

**[No. 494]**

**(HB 5763)**

AN ACT to amend 1964 PA 265, entitled "An act to enact the uniform securities act relating to the issuance, offer, sale or purchase of securities and commodity contracts; to prohibit fraudulent practices in relation thereto; to establish civil and criminal penalties for violations of the act and civil penalties for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers and their principals, agents, investment advisers, commodity issuers, and securities; to make uniform the law with reference thereto; and to repeal certain acts and parts of acts," by amending the title and sections 101, 102, 103, 201, 202, 203, 204, 301, 304a, 305, 401, 402, 403, 405, 406, 409, 410, 412, 413, 414, and 417 (MCL 451.501, 451.502, 451.503, 451.601, 451.602, 451.603, 451.604, 451.701, 451.704a, 451.705, 451.801, 451.802, 451.803, 451.805, 451.806, 451.809, 451.810, 451.812, 451.813, 451.814, and 451.817), section 201 as amended by 1996 PA 349, sections 202, 203, 402, and 410 as amended by 1990 PA 150, section 304a as added and section 305 as amended by 1996 PA 529, sections 401 and 409 as amended by 1988 PA 408, and section 413 as amended by 1992 PA 207, and by adding sections 202a and 308.

*The People of the State of Michigan enact:*

TITLE

An act to enact the uniform securities act 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.

**451.501 Offer, sale, or purchase of security; unlawful practices.  
[M.S.A. 19.776(101)]**

Sec. 101. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud.
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

**451.502 Investment adviser; unlawful practices.  
[M.S.A. 19.776(102)]**

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

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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

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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.

### **451.503 Imitation or false ingots, bullion, wafers, medals, artifacts, or instruments representing securities. [M.S.A. 19.776(103)]**

Sec. 103. It is unlawful for any person with intent to deceive to make, offer, or sell imitation or false ingots, bars of bullion, wafers, medals, or similar artifacts, or certificates or other instruments representing securities.

### **451.601 Registration required; exceptions. [M.S.A. 19.776(201)]**

Sec. 201. (a) A person shall not transact business in this state as a broker-dealer or agent unless registered under this act.

(b) A broker-dealer or issuer shall not employ an agent unless the agent is registered. The registration of an agent is not effective during any period when the agent is not

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associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities that make him or her an agent, the agent as well as the broker-dealer or issuer shall immediately notify the administrator in writing on a form prescribed by the administrator.

(c) A person shall not transact business in this state as an investment adviser unless the person meets 1 or more of the following:

(1) The person is registered under this act.

(2) The person is registered as a broker-dealer without the imposition of a condition under section 204(b)(5).

(3) The person's only clients in this state are insurance companies, federally covered advisers, banks, or trust companies.

(4) 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 any of the following apply:

(A) The investment adviser's only clients in this state are other investment advisers, federally covered advisers, broker-dealers, or institutional investors.

(B) The investment adviser has no place of business in this state and the investment adviser directs business communications in this state to a person who is an existing customer and whose principal place of residence is not in this state.

(C) The investment adviser has no place of business in this state and the investment adviser during the preceding 12-month period has had not more than 5 clients, other than those specified in subparagraph (A), who are residents of this state.

(5) The person's only clients in this state are individuals who access the person's services through a 1-900 or toll-free telephone number and the services are generic in nature and not customized or specific to an individual and would not otherwise be considered the offering of investment advice.

(d) A registration under this section is effective upon order of the administrator and expires on December 31 of that year. If a person does not file an annual report, with the information required by the administrator, before December 31 of each year, the person shall not continue to transact business in this state as an investment adviser, broker-dealer, or agent.

(e) The registration provisions of this act do not apply to a county treasurer acting under his or her authority under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150.

(f) 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, is exempted from registering as a broker-dealer under this act for the offer or sale of mortgage loans as defined under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684. 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, is exempted from the agent registration provision of this act for the offer or sale of mortgage loans as defined under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, when acting as an employee of the licensed or registered person.

### **451.602 Application for registration; contents; announcement; fees; registration of successor; irrevocable consent to service of process; capital and bond requirements; fingerprinting. [M.S.A. 19.776(202)]**

Sec. 202. (a) A broker-dealer, agent, or investment adviser may obtain an initial registration by filing with the administrator an application together with a consent to

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service of process pursuant to section 414(g). The application shall contain the information that the administrator by rule requires concerning any of the following:

(1) The applicant's form and place of organization.

(2) The applicant's proposed method of doing business.

(3) The qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee.

(4) Any injunction or administrative order or conviction of a misdemeanor or of a felony.

(5) The applicant's financial condition and history.

(b) The administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in this state. Registration becomes effective upon order of the administrator. The administrator may by rule or order establish classes of or otherwise condition the registration of broker-dealers, agents, or investment advisers.

(c) Every applicant for registration shall pay a filing fee and every registrant shall pay an annual fee of \$250.00 in the case of a broker-dealer, \$30.00 in the case of an agent, and \$150.00 in the case of an investment adviser. Every applicant filing an application for registration of a successor pursuant to subsection (d) shall pay a filing fee of \$100.00 for the unexpired portion of the year. A registered agent who has terminated his or her connection with a broker-dealer shall pay a transfer fee of \$10.00 when transferring his or her connection to another broker-dealer.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence. The administrator may grant or deny the application.

(e) An applicant for registration under this act or an issuer who offers or sells a security in this state through any person shall file with the administrator, in the form prescribed by the administrator by rule or order, an irrevocable consent to service of process.

(f) Subject to the requirements of section 15 of title I of the securities exchange act of 1934, 15 U.S.C. 78o, and section 222 of the investment advisers act of 1940, 15 U.S.C. 80b-18a, the administrator may by rule or order require a minimum capital for registered broker-dealers and investment advisers and prescribe a ratio between net capital and aggregate indebtedness. If the registrant fails to comply with the minimum net capital requirement, the registrant shall immediately cease all investment advisory or securities business operations and promptly notify the administrator of its failure to maintain the required net capital, of the steps to be taken to cure the net capital deficiency, and of its anticipated date of reopening business operations. The registrant shall not reactivate its securities or investment advisory business operations without prior notification to the administrator.

(g) Except as otherwise provided in this section, the administrator may require a fidelity bond from a broker-dealer, agent, or investment adviser who is required to be registered under this act. The administrator may not require a bond from a broker-dealer that is registered under the securities exchange act of 1934 or an investment adviser that maintains its principal place of business in a state other than this state if the investment adviser is registered in that other state and is in compliance with that state's bonding requirements, if any.

(h) Unless the requirement is waived by rule or order of the administrator, all persons, including but not limited to partners, officers, directors, and agents employed by a broker-dealer or investment adviser who are regularly employed within this state shall, as a condition of employment, be fingerprinted. The administrator may process the fingerprint cards with the federal bureau of investigation and the department of state police either directly or through the national association of securities dealers. The fingerprints or information relating to the fingerprints shall be used for the official use of the administrator only.

**451.602a Adviser's form ADV; notice filing. [M.S.A. 19.776(202a)]**

Sec. 202a. (a) Except as provided in subsection (b), before conducting business in this state, a federally covered adviser shall file with the administrator or through the investment adviser registration depository a complete and current copy of the adviser's form ADV as filed with the securities and exchange commission. A notice filing shall be accompanied by a consent to service of process and a fee of \$150.00.

(b) The provisions of subsection (a) do not apply to a federally covered adviser that meets 1 of the following:

(1) He or she is a registered broker-dealer that is not subject to a condition imposed under section 204(b)(5).

(2) His or her only clients in this state are individuals who access his or her services through a toll-free telephone number and the services are generic in nature, are not customized or specific to an individual, and are not otherwise the offering of investment advice.

(c) A notice filing shall be effective upon receipt by the administrator and shall expire on December 31 of the year of filing. A notice filing may be renewed by the federally covered adviser filing with the administrator, either directly or through the investment adviser registration depository, a copy of the last annual update to form ADV that the adviser filed with the securities and exchange commission, together with an annual renewal fee of \$150.00.

(d) A federally covered adviser may terminate or withdraw a notice filing by notifying the administrator of the termination or withdrawal in writing. A termination or withdrawal is effective upon receipt by the administrator of the written notification.

(e) A federally covered adviser that acquires the business of an investment adviser or another federally covered adviser, or an investment adviser that acquires the business of a federally covered adviser, shall make a notice filing.

(f) If a federally covered adviser files an amendment with the securities and exchange commission to correct information that is or becomes inaccurate or incomplete in a document also filed with the administrator as part of a notice filing, the federally covered adviser shall file a copy of the amendment with the administrator, either directly or through the investment adviser registration depository.

(g) For purposes of this section, "notice filing" means the documents filed with the administrator under subsection (a).

**451.603 Preservation of records; filing financial reports; correction of information; examination of records; expenses; cooperation and exchange of information; summary suspension order; withdrawal or termination of registration; notice of appointment of trustee; notice of proceedings or sanctions; filing of advertising; restrictions. [M.S.A. 19.776(203)]**

Sec. 203. (a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the

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administrator by rule or order prescribes. All records required shall be preserved for 3 years unless the administrator by rule or order prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file financial reports as the administrator by rule prescribes.

(c) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest or for the protection of investors. The expenses reasonably attributable to the examination of a matter arising under this section may be charged to the applicant or registrant involved. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as it deems it practicable in administering this subsection, may cooperate and exchange information with the securities and commodities administrators of other states, the securities and exchange commission, the commodity futures trading commission, any national securities exchange or national securities association registered under the securities exchange act of 1934, and other appropriate law enforcement agencies. Failure of a registrant to promptly provide records for inspection shall be cause for a summary suspension order until conclusion of the examination of the records.

(e) A registered broker-dealer or investment adviser may not withdraw or terminate its registration unless the registrant has complied with all of the following:

(1) Filed a broker-dealer or investment adviser withdrawal form as prescribed by the administrator.

(2) Delivered all securities and cash balances owing to all customers.

(3) Delivered all securities owing to other broker-dealers.

(4) Met other conditions as the administrator may by rule or order prescribe.

(5) Received a withdrawal order from the administrator approving the withdrawal request.

(f) Notwithstanding the provisions of subsection (e):

(1) A registrant may temporarily cease business by promptly advising the administrator in writing on or before the date of temporary cessation of business of the fact of cessation, the reasons for cessation, and the date or basis for reopening of the business.

(2) A registrant or federally covered adviser subject to a merger or acquisition where all obligations of the predecessor registrant or federally covered adviser are acquired by or transferred to the new broker-dealer or investment adviser or federally covered adviser that continues the business in an uninterrupted fashion shall comply with section 202(d) or 202a(e), whichever is applicable, instead of this section.

(g) A registered broker-dealer shall immediately notify the administrator of the appointment of a trustee for the registrant pursuant to the securities investor protection act of 1970. A broker-dealer for whom such a trustee has been appointed shall file with the administrator a broker-dealer withdrawal form in accordance with subsection (e). A broker-dealer's registration continues effective until entry of the withdrawal order by the administrator.

(h) A registrant or applicant for registration shall promptly notify the administrator in writing if any proceedings have been commenced or any sanction imposed by securities

administrators of other states, other state regulatory agencies, the securities and exchange commission, or any national securities exchange or national securities association registered under the securities exchange act of 1934.

(i) Except for advertising related to a federally covered security, the administrator may by rule or order require a broker-dealer or investment adviser to file all advertising for review and acceptance before first use.

(j) The administrator shall not require any of the following:

(1) That a broker-dealer that is registered under the securities exchange act of 1934 make, maintain, or preserve any records other than those required to be made, maintained, and preserved under the securities exchange act of 1934.

(2) That an investment adviser that maintains its principal place of business in another state make, maintain, or preserve any records other than those required by that state, provided that the investment adviser is registered in that state and is in compliance with any record-keeping requirements of that state.

(3) That a broker-dealer that is registered under the securities exchange act of 1934 file a financial report that is not required to be created and filed under the securities exchange act of 1934.

(4) That an investment adviser that maintains its principal place of business in another state create or file a financial report that is not required by that state, provided that the investment adviser is registered in that state and is in compliance with any financial reporting requirements of that state.

**451.604 Denial, suspension, or revocation of registration, or censure of registrant; grounds; postponement or suspension of registration pending final determination; order; notice; hearing; cancellation of registration or application; withdrawal from registration; conditions to entering of order; civil liability; violation. [M.S.A. 19.776(204)]**

Sec. 204. (a) The administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if it finds that 1 or more of the following apply:

(1) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(B) Has violated or failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act.

(C) Has been convicted of any misdemeanor involving moral turpitude or any felony.

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business.

(E) Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser.

(F) Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying, suspending, or revoking

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registration as a broker-dealer, floor broker, agent, or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the securities exchange act of 1934 or in the case of an individual, is subject to an order by the securities and exchange commission barring the individual from association with a broker-dealer or investment adviser or is the subject of an order of a national securities exchange or a national securities association registered under the securities exchange act of 1934 suspending or expelling him or her from membership, or is the subject of a United States post office fraud order. The administrator may by order deny, suspend, or revoke any broker-dealer or investment adviser registration if the applicant or registrant has been associated with a broker-dealer which was liquidated pursuant to the securities investor protection act of 1970, or if 1 or more of the applicant's or registrant's partners, officers, or directors have been associated with a broker-dealer liquidated under that act, unless the association was terminated 12 months or more before the commencement of litigation under that act, or unless the associated person establishes that he or she did not engage in dishonest or unethical business practices or violate or fail to comply with any provisions of this act or a predecessor act, or any rule or order under this act or a predecessor act, during association with that broker-dealer.

(G) Has engaged in dishonest or unethical business practices.

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the administrator may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

(J) Has delayed unreasonably delivery of securities to the extent that the registrant is in a position to control or direct the delivery of the securities. The burden of proof of inability to control or direct delivery shall rest with the registrant.

(K) Has represented that securities will be listed or that application for listing will be made, without basis in fact for the representation.

(L) Has induced excessive trading in a customer's account, or induced trading beyond the customer's known financial resources, if done with the intent to produce profits and commissions for the registrant or an agent in disregard of the customer's best interests as they reasonably appeared at the time of the transaction, and if improper under the then existing circumstances.

(M) Has recommended to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as may be necessary under the circumstances concerning the customer's investment objectives, financial situation and needs, and other information known by the person making the recommendation.

(N) Has recommended speculative low priced securities to customers without knowledge of or an attempt to obtain information concerning the customer's other securities holdings, financial situation, investment objectives, and ability to bear the risks inherent in the purchase of those securities, or has recommended the securities in disregard of the information.

(O) Has executed a transaction on behalf of a customer without authority to do so.

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(P) Has executed transactions pursuant to general discretionary authority for the account of a customer without first obtaining general discretionary authority in writing from the customer. However, written authority is not required if the discretionary authority relates solely to the execution of an order and is limited in scope.

(Q) Has acted on an agency basis for both the seller and the purchaser of a security without disclosing that fact to both on the confirmation.

(R) Has, while acting on an agency basis for a customer in any transaction, charged the customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to a security at the time of the transaction, the expense of executing the order and the value of any service rendered by reason of experience in and knowledge of the security, and the market for the security; or has sold at an excessive markup in relation to the market price of the security at the time of sale in light of the volume of securities traded at that time.

(S) Has entered into a transaction with a customer in a security at a price not reasonably related to the market price of the security.

(T) Has extended credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board.

(U) Has employed in connection with the purchase or sale of a security a manipulative or deceptive device or contrivance.

(V) Has sold a security to or purchased a security from a customer without disclosing that the broker-dealer is acting as a market maker in that security or has a substantial position in the market.

(W) Has, while registered as an agent or investment adviser, borrowed money from a customer.

(X) Has made unauthorized use of the funds of a customer; or has hypothecated a customer's securities contract without having a lien thereon unless written consent of the customer was first obtained.

(Y) Has, while registered as an agent, effected securities transactions when those transactions were not recorded on the records of the employer broker-dealer.

(Z) Has operated an account under a fictitious name.

(2) The applicant or registrant has failed reasonably to supervise its agents if it is a broker-dealer or its employees if an investment adviser.

(3) The applicant or registrant has failed to pay the proper filing fee. The administrator may enter only a denial order under this subdivision, and it shall vacate the denial order when the deficiency has been corrected.

(b) The following provisions govern the application of subsection (a)(1)(I):

(1) The administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if he or she is an individual or an agent of the broker-dealer.

(2) The administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser if he or she is an individual or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser.

(3) The administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

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(5) The administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his or her not transacting business in this state as an investment adviser.

(6) The administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser.

(c) The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that the order has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If a hearing is not requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

(e) The administrator may institute a revocation or suspension proceeding under subsection (a)(1)(B) within 1 year after withdrawal from registration of a broker-dealer, agent, or investment adviser became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) An order may not be entered under any part of this section except the first sentence of subsection (c) without all of the following:

(1) Appropriate prior notice to the applicant or registrant, as well as to the employer or prospective employer if the applicant or registrant is an agent.

(2) Opportunity for hearing.

(3) Written findings of fact and conclusions of law.

(g) The administrator may by order, if it finds the order to be in the public interest, impose a civil fine of \$1,000.00 on any registrant if it finds that the registrant, or in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, has engaged in conduct prohibited by subsection (a)(1)(B), (G), or (J) to (Z).

(h) A violation of a provision of this section or action of the administrator pursuant to this section shall not subject a registrant to civil liability to a customer of the registrant unless that violation or action is contrary to another provision of this act.

### **451.701 Sale of securities; registration requirement. [M.S.A. 19.776(301)]**

Sec. 301. It is unlawful for any person to offer or sell any security in this state unless 1 of the following is met:

(1) It is registered under this act.

(2) The security or transaction is exempted under section 402.

(3) The security is a federally covered security.

**451.704a Small company offering registration. [M.S.A. 19.776(304a)]**

Sec. 304a. (1) A security that is exempt from registration under the federal exemption set forth in 17 C.F.R. 230.504 may be registered under this section. An issuer eligible to register a security under this section shall use a registration form approved by the administrator as the disclosure document for the offering. A registration under this section shall be known as a small company offering registration.

(2) An application for a small company offering registration shall comply with this section. The offering is exempt pursuant to 17 C.F.R. 230.504, 17 C.F.R. 230.251, or section 3(a)(11) of the securities act of 1933. However, the administrator may waive provisions of this section.

(3) A small company offering registration under this section is not available to either of the following:

(a) Investment companies subject to the investment company act of 1940.

(b) Issuers subject to the reporting requirements of section 13 or section 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o.

(4) All of the following provisions apply to the availability of a small company offering registration:

(a) A small company offering registration shall not be utilized by the following issuers and programs unless the administrator grants written permission based upon a showing that adequate disclosure can be made to investors using the small company offering registration format:

(i) Holding companies, or companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

(ii) Portfolio companies, such as real estate investment trusts.

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

(b) A small company offering registration under this section is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements shall be met:

(i) The issuer is a domestic corporation, a foreign corporation, or a manager managed limited liability company organized under the laws of any state, territory, or possession of the United States or province or territory of Canada. The administrator may allow other entities to file a small company offering registration.

(ii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(iii) The offering price for securities; the exercise price if the securities offered are options, warrants, or rights for common stock or membership interests; or the conversion price if the securities are convertible into common stock or units of membership interest is at least \$1.00 per share or unit of membership interest. The issuer shall enter into an agreement with the administrator that the issuer will not split any class of security or declare a dividend for 2 years after the effective date of the registration if such action has the effect of lowering the price below \$1.00 per share.

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(iv) The aggregate offering price of the securities offered, within or outside this state, is not more than \$1,000,000.00, or a greater amount established under 17 C.F.R. 230.504, or \$5,000,000.00 if a federal exemption is granted to this state pursuant to section 3(b) of the securities act of 1933, 15 U.S.C. 77c, or an amount authorized under 17 C.F.R. 230.251, if the issuer is utilizing a registration form approved by the administrator.

(c) A small company offering registration under this section is only available for debt offerings if the issuer can demonstrate a reasonable ability to service its debt.

(5) Except as otherwise provided in this subsection, financial statements shall be prepared in accordance with generally accepted accounting principles or the Canadian equivalent. If the issuer has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. Annual financial statements shall be audited by independent certified public accountants or chartered accountants, as appropriate, except that annual financial statements in lieu of being audited may be reviewed by independent certified public accountants or chartered accountants, in accordance with the accounting and review services standards promulgated by the American institute of certified public accountants or the Canadian equivalent, consistently applied, rather than audited, if all of the following conditions are satisfied:

(a) The issuer has not previously sold securities through an offering involving general advertising or the solicitation of prospective investors.

(b) The issuer has not been previously required under federal, state, provincial, or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(c) The aggregate amount of all previous sales of securities by the issuer within the last 24 months does not exceed \$1,000,000.00.

(d) The amount of the small company offering for which a small company registration is sought does not exceed \$1,000,000.00.

(6) A small company offering registration under this section is not available if any of the following provisions apply to the issuer, to any of the issuer's officers, directors, managers, 10% security holders, promoters, or selling agent of the securities to be offered, or to any officer, director, or partner of the selling agent of the securities to be offered:

(a) The person has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the small company offering registration application is filed.

(b) The person has been convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following, within 5 years before the small company offering registration application is filed:

(i) Forgery.

(ii) Embezzlement.

(iii) Obtaining money under false pretenses.

(iv) Larceny.

(v) Conspiracy to defraud.

(c) The person is currently subject to either of the following:

(i) A state administrative enforcement order or judgment entered against that person by a state securities administrator or the securities and exchange commission within 5 years before the small company offering registration application is filed.

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(ii) A federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or failing to state material facts, was found and the order or judgment was entered within 5 years before the small company offering registration application is filed.

(d) The person is subject to a federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.

(e) The person is currently subject to a court order, judgment, or decree entered within 5 years before the small company offering registration application is filed that does either of the following:

(i) Temporarily, preliminarily, or permanently restrains or enjoins that person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

(ii) Involves the making of a false filing with any state or with the securities and exchange commission.

(f) A person who is disqualified under this subsection shall not act in any capacity other than that for which the person is licensed or registered. A disqualification under this subsection is automatically waived if the administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances to deny the exemption.

(g) Subdivisions (a), (b), (c), and (e) do not apply if the person disqualified under those subdivisions is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against that person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to that person.

(7) An applicant who files a small company offering registration application in this state shall not split its securities or declare a stock or membership dividend for any security issued under this section for 2 years after the registration is effective without the prior written approval of the administrator.

(8) In addition to a properly completed application form, an applicant for a small company offering registration under this section shall file all of the following exhibits with the administrator:

(a) The form of the selling agency agreement.

(b) The issuer's articles of incorporation or other charter documents and all amendments.

(c) The issuer's bylaws or operating agreement, as amended.

(d) Copies of any resolutions by directors or managers setting forth terms and provisions of securities to be issued.

(e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.

(f) A specimen of the security to be offered, including any legend restricting resale.

(g) Consent to service of process accompanied by an appropriate resolution.

(h) Copies of all material directed or furnished to investors in the offering.

(i) The form of escrow agreement for escrow of proceeds. An escrow agreement shall comply with all of the following:

(i) The administrator may require that the issuer impound the proceeds from the sale of a registered security in this state until the issuer receives a specified amount from the

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sale of that security in this state or elsewhere that is sufficient to accomplish the stated purposes of the offering or until the issuer's stipulated requirements are met.

(ii) The administrator may require that the issuer return any impounded proceeds, together with any accrued interest, to investors if the issuer fails to raise the specified amount while the registration is effective or within 1 year or if the issuer's stipulated requirements are not met.

(iii) A bank or trust company may act as the depository or escrow agent for impounded proceeds. Checks, drafts, and money orders shall be made payable to the depository. If a broker-dealer is acting as selling agent for the issuer, the broker-dealer shall promptly remit payments made directly to the broker-dealer to the depository or escrow agent.

(iv) A request to release impounded funds shall be in writing. The request shall confirm compliance with the registration and shall be accompanied by a statement from the depository or escrow agent setting forth the total amount on deposit.

(j) Consent to inclusion in the disclosure document of an accountant's report.

(k) Consent to inclusion in the disclosure document of a tax advisor's opinion or a description of tax consequences.

(l) Consent to inclusion in the disclosure document of an evaluation by a licensed attorney of any pending or anticipated litigation or administrative action.

(m) The form of any subscription agreement for the purchase of securities in the offering.

(n) An opinion of a licensed attorney that the securities to be sold in the offering are duly authorized and binding on the issuer in accordance with the terms of the securities.

(o) A list of the residence street addresses of officers, directors, managers, and principal security holders.

(9) Information provided to the administrator under subsection (8) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) An applicant for a small company offering registration under this section shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but in no case less than \$100.00 or more than \$1,250.00, to the administrator with the application form. If the applicant withdraws the application before the small company offering registration is effective or before a preeffective stop order is issued, the administrator shall retain the entire filing fee if review of the application has commenced, or shall retain a \$100.00 fee and refund the balance of the filing fee to the applicant if review of the application has not commenced.

(11) A small company offering registration statement filed under this section is effective for 1 year from its effective date, except during the time a stop order is in effect under this section. A small company offering registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the small company offering registration statement is effective. A small company offering registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A small company offering registration statement may be withdrawn otherwise only in the discretion of the administrator.

(12) For the period that a small company offering registration statement is effective, the administrator may by rule or order require the person who filed the small company offering registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the small company offering registration statement and to disclose the progress of the offering.

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(13) A small company offering registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective small company offering registration statement as proposed to be offered, the person or persons who filed the small company offering registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the small company offering registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the small company offering registration statement, if any, plus a late registration fee of \$250.00. Upon the election and payment, the small company offering registration statement shall be considered to have been in effect with respect to those securities. Every person filing an amendment under this section shall pay a filing fee, calculated in the manner specified in subsection (10), with respect to the additional securities.

(14) Fees, expense reimbursements, and fines received under this section shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(15) Fees and fines received under this section shall not be expended for partisan political activity.

(16) All of the following apply to orders under this subsection:

(a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any small company offering registration statement if it finds that the order is in the public interest and any of the following:

(i) The small company offering registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under subsection (13) as of its effective date, or any report under subsection (12) is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(ii) Any provision of this section or any rule, order, or condition lawfully imposed under this section has been violated in connection with the offering by any of the following:

(A) The person filing the small company offering registration statement.

(B) The issuer, any officer, director, or manager of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the small company offering registration statement is directly or indirectly controlled by or acting for the issuer.

(C) Any underwriter.

(iii) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court entered under any other federal or state act applicable to the offering. However, the administrator shall not institute a proceeding against an effective small company offering

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registration statement under this subdivision more than 1 year from the date of the order or injunction relied on, and may not enter an order under this subdivision on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section.

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

(v) The offering has worked or has tended to work a fraud, deception, or imposition or would operate to work a fraud, deception, or imposition.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the small company offering registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subdivision (c) that the order has been entered, the reasons that the order has been entered, and that within 15 days after the receipt of a written request the matter will be scheduled for hearing. If no hearing is requested and none is ordered by the administrator, the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in subdivision (c), may modify, vacate, or extend the order until final determination.

(c) A stop order shall not be entered under this section except under the first sentence of subdivision (b) without all of the following:

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

(ii) Opportunity for hearing.

(iii) Written findings of fact and conclusions of law.

(d) The administrator may vacate or modify a stop order if it finds that the conditions that prompted entry of the stop order have changed or that it is otherwise in the public interest to vacate or modify the stop order.

### **451.705 Registration statement; filing; fee; contents; conditions; effective period; withdrawal; reports, information, and progress of offering; amendment; election; registration fee; filing fee; disposition of fees, expense reimbursements, and fines; prohibition; applicability of section to securities registered under § 451.704a. [M.S.A. 19.776(305)]**

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

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

(c) Every registration statement shall specify all of the following:

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

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

(3) Any withdrawal or any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

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

(e) The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) The administrator may by rule or order require as a condition of registration by qualification or coordination both of the following:

(1) That any security issued or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow.

(2) That the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by rule or order determine the conditions of any escrow or impounding required under this subsection, and, after prior notice and opportunity for hearing, may order the cancellation in whole or in part of any security deposited in escrow if necessary for the protection of security holders. The administrator may not reject a depository solely because of location in another state.

(g) The administrator may by rule or order impose conditions under which a security registered by qualification may be sold, if it finds that the conditions are reasonable and in the public interest.

(h) Every registration statement is effective for 1 year from its effective date, except during the time a stop order is in effect under section 306. A registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective or the issuer has a class of securities that have been subject to the reporting requirements of section 13 or 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o, for not less than 9 months before the transaction and all reports required by that act have been filed for that period. A registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

(i) For the period that the registration statement is effective, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(j) A registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective registration statement, as proposed to be offered, the person or persons who filed the registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the registration statement, if any, plus a late registration fee of \$250.00. Upon the election and payment, the registration statement shall be considered to have been in effect with respect to those shares. Every

person filing an amendment under this subsection shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities.

(k) Fees, expense reimbursements, and fines received under this act shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(l) Fees and fines received under this act shall not be expended for partisan political activity.

(m) This section does not apply to securities registered under section 304a.

**451.708 Registered security or filed registration statement; notice filing; projection of nonexempt sales; reports; penalty.  
[M.S.A. 19.776(308)]**

Sec. 308. (a) Any security issued by an investment company, other than a unit investment trust, that is registered or that has filed a registration statement under the investment company act of 1940 may be offered for sale and sold into, from, or within this state upon the annual receipt by the administrator of all of the following:

(1) A notice as prescribed by the administrator. A copy of the federal registration statement filed with the securities and exchange commission under the securities act of 1933 may be provided to the administrator in lieu of the notice.

(2) Payment of a fee of \$500.00.

(3) A consent to service of process.

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

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

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

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

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

(d) With respect to any security that is a federally covered security under the securities act of 1933, the issuer shall file a notice on securities and exchange commission form D or a form approved by the administrator; with a consent to service of process signed by the issuer, no later than 15 days after the first sale of a federally covered security in this state, together with a nonrefundable filing fee of \$100.00.

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

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

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

(h) All of the following apply to the renewals of a notice filing under subsection (c):

(1) Subject to adjustment under subdivision (3), the fee for the renewal shall be 1 of the following:

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

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

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

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

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

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

(A) The renewal fee determined under subdivision (1).

(B) A renewal fee determined under subdivision (1), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.

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

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

(6) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer a penalty in the amount of the renewal fees the issuer would have paid under subdivision (1) if its projections had been accurate. This penalty is in addition to an increased fee for renewal under subdivision (3), if any.

### **451.801 Definitions. [M.S.A. 19.776(401)]**

Sec. 401. As used in this act, unless the context otherwise requires:

(a) "Administrator" means the office of financial and insurance services of the department of consumer and industry services.

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(b) “Affiliate” means a person that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with a specified person.

(c) “Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. “Agent” does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by section 402(a)(1), (2), (3), (4), (5), (9), or (10), (2) effecting transactions exempted by section 402(b), (3) effecting transactions in a covered security as defined in section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933, 15 U.S.C. 77r, or (4) effecting transactions with existing employees, partners, officers, or directors of the issuer or any of its subsidiaries if, in connection with all of these 4 cases, no commission is paid or given directly or indirectly for soliciting any person in this state. “Agent” does not include an officer or general partner of an issuer whose securities are registered under the provisions of this act, who represents the issuer in effecting transactions in the registered securities, if no commission is paid or given directly or indirectly for soliciting any person in this state. “Agent” does not include a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). “Agent” does not include a person whose transactions in this state are limited to only those transactions set forth in section 15(h)(2) of the securities exchange act of 1934, 15 U.S.C. 78o. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition. The administrator may by rule or order exclude other persons from the definition of the word “agent”.

(d) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. “Broker-dealer” does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, (4) a person who has no place of business in this state if (A) he or she effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months he or she does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in clause (A) of this subdivision, whether or not the offeror or any of the offerees is then present in this state, or (5) a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). The administrator may by rule or order exclude other persons from the definition of the word “broker-dealer”.

(e) “Commission” means any payment in cash, securities, or goods for offering or selling, promise, or commitment to provide payment in the future for offering or selling, or any other similar payment. Commission does not include a real estate commission commensurate with fees paid in the area for similar services, paid to licensed real estate brokers solely for real estate services which have been rendered, or payment by a person to a lawyer or accountant in connection with advice or recommendations made by a lawyer or accountant to the client with whom the lawyer or accountant has an established professional relationship, if disclosure of the payment and the interest of the lawyer or accountant in the transaction or in the issuer or any affiliate of the issuer, is made in writing to the client before the sale. Officers, directors, and partners of an issuer or purchaser, or persons occupying a similar status shall not be considered a finder if their contact was purely incidental and their compensation was not directly or indirectly tied to or conditioned upon involvement in securities solicitation or purchase.

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(f) “Direct or indirect compensation or remuneration” means any payment, receipt or use of proceeds of an offering for the benefit of the promoter, general partners, officers or directors, or persons occupying similar positions or their affiliates, any receipt, payment, or use of securities or goods by those persons at less than the amount public investors paid for the securities or goods, or any markup charged on sale of property to the entity raising capital, any advantageous contractual relationships, any real estate commission, or other similar payments or arrangements to those persons.

(g) “Federally covered adviser” means a person that is registered under section 203 of the investment advisers act of 1940. The term does not include a person excluded from the definition of investment adviser under subdivision (l)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (11).

(h) “Federally covered security” means any security that is a “covered security” under the securities act of 1933 or rules or regulations promulgated under that act.

(i) “Finder” means a person who, for consideration, participates in the offer to sell, sale, or purchase of securities or commodities by locating, introducing, or referring potential purchasers or sellers. Finder does not include a person whose actions are solely incidental to a transaction exempt pursuant to section 402(b)(19). The administrator may by rule or order exclude other persons from this definition.

(j) “Fraud”, “deceit”, and “defraud” are not limited to common-law deceit.

(k) “Guaranteed” means guaranteed as to payment of principal, interest, or dividends.

(l) “Investment adviser” means any person who, for consideration, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities, who, for consideration and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or who acts as a finder in conjunction with the offer, sale, or purchase of a security. “Investment adviser” does not include any of the following:

(1) A bank, savings institution, or trust company.

(2) A lawyer, accountant, engineer, geologist, geophysicist, or teacher whose performance of these services is solely incidental to the practice of his or her profession.

(3) A broker-dealer or a registered agent acting on behalf of a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for the services.

(4) A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of a client.

(5) A person who has no place of business in this state if either of the following applies:

(A) His or her only clients in this state are other investment advisers, federally covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts the assets of which are managed by a bank or trust company or other institutional manager, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.

(B) During any period of 12 consecutive months he or she does not have more than 5 clients in this state other than those specified in subparagraph (A).

(6) A person excluded from the definition of investment adviser under section 202(a)(11) of the investment advisers act of 1940, 15 U.S.C. 80b-2.

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(7) Any other persons not within the intent of this subdivision as the administrator may by rule or order designate.

(8) A trustee whose custody of assets is pursuant to judicial appointment, or appointment under a trust indenture or agreement, and who does not hold himself or herself out to the general public as giving advice to others with respect to securities and who maintains close contact with the personal financial affairs of his or her clients as a part of his or her fiduciary responsibilities, or a person who gives advice only to such a trustee.

(9) A county treasurer acting pursuant to his or her authority under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150.

(10) A person who is a federally covered adviser.

(11) A person who is employed by or associated with an investment adviser.

(m) "Investment adviser representative" means a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual except a clerical or ministerial employee or other employee or associate designated by the administrator by rule or order as within the intent of this subsection, who is employed by or associated with either of the following:

(1) An investment adviser that is registered or required to be registered under this act and who does any of the following:

(i) Makes any recommendations or otherwise renders advice regarding securities.

(ii) Manages accounts or portfolios of clients.

(iii) Determines which recommendation or advice regarding securities should be given.

(iv) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(v) Supervises employees who perform any of the activities described in subparagraph (i), (ii), (iii), or (iv).

(2) A federally covered adviser that is subject to section 203A of title II of the investment advisers act of 1940, 15 U.S.C. 80b-3a, and is designated by the administrator by rule or order.

(n) "Investment advisers act of 1940" means the investment advisers act of 1940, title II of chapter 686, 54 Stat. 847, 15 U.S.C. 80b-1 to 80b-21.

(o) "Investment company act of 1940" means the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64.

(p) "Issuer" means any person who issues or proposes to issue any security, except that:

(1) For certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(2) For certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under titles or leases, the term "issuer" means the owner of the oil, gas, or mining titles or leases or payments out of production or any fractional part thereof who creates and sells certificates of interest or participation therein.

(q) "Nonissuer" means not directly or indirectly for the benefit of the issuer. A sale of securities shall be considered to be indirectly for the benefit of the issuer if all of the following conditions are met:

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(1) The sale is directly or indirectly made for the benefit of a director or executive officer of the issuer, or a person occupying a similar status or performing similar functions, or a beneficial owner of 10% or more of any class of equity securities of the issuer.

(2) The sale, together with all sales made in this state by or for the benefit of the issuer during the 6-month period immediately before the date of the sale, otherwise than pursuant to a registration statement or exemption order under this act, exceeds 1% of the outstanding securities of the class of securities being sold.

(3) The securities are not of a class that has been designated by the administrator as eligible for trading in this state.

(r) "Notice filing" means the documents filed with the administrator under section 202a or 308, or both, as applicable.

(s) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(t) "Promoter" means a person who, acting alone or in conjunction with 1 or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or a person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, 10% or more of the proceeds from the sale of any class of securities or 10% or more of the equity interest in the issuer after the offering is complete. However, a person who receives such an amount of securities or proceeds either solely as underwriting commissions pursuant to an offering of securities registered under this act or solely in consideration of property or legal or accounting services shall not be considered a promoter within the meaning of this subsection if the person does not otherwise take part in founding and organizing the enterprise.

(u) "Public utility holding company act of 1935" means the public utility holding company act of 1935, title I of chapter 687, 49 Stat. 838.

(v)(1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subdivision do not include:

(A) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock.

(B) Any 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.

(w) "Securities act of 1933" means the securities act of 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r and 77s to 77aa.

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(x) "Securities exchange act of 1934" means the securities exchange act of 1934, chapter 404, 48 Stat. 881.

(y) "Securities investor protection act of 1970" means the securities investor protection act of 1970, Public Law 91-598, 84 Stat. 1636.

(z) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" includes any contractual or quasi contractual arrangement pursuant to which: (1) a person furnishes capital, other than services, to an issuer; (2) a portion of that capital is subjected to the risks of the issuer's enterprise; (3) the furnishing of that capital is induced by the representations of an issuer, promoter, or their affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise; (4) the person furnishing the capital does not intend to be actively involved in the management of the enterprise in a meaningful way; and (5) a promoter or its affiliates anticipate, at the time the capital is furnished, that financial gain may be realized as a result thereof. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period or a commodity contract. The administrator may exclude by rule or by order other transactions or agreements from the definition of the word "security".

(aa) "Small business investment act of 1958" means the small business investment act of 1958, Public Law 85-699, 72 Stat. 689.

(bb) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

### **451.802 Exempt securities and transactions; burden of proof; combining exempt offers or sales. [M.S.A. 19.776(402)]**

Sec. 402. (a) The following securities are exempted from sections 301 and 403:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of 1 or more of the foregoing, or any certificate of deposit for any of the foregoing, or any guarantee or other obligation made in connection therewith.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of 1 or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

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(5) Any security issued or guaranteed by any federal credit union, any credit union organized and supervised under the laws of this state or any other state or territory of the United States, or any industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company that is a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act, or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province. Also, any equipment trust certificate or equipment note or bond based on chattel mortgages, leases, or agreements for conditional sales of cars, motive power, or other rolling stock mortgages, leased or sold to or furnished for the use of or upon railroads, other common carriers, public utilities, or holding companies supervised by a governmental authority of the United States, a state, Canada, or a Canadian province, or equipment, notes, or bonds where the ownership or title of the equipment is pledged or retained in accordance with the provisions of the laws of the United States, a state, Canada, or a Canadian province, to secure the payment of the equipment trust certificates, bonds, or notes.

(7) Any security listed or approved for listing upon notice of issuance on the New York or American stock exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The administrator may by rule exempt securities listed on other exchanges or may establish criteria for designating other classifications of exempt securities.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. However, unless the securities are part of an issue having an aggregate sales price of \$250,000.00 or less, are sold only to bona fide members of the issuing organization, and are sold without payment of a commission or consulting fee, the issuer shall do all of the following:

(A) Ten days before offer or sale of the security file with the administrator an offering circular in a form the administrator may by rule or order require together with a filing fee of \$50.00, and the administrator does not disallow the exemption.

(B) Not pay a commission or consulting fee to any person except a registered broker-dealer in connection with the offer or sale of the security.

(C) Sell only through registered securities broker-dealers or through persons exempted from the definition of the term "agent" by the administrator. In connection with all of the foregoing, the administrator may by rule or order withdraw or further condition this exemption, or waive the conditions contained in subparagraphs (A) and (B).

(9) Any prime quality negotiable commercial paper sold in an aggregate amount of not less than \$25,000.00 to any 1 purchaser which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash at a fixed date within 9 months of the date of issuance, exclusive of days of grace, or any nonautomatic renewal of the commercial paper which is likewise limited, or any guarantee of the commercial paper or of any such renewal if the commercial paper is sold through a registered broker-dealer or an institution whose securities are exempted under subsection (a)(3).

(10) Any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit sharing or similar benefit plan.

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(11) A security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation national market system and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing. The administrator may, after providing notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:

(A) Deny or revoke this exemption by order for a specific issue of securities.

(B) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.

(C) Decertify the system by order if the administrator determines that the system's requirements are so changed from those listed in securities act release no. 33-6810, 53 F.R. p. 52550 (Dec. 28, 1988), or insufficiently applied that the public interest and protection of investors contemplated by the requirements is no longer afforded.

(b) The following transactions are exempted from sections 301 and 403:

(1) An isolated nonissuer transaction, and with respect to a certificate of interest or participation in an oil, gas or mining title or a lease or payment out of production under a title or lease, any isolated transaction not involving an offer or sale by a promoter, whether effected through a broker-dealer or not.

(2) A nonissuer distribution of an outstanding security whose issuer and any predecessors have been in continuous operation for at least 5 years if a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on the security. For purposes of this subdivision, an issuer or predecessor is in continuous operation only if it has gross operating revenue in each of the 5 years immediately preceding its claim of exemption and has had gross operating revenue of at least \$500,000.00 in not less than 3 of those 5 years.

(3) A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

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

(5) A transaction not part of a series of transactions in related or adjacent properties to individual investors, or a transaction involving an offer or sale to a financial institution as described in subdivision (8), in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) A transaction by an executor, a personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) A bona fide pledge or transaction in foreclosure of a pledge executed by a bona fide pledgee without any purpose of evading this act.

(8) An offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, the federal national mortgage association, the federal home loan mortgage corporation, or the govern-

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ment national mortgage association, pension or profit sharing trust the assets of which are managed by an institutional manager, the treasurer of this state, other financial institution, broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity, or a lender approved by the federal housing administration and who has satisfied any additional requirements established by the administrator by rule or order.

(9) A transaction pursuant to an offering which satisfies in full each of the following requirements:

(A) The issuer and any person acting on its behalf shall exercise reasonable care to assure that purchasers in this state of the securities in the offering do not resell the securities without compliance with state and federal securities laws. For sales described in subparagraph (D)(2), (3), and (5) that reasonable care shall include, where appropriate, but not necessarily be limited to, all of the following:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his or her own account or on behalf of other persons who may be considered as separate offerees or purchasers.

(2) Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of the securities.

(3) Issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer.

(4) Obtaining from the purchaser a signed agreement that the securities will not be sold without registration under the act or exemption therefrom.

(B) The securities are not offered or sold in reliance upon this subdivision by means of any general advertising or general solicitation, except as approved by the administrator.

(C) A commission is not paid or given directly or indirectly for soliciting any prospective purchaser in this state, except to a broker-dealer registered pursuant to this act who is not affiliated with the issuer or its affiliates. Those payments shall be reflected on the books and records of the broker-dealer, and shall be fully disclosed in writing to each prospective purchaser. The broker-dealer or issuer shall file with the administrator on forms as the administrator prescribes, a confidential report of offering within 30 days after initiation of the offering in this state and every 90 days thereafter until the final report of completion of the offering.

(D) Each sale in the offering made in reliance upon this subdivision meets all of the conditions of 1 of the following:

(1) The sale is to any of the following classes of persons:

(i) Promoters or other persons actively engaged or reasonably expected to be actively engaged in the management of the issuer, or in a professional capacity as attorneys or accountants to the issuer, or directly related by blood or marriage to the promoter or person actively engaged or reasonably expected to be actively engaged in the management of the issuer, if such persons are purchasing with investment intent and the issuer relies upon this subparagraph for sales to not more than 10 persons in this state within a 12-month period.

(ii) Not more than 15 persons whose principal business is the line of business to which the offering relates, and who are qualified by previous experience to evaluate the risks of the investment. The provisions of subparagraph (A) shall not apply to sales covered by subparagraph (D)(1) (i) and (ii).

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(2) Sales to not more than 15 persons in this state within any 12-month period, in reliance upon this subparagraph, and the issuer provides to all such offerees at least 48 hours before sale a document that includes all of the following:

(i) Disclosing in reasonable detail the intended application of the proceeds to be received from the offering.

(ii) Disclosing in reasonable detail the current financial condition of the issuer and in the case of a limited partnership or oil and gas venture, the current financial condition of the general partner or oil and gas issuer; except that in the case of a limited partnership interest or interest in oil or gas, the document may merely state that the general partner or oil and gas issuer has a net worth, determined in accordance with generally accepted accounting principles, in excess of a stated sum, and that its net worth exceeds the obligations undertaken by the general partner or oil and gas issuer, and that the assets or operations of the general partner or oil and gas issuer will generate sufficient cash to meet these obligations as they come due.

(iii) Disclosing in all reasonable detail direct or indirect compensation or remuneration to be received by a promoter or affiliates of the promoter and fully identifying the persons who shall be recipients of that compensation.

(iv) Disclosing the form, date, and jurisdiction under which formed, and nature of business of the issuer.

(v) Disclosing the kind and amount of securities to be offered and the offering price or method by which the offering price is computed.

(vi) Stating, except in the case of a corporate issuer, that each investor or his or her designated representative may inspect the books and records of the issuer or the venture at any reasonable time for proper purposes.

(vii) Stating, except in the case of a corporate issuer, that the issuer shall promptly call an informational meeting of all investors upon request by 25% in interest or more of the investors in any class of securities who are unaffiliated with a promoter or affiliate of the promoter.

(viii) Stating, except in the case of a corporate issuer, that the issuer shall agree to maintain at its offices a list of names and addresses of all investors in the entity available to any investor or the designated representative of any investor.

(ix) Stating that the issuer shall provide all investors with a detailed written statement of the application of the proceeds of the offering within 6 months after commencement of the offering or upon completion, whichever occurs first, and with annual current balance sheets and income statements to investors thereafter.

(3) Sales to not more than 35 persons in this state within any 12-month period in reliance upon this subparagraph, if all of the following conditions are met:

(i) The offeror files with the administrator an exemption application, an offering circular, and a \$100.00 filing fee.

(ii) The administrator by order finds the offering consistent with section 306 and declares this exemption effective.

(iii) The offering is made upon conditions and with information or provisions in the offering circular as the administrator may require.

(iv) The offering circular is delivered to each purchaser at least 48 hours before the sale to the purchaser.

(4) Sales made by a person other than an issuer to not more than 10 persons pursuant to offers to not more than 15 persons in this state within a 12-month period in reliance upon this subparagraph, if the offering is not part of a distribution of the issuer's securities.

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(5) Sales made to a person who the seller has reasonable grounds to believe and does believe is 1 of the following:

(i) A business entity having either net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of \$1,000,000.00 at the time of purchase, and after the purchase has less than 10% of its total assets invested in the securities of the issuer.

(ii) An individual who after the purchase has an investment of \$50,000.00 or more in the securities of the issuer, including installment payments to be made within 1 year after purchase by the investor; has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00; and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or has obtained the advice of an attorney, certified public accountant, investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under this act, with respect to the merits and risks of the prospective investment.

(E) For purposes of this subparagraph:

(1) Each offer or sale made to a pension or profit sharing trust shall be considered to have been made to each beneficiary as an individual offeree unless all of the following apply:

(i) The trust has an independent trustee.

(ii) The issuer makes inquiry and reasonably believes that the trust invests not more than 10% of its assets in the securities sold by the issuer.

(iii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the trust was not formed to purchase the securities of the issuer.

(2) Each offer or sale made to a partnership or association shall be deemed to have been made to each partner or member as an individual unless both of the following occur:

(i) The issuer makes inquiry and reasonably believes that the partnership or association invests not more than 10% of its assets in the securities offered or sold by the issuer.

(ii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the partnership or association or solicitation of its investors and the issuer makes inquiry and reasonably believes that the partnership or association was not formed to purchase the securities of the issuer.

(3) Each offer or sale made to a corporation or business trust shall be considered to have been made to each security holder of the corporation or business trust as an individual unless within the 2-year period before the initial offer of the securities the issuer was not directly or indirectly connected with the formation or subsequent operation of the corporation or trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the corporation or trust, or in the case of a wholly owned subsidiary, its parent, was not formed to purchase the securities of the issuer and 1 of the following applies:

(i) A class of securities of the corporation or trust is registered pursuant to the securities exchange act of 1934.

(ii) The decision of the corporation or trust to acquire the shares of the issuer is directly or indirectly related to the business of the corporation or trust and not for investment purposes, and its principal business is not investing in securities.

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(iii) The issuer makes inquiry and reasonably believes that the corporation or trust invests not more than 10% of its assets in the securities offered or sold by the issuer.

(4) An offer or sale to an investment company registered under the investment company act of 1940 constitutes an offer or sale to an individual.

(5) Husband, wife, and children living as a family are considered to be 1 individual.

(6) Each client of an investment adviser or federally covered adviser, each customer of a broker-dealer, or a person with a similar relationship shall be considered an offeree or purchaser for purposes of this subdivision regardless of the amount of discretion given to the investment adviser or federally covered adviser, broker-dealer, or other person to act on behalf of the client, customer, or trust.

(F) The administrator may by rule or order as to any security or transaction, or any type of security or transaction, increase the number of offerees or purchasers, waive any conditions, and in conjunction with a request to exercise its discretion under these provisions, the administrator may further condition this exemption.

(10) Any offer or sale of a preorganization certificate or subscription in a corporation, and the issuance of securities pursuant thereto, if all of the following apply:

(A) No commission is paid or given directly or indirectly for soliciting any prospective subscriber. The administrator may by rule or order waive this condition and require reports of sales under this exemption.

(B) There are not more than 10 purchasers.

(C) Advertising is not published or circulated unless it has been reviewed and no objection thereto is made by the administrator in writing.

(D) The seller reasonably believes that all the buyers in this state, other than those designated in subsection (b)(8), are purchasing for investment.

(11) A transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if either of the following occurs:

(A) A commission, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state and the offer is made either to holders of the convertible securities or warrants and relates to the underlying security, or the securities are purchased by not more than 25 security holders in this state within a 12-month period.

(B) Twenty business days before any offer, the issuer files with the administrator the offering circular or other materials proposed to be sent to security holders and other persons describing the terms of the offer together with a filing fee of \$100.00 and the administrator does not by order disallow the exemption within the next 20 business days.

(12) An offer, but not a sale, of a security for which a registration statement or exemption order request was filed under this act if a stop order is not in effect and a public proceeding or examination looking toward a stop order is not pending and if made in compliance with section 307.

(13) An offer, sale, or issuance of securities pursuant to an investment contract or option which is exempt under subsection (a)(10).

(14) An offer or sale of a security as contemplated under the small business investment act of 1958 to the federal small business administration, or by a small business concern to a small business investment company or to a development company for equity capital provided or loans made, or by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans.

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(15) An offer or sale of any security by a nonprofit development corporation, formed and existing under the laws of this state, if the primary purpose of the corporation is to promote and assist the growth and development of business enterprises in the area covered by its operations.

(16) The distribution by a cooperative corporation of its securities to its patrons as patronage refunds or returns distributed on a patronage basis.

(17) A nonissuer transaction effected by or through a broker-dealer in any outstanding security of the same class as that which has been designated by order by the administrator as eligible for trading in this state. A person requesting a designation order shall pay a filing fee of \$100.00.

(18) The sale of capital stock issued by a professional service corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(19) A transaction incident to a class vote by shareholders pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation.

(20) A transaction that the administrator by order exempts from the registration provisions of this act after a determination that registration is not necessary in the public interest and for the protection of investors. An order may be granted either before or after consummation of the transaction upon the petition of any interested party in the transaction.

(21) A transaction made pursuant to a uniform limited offering exemption filing with the administrator. A person claiming under this subdivision shall pay a filing fee of \$100.00 at the time of filing the initial notice form.

(c) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) Offers or sales which are exempt under subsection (b)(1) through (20) may be combined to exempt an entire transaction or series of transactions.

### **451.803 Sales literature or advertising communication; filing and acceptance; exemption. [M.S.A. 19.776(403)]**

Sec. 403. The administrator may by rule or order require the filing and acceptance before use of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser or federally covered adviser, unless the security, or transaction is exempted by section 402(a)(1) to (7) or is a federally covered security. The administrator shall not, by rule or order under this section, require a federally covered adviser to file with the administrator any document that is not required to be filed with the securities and exchange commission under the investment advisers act of 1940.

### **451.805 Effect of registration, exemption, exception, or order; inconsistent representation prohibited. [M.S.A. 19.776(405)]**

Sec. 405. (a) Neither the fact that an application for registration under sections 201 to 204, a notice filing under section 202a or 308, or a registration statement under sections 301 to 306 has been filed, nor the fact that a person or security is effectively registered or a notice filing has been made, constitutes a finding by the administrator that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction, or that an order

has been issued by the administrator, means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) A person shall not make, or cause to be made, to a prospective purchaser, customer, or client a representation inconsistent with subsection (a).

**451.806 Administration of act; bureau as criminal justice agency; disclosures; privilege; joint investigations or inspections.  
[M.S.A. 19.776(406)]**

Sec. 406. (a) This act shall be administered by the administrator which is a criminal justice agency as defined in 28 C.F.R. 20.3(c).

(b) The administrator or any of its officers or employees shall not disclose to the public or use for personal benefit any information which is filed with or obtained by the administrator and which is not made public pursuant to this act. This act does not authorize the administrator or any of its officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this act, or to federal, state, local, or foreign governmental agencies for their own official use. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any of its officers or employees.

(c) The administrator may conduct joint investigations or inspections with federal, state, or local agencies, or self-regulatory bodies as defined in the securities exchange act of 1934.

**451.809 Violation; penalty; evidence; punishment for statutory or common law crime; filing criminal complaint or indictment.  
[M.S.A. 19.776(409)]**

Sec. 409. (a) Any person who willfully violates section 101, 102, 103, 201, 203(h), 301(1) or (2), 402, 405(b), or 406(b), or who engages in conduct prohibited by section 204(a)(1)(J) to (S) and (V) to (Z), or who willfully violates section 404 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$25,000.00 for each violation, or imprisoned not more than 10 years, or both.

(b) The administrator may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

(d) Any criminal complaint or indictment for violation of this act shall be filed within 6 years after the commission of the offense, but any period during which the party charged was not usually and publicly resident within this state shall not be included as part of the 6 years.

**451.810 Offer or sale of security; liability; recovery; contribution; tender; survival of action; limitations; rescission offer; disclosure; suit based on contract; rights and remedies cumulative.  
[M.S.A. 19.776(410)]**

Sec. 410. (a) Any person who does either of the following is liable to the person buying the security from him or her and the buyer may sue either at law or in equity to recover

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the consideration paid for the security, together with interest at 6% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or, if he or she no longer owns the security, for damages which shall be the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 6% per year from the date of disposition:

(1) Offers or sells a security in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304(d), 305(f), 305(g), or 412(g).

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of the seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the person sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) A person may not bring an action under subsection (a)(1) more than 2 years after the contract of sale. A person may not bring an action under subsection (a)(2) more than 2 years after the person, in the exercise of reasonable care, knew or should have known of the untruth or omission, but in no event more than 4 years after the contract of sale. A person may not bring an action under this section if the buyer received a written rescission offer, before the action and at a time when he or she owned the security, to refund the consideration paid together with interest at 6% per year from the date of payment, less the amount of any income received on the security, and he or she failed to accept the offer within 30 days of its receipt, or if the buyer received the offer before the action and at a time when he or she did not own the security, unless he or she rejected the offer in writing within 30 days of its receipt. The documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities shall be provided to the offeree concurrently with the written rescission offer. Such an offer shall not be made until 45 days after the date of sale of the securities and acceptance or rejection of the offer shall not be binding until 48 hours after receipt by the offeree. The rescission offer shall recite the provisions of this section. A rescission offer under this subsection shall not be valid unless the offeror substantiates that it has the ability to fund the offering and this information is set forth in the disclosure documents.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

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(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section.

### **451.812 Rules, forms, and orders; making, amending, or rescinding; classification; financial statements; publication of rules and forms; applicability of provisions imposing liability; hearing; rules. [M.S.A. 19.776(412)]**

Sec. 412. (a) The administrator may from time to time make, amend, and rescind rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, notice filings under section 202a or 308, applications, and reports and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with this act. For the purpose of rules and forms, the administrator may classify securities, persons, and matters within its jurisdiction and prescribe different requirements for different classes.

(b) A rule, form, or order may not be made, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms, the administrator may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The administrator may by rule or order prescribe the form and content of financial statements required under this act, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. Financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) Rules and forms of the administrator shall be published.

(e) A provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the administrator, notwithstanding that the rule, form, or order may not later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public unless the administrator in its discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(g) The administrator shall promulgate rules with respect to broker-dealers and agents as necessary or appropriate in the public interest or for the protection of investors. The rules may require, among other things, the promulgation and issuance of a disclosure statement by the broker-dealer, the segregation of customers' funds and assets, maintenance of reserves for obligations, contingent or otherwise, to customers, the maintenance of a fidelity bond, hedging or covering obligations to customers, the signing and filing of a consent to service of process, and prior approval of advertising, limitation of the content of advertising, and margin requirements.

(h) The rules promulgated and hearings held under this act shall be in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**451.813 Filing of documents; register; retention and storage of information; public inspection; availability of information to public; certified reproductions; charges; reproduction as evidence; certificate of nonexistence; interpretive opinions; rules. [M.S.A. 19.776(413)]**

Sec. 413. (a) A document is filed when it is received by the administrator with the appropriate fee and all required forms.

(b) The administrator shall keep a register of all applications for registration, notice filings under sections 202a and 308, and registration statements that are or have ever been effective under this act and all denial, suspension, or revocation orders that have been entered under this act. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, notice filing, application, or report may be retained and stored by the administrator in the document's original form or by reproduction pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403. Reproductions of any registration statement, application, or report may be made available to the public under rules prescribed by the administrator, except that the administrator may withhold from public inspection information, the disclosure of which is not necessary in the public interest and for the protection of investors.

(d) Upon request and for a reasonable charge as he or she prescribes, the administrator shall furnish to any person a reproduction pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, certified under his or her seal of office if requested, of an entry in the register or any document that is a matter of public record. The charges made shall constitute reimbursement to the administrator for the cost of reproduction. In a proceeding or prosecution under this act, a certified reproduction in a medium pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, or a certified reproduction consisting of a printout or other output readable by sight from a medium pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, is prima facie evidence of the contents of the entry or document certified.

(e) The administrator may certify the nonexistence of a filing for a document that this act permits to be filed with the administrator, upon certification that the document is of a type that, if filed, are filed with the administrator and that a personal search of the records has been made by the person making the certification. A certificate of nonexistence is prima facie evidence that the document has not been filed with the administrator.

(f) The administrator in his or her discretion may honor a request from an interested person for an interpretive opinion or no action position and may promulgate rules that set forth the procedure for requesting an opinion or no action position.

**451.814 Provisions applicable to offer to sell or buy; what constitutes making or accepting offer to sell or buy; filing irrevocable consent; administrator or successor as attorney to receive service of process; effecting service of process; prohibited conduct as equivalent to appointment of administrator or successor as attorney; continuance. [M.S.A. 19.776(414)]**

Sec. 414. (a) Sections 101, 201(a), 301, 405, and 410 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a), and 405 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from

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this state, or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than 2/3 of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as section 405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this act, every person submitting a notice filing under section 202a or 308, and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the administrator, in a form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or its successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by it, promptly sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her last address on file with the administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within a further time that the court allows.

(h) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he or she has not filed a consent to service of process under subsection (g) and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the administrator or its successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by it, promptly sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's

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affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within a further time that the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before it, shall order a continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

### **451.817 Saving clause; repeal of §§ 451.101 to 451.133; effect of prior law; effect of prior law on certain offers or sales; judicial review of administrative orders. [M.S.A. 19.776(417)]**

Sec. 417. Except as saved in this section:

(a) Act No. 220 of the Public Acts of 1923, as amended, being sections 451.101 to 451.133 of the Compiled Laws of 1948, is repealed.

(b) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within a period of limitation which applied when the cause of action accrued and in any event within 2 years after the effective date of this act.

(c) All effective registrations under prior law, all administrative orders relating to effective registrations under prior law, all conditions imposed upon effective registrations under prior law, and all notice filings made with the administrator since enactment of the national securities markets improvements act of 1996, Public Law 104-290, 110 Stat. 3416, remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have been filed, entered, or imposed under this act, but are governed by prior law.

(d) Prior law applies in respect of any offer or sale made within 1 year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 411, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this act.

This act is ordered to take immediate effect.

Approved January 10, 2001.

Filed with Secretary of State January 11, 2001.

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