

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

***** 451.2306.new THIS NEW SECTION IS EFFECTIVE OCTOBER 1, 2009 *****

451.2306.new Denying, suspending, or revoking effectiveness; stop order; publication of guidelines, rules, or orders; conditions prohibiting issuance of stop order; summary revocation, denial, postponement, or suspension of effectiveness; modifying or vacating stop order.

Sec. 306. (1) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that 1 or more of the following apply:

(a) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 305(10) as of its effective date, or a report under section 305(9) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the administrator shall not institute a proceeding against an effective registration statement under this paragraph more than 1 year after the date of the order or injunction on which it is based, and the administrator shall not issue an order under this subdivision on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

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

(e) With respect to a security sought to be registered under section 303, there has been a failure to comply with the undertaking required by section 303(2)(d).

(f) The applicant or registrant has not paid the proper filing fee, but the administrator shall void the order if the deficiency is corrected.

(g) One or more of the following apply to the offering:

(i) The offering will work or tend to work a fraud upon purchasers or would so operate.

(ii) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, promoters' profits or participations, or unreasonable amounts or kinds of options.

(iii) The offering is being made on terms that are unfair, unjust, or inequitable.

(2) To the extent practicable, the administrator by rule or order under this act shall publish guidelines, rules, or orders that provide notice of conduct that violates subsection (1)(g).

(3) The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(4) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (5) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(5) The administrator shall not issue a stop order under this section until all of the following have occurred:

(a) Appropriate notice has been given to the applicant or registrant, the issuer, and the person on whose

behalf the securities are to be or have been offered.

(b) An opportunity for hearing has been given to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(c) Findings of fact and conclusions of law in a record in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

History: 2008, Act 551, Eff. Oct. 1, 2009.