

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

PART IV

GENERAL PROVISIONS, DEFINITIONS AND EXEMPTIONS

***** 451.801 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.801 Definitions.

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.

(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.

(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.

(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:
- (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.

(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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 339, Imd. Eff. July 23, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1985, Act 120, Imd. Eff. July 31, 1985;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 of the Michigan Administrative Code.

***** 451.802 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.802 Exempt securities and transactions; burden of proof; combining exempt offers or sales.

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.

(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.

(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 government 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).

(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.

(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.

(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.

(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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1968, Act 171, Eff. Nov. 15, 1968;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1987, Act 194, Imd. Eff. Dec. 2, 1987;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

***** 451.803 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.803 Sales literature or advertising communication; filing and acceptance; exemption.

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.

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

***** 451.804 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.804 False or misleading statements unlawful.

Sec. 404. It is unlawful for any person to make or cause to be made, in any document filed with the administrator or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.805 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.805 Effect of registration, exemption, exception, or order; inconsistent representation prohibited.

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).

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

***** 451.806 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.806 Administration of act; bureau as criminal justice agency; disclosures; privilege; joint investigations or inspections.

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.

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

***** 451.807 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.807 Powers of administrator; failure to obey subpoena; contempt; privilege against self-incrimination.

Sec. 407. (a) The administrator in its discretion:

(1) May make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(3) May publish information concerning any violation of this act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this act, the administrator, or any officer designated by it, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court for the county of Ingham, upon application by the administrator, may issue to the person an order requiring him to appear before the administrator, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the administrator, or in obedience to the subpoena of the administrator, or any officer designated by it, or in any proceeding instituted by the administrator, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.808 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.808 Cease and desist order; injunction, restraining order, order requiring accounting or disgorgement, or writ of mandamus; appointment of receiver or conservator; bond not required; hearing; decision; order denying or revoking exemption; remedies; commencement of action or proceeding.

Sec. 408. (a) Whenever it appears to the administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion issue a cease and desist order or bring an action in a circuit court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, order requiring an accounting or disgorgement or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the administrator to post a bond.

(b) A person who has been ordered to cease and desist may file with the administrator within 15 days after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall hold the hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.

(c) The administrator, if it finds such action to be in the public interest and that any person has violated or is about to violate any provision of this act or any rule or order hereunder, may by order deny or revoke any exemption specified in section 402(a)(1), (6), (7), (8), (9), or (10) or section 402(b) with respect to a specific security, issuer or transaction, or a person's right to sell exempt securities or engage in exempt transactions in the future without compliance with the registration provisions of this act. The order shall list the individual exemptions revoked and the rationale for the revocation. An order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order the administrator shall promptly notify all interested parties that the order has been entered and the reasons therefor and that within 15 days after receipt of a written request the matter will be set down for hearing. If a hearing is not requested within 15 days 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 an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may operate retroactively. A person does not violate section 301 or 403 by reason of any offer or sale effected after the entry of an order

under this subsection if that person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) None of the remedies provided for in this act are mutually exclusive and the administrator in its discretion may use as many remedies as it deems necessary. The administrator in seeking a remedy shall consider the present actions and the possibility of future violations by the parties against whom proceedings are contemplated, together with actions taken to mitigate harm to the public. The administrator may impose a civil penalty of not more than \$1,000.00 for each violation of this act, not to exceed a total of \$10,000.00.

(e) The administrator shall not commence any action or proceeding under this act more than 6 years after the violation.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

***** 451.809 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.809 Violation; penalty; evidence; punishment for statutory or common law crime; filing criminal complaint or indictment.

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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.810 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

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.

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 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.

(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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1984, Act 176, Imd. Eff. July 3, 1984;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.811 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.811 Administrator's orders; judicial review; findings of fact conclusive; additional evidence; stay of administrator's orders.

Sec. 411. (a) Any person aggrieved by a final order of the administrator may obtain a review of the order in the circuit court for the county of Ingham by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the administrator, and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. The findings of the administrator as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator, the court may order the additional evidence to be taken before the administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The administrator may modify its findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.812 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

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.

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.

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

Administrative rules: R 451.601.1 et seq. and R 451.2101 et seq. of the Michigan Administrative Code.

***** 451.813 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

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.

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 interpretative opinion or no action position and may promulgate rules that set forth the procedure for requesting an opinion or no action position.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 1992, Act 207, Imd. Eff. Oct. 5, 1992;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.814 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

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.

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 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 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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.815 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.815 Construction of act.

Sec. 415. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this act with the related federal regulation.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.816 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.816 Uniform securities act; short title.

Sec. 416. This act shall be known and may be cited as the “uniform securities act”.

History: 1964, Act 265, Eff. Jan. 1, 1965.

***** 451.817 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.817 Saving clause; repeal of MCL 451.101 to 451.133; effect of prior law; effect of prior law on certain offers or sales; judicial review of administrative orders.

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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

***** 451.818 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.818 Effective date of act.

Sec. 418. This act shall take effect on January 1, 1965.

History: 1964, Act 265, Eff. Jan. 1, 1965.