

UNIFORM SECURITIES ACT (2002) (EXCERPT)

Act 551 of 2008

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 Notes: 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 Notes: 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 Notes: 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 advisor 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 Notes: 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 Notes: 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 Notes: 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 Notes: 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 Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance

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 Notes: 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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, 2027, 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 ;-- Am. 2019, Act 73, Imd. Eff. Sept. 30, 2019 ;-- Am. 2023, Act 132, Imd. Eff. Sept. 29, 2023

Compiler's Notes: 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 Notes: 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 Notes: 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 Notes: 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.