

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

PART II

REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISORS

***** 451.601 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.601 Registration required; exceptions.

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 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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 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. 1987, Act 175, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 349, Imd. Eff. June 28, 1996;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

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

451.602 Application for registration; contents; announcement; fees; registration of successor; irrevocable consent to service of process; capital and bond requirements; fingerprinting.

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 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) Before October 1, 2003 or after September 30, 2012, an 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. Before October 1, 2003 or after September 30, 2012, an 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. Before October 1, 2003 or after September 30, 2012, 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. After September 30, 2003 and before October 1, 2012, an applicant for registration shall pay a filing fee and every registrant shall pay an annual fee of \$300.00 in the case of a broker-dealer, \$65.00 in the case of an agent, and \$200.00 in the case of an investment adviser. After September 30, 2003 and before October 1, 2012, an applicant filing an application for registration of a successor pursuant to subsection (d) shall pay a filing fee of \$125.00 for the unexpired portion of the year. After September 30, 2003 and before October 1, 2012, a registered agent who has terminated his or her connection with a broker-dealer shall pay a transfer fee of \$20.00 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 the securities exchange act of 1934, 15 USC 78o, and section 222 of the investment advisers act of 1940, 15 USC 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.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—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;—Am. 2003, Act 150, Imd. Eff. Aug. 8, 2003;—Am. 2007, Act 82, Imd. Eff. Sept. 30, 2007.

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

***** 451.602a THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.602a Adviser's form ADV; notice filing.

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).

History: Add. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

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

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.

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

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. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

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

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.

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 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.

(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.

(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.

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.