliver to each of its advisory clients the disclosure statement required by this section. Any disclosure statement required by this section and requested in writing by an advisory client pursuant to an offer to deliver must be mailed or delivered within 5 business days of the request. The delivery or offer to deliver required by this section need not be made to advisory clients receiving advisory services solely pursuant to a contract with an investment company registered pursuant to section 15(c) of the investment company act of 1940, 15 U.S.C. 80a-15.

(g) Subsection (b)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, and does not apply to any person, except a trust, collective trust fund, or separate account referred to in section 3(c)(11) of the investment company act of 1940, 15 U.S.C. 80a-3, if the investment advisory contract relates to the investment of assets in excess of \$1,000,000.00, and the investment advisory contract provides for compensation based on the asset value of the company or fund under management averaged over a specific period and increasing and decreasing proportionately with the investment performance of the company or fund over a specific period in relation to the investment record of an appropriate index of securities prices, or another measure of investment performance as the administrator by rule, regulation, or order may specify. For purposes of determining whether subsection (b)(1) applies to an investment advisory contract, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of the company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be considered appropriate unless the administrator by order shall determine otherwise. The definition of the term "assignment" and the other terms used in this section shall be the same as the definitions of those terms in the investment advisers act of 1940.

(h) Unless the administrator by rule or order permits taking or having custody, it is unlawful for any investment adviser not registered as a broker-dealer to take or have custody of any securities or funds of any client.

(i) It is unlawful for an agent registered with a broker-dealer to conduct business as an investment adviser or an investment adviser representative except through the broker-dealer with which the agent is registered and with the written consent of the broker-dealer filed with the administrator, in a form and subject to terms and conditions acceptable to the administrator.

**History:** 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.