

Act No. 408
Public Acts of 1988
Approved by the Governor
December 23, 1988
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**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Rep. Bennett

ENROLLED HOUSE BILL No. 5624

AN ACT to amend sections 201, 202, 305, 401, 402, 408, and 409 of Act No. 265 of the Public Acts of 1964, entitled as amended "An act to enact the uniform securities act relating to the issuance, offer, sale or purchase of securities and commodity contracts; to prohibit fraudulent practices in relation thereto; to establish civil and criminal penalties for violations of the act and civil penalties for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers and their principals, agents, investment advisers, commodity issuers, and securities; to make uniform the law with reference thereto; and to repeal certain acts and parts of acts," section 201 as amended by Act No. 175 of the Public Acts of 1987, section 401 as amended by Act No. 120 of the Public Acts of 1985, and section 402 as amended by Act No. 194 of the Public Acts of 1987, being sections 451.601, 451.602, 451.705, 451.801, 451.802, 451.808, and 451.809 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 201, 202, 305, 401, 402, 408, and 409 of Act No. 265 of the Public Acts of 1964, section 201 as amended by Act No. 175 of the Public Acts of 1987, section 401 as amended by Act No. 120 of the Public Acts of 1985, and section 402 as amended by Act No. 194 of the Public Acts of 1987, being sections 451.601, 451.602, 451.705, 451.801, 451.802, 451.808, and 451.809 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 201. (a) A person shall not transact business in this state as a broker-dealer, commodity issuer, 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. If an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him or her an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator in writing on a form prescribed by the administrator.

(c) Unless a broker-dealer is a member of a national securities exchange as defined in title I of the securities exchange act of 1934, chapter 404, 48 Stat. 881, the administrator may by rule or order require that a broker-dealer designate a person who shall be registered as a principal of the broker-dealer in charge of management, financial matters, or compliance. If so required, a broker-dealer shall at all times designate and maintain a principal. The registration of a principal is not effective during any period when the principal is not associated with a particular broker-dealer registered under this act. If a principal begins or terminates a connection with a broker-dealer, or begins or terminates activities and designation as a principal, the principal as well as the broker-dealer shall promptly notify the administrator in writing on a form prescribed by the administrator.

(d) A person shall not transact business in this state as an investment adviser unless the person complies with 1 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) His or her only clients in this state are investment companies as defined in section 3 of the investment company act of 1940, 15 U.S.C. section 80a-3, or insurance companies, banks, or trust companies.

(e) Every registration under this section shall be effective until it is withdrawn, terminated, revoked, or canceled. Every registrant shall be required to file or have filed an annual report with such information as the administrator may require. The administrator may by rule or order reduce the filing fee for registration applications received more than 6 months after the beginning of the fiscal year.

(f) Unless the administrator by rule provides for such regulation, the broker-dealer, commodity issuer, and agent registration provisions of this act shall not apply to a person engaged in the commodities business in this state, whose transactions with the public involve any of the following:

(1) A sale with delivery into the possession of the buyer of the commodity sold, within 10 days after the cash payment, if, with respect to the sales the seller:

(i) Does not guarantee or promise the repurchase of the commodity from the buyer in the future.

(ii) Does not promise or agree to act as a broker or dealer on behalf of the buyer in connection with a future resale of the commodity by the buyer.

(iii) Does not advertise the commodity except under a plan accepted by the administrator.

(iv) Does not pay a commission directly or indirectly for soliciting any prospective buyer.

(2) The sale of the commodity to, or the purchase of the commodity from, a person using or processing the commodity in a trade or business, including the resale of the commodity, other than for investment, whether or not for immediate delivery.

(g) The registration provisions of this act do not apply to all commodities accounts, agreements, and transactions excluded from state jurisdiction pursuant to the commodity exchange act, chapter 369, 42 Stat. 998.

(h) The registration provisions of this act do not apply to a county treasurer acting pursuant to his or her authority under the local government investment pool act.

(i) A person licensed or registered as a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, Act No. 173 of the Public Acts of 1987, being sections 445.1651 to 445.1683 of the Michigan Compiled Laws, shall be 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. Employees of persons licensed or registered under Act No. 173 of the Public Acts of 1987 are exempted from the agent registration provision of this act for offer or sale of mortgage loans as defined under that act, when acting as employees of the licensed persons.

Sec. 202. (a) A broker-dealer, principal, commodity issuer, 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 whatever information the administrator by rule requires concerning such matters as:

(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; and

(5) The applicant's financial condition and history. 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, principals, commodities issuers, agents, or investment advisers.

(b) Every applicant for registration shall pay a filing fee and every registrant shall pay an annual fee of \$250.00 in the case of a broker-dealer, \$250.00 in the case of a commodity issuer, \$30.00 until December 1, 1990 and \$25.00 on and after December 1, 1990 in the case of a principal, \$30.00 until December 1, 1990 and \$15.00

on and after December 1, 1990 in the case of an agent, and \$150.00 until December 1, 1990 and \$100.00 on and after December 1, 1990 in the case of an investment adviser. Every applicant filing an application for registration of a successor pursuant to section 202(c) shall pay a filing fee of \$100.00 until December 1, 1990 and \$50.00 on and after December 1, 1990 for the unexpired portion of the year. Until December 1, 1990, a licensed 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. The administrator, in connection with any examination pursuant to section 204(b)(6), may require by rule the payment of a reasonable fee sufficient to defray the expense of preparing, administering, scoring, and disseminating information concerning the examination. The administrator may either collect this fee for, or direct that it be paid in whole or in part to, any agency, association, or organization cooperating in administering this examination.

(c) A registered broker-dealer, commodity issuer, 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.

(d) The administrator may by rule require a minimum capital for registered broker-dealers, commodity issuers, 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 services, securities, or commodities 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 commodities or investment advisory business without prior notification to the administrator.

(e) The administrator may by rule require registered broker-dealers, commodity issuers, principals, agents, and investment advisers to post surety bonds in amounts up to \$100,000.00, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond required. A bond may not be required of any registrant whose net capital, which may be defined by rule, exceeds \$100,000.00. Every bond shall provide for action thereon by any person who has a cause of action under section 410 and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this act. Every bond shall provide that action may not be maintained to enforce any liability on the bond unless brought within 2 years after the sale or other act upon which it is based. If a civil action is maintained under the provisions of the bond, the court shall require the person maintaining an action against the principal or surety, or both, on the bond to place a notice in a newspaper of general circulation in the county where the registrant maintains its principal office, or if there is no principal office in this state, then in the county of each registered office in this state, for 3 successive days, stating that a claim has been made under the provisions of the bond; or the court may provide for alternative notice designed to advise prospective claimants against the broker-dealer or surety. The court shall for a period of 30 days thereafter permit other claimants against the bond to join the action and claim under the provisions of the bond.

(f) The administrator may by rule require registered broker-dealers and investment advisers to carry fidelity bonds in amounts up to \$400,000.00 in the case of broker-dealers and up to \$100,000.00 in the case of investment advisers covering the registrant's general partners and employees or covering its officers and employees.

(g) 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, commodity issuer, 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.

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

(b) Every person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 until December 1, 1990 and \$50.00 on and after December 1, 1990 or more than \$1,250.00 until December 1, 1990 and \$500.00 on and after December 1, 1990. When an application for registration is withdrawn before the effective date or a preeffective stop order is issued, the administrator shall retain a fee of \$100.00 until December 1, 1990 and \$50.00 on and after December 1, 1990 if the initial review has not been commenced, and the full filing fee after review has been commenced.

(c) Every registration statement shall specify:

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

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

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

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

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

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

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

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

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

(h) Every registration statement is effective for 1 year from its effective date, except during the time a stop order is in effect under section 306. A registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306, if the registration statement did not relate in whole or in part to a nonissuer distribution, and 1 year from the effective date of the registration statement. A registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

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

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

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

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

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

(a) "Administrator" means the corporation and securities bureau of the department of commerce.

(b) "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 or commodity contracts. "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), or (3) effecting transactions with existing employees, partners, officers, or directors of the issuer or any of its subsidiaries and

if, in connection with all of these 3 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 such 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). 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".

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities or commodity contracts 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 or commodity contracts 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), 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".

(d) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "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 commodity contracts, or as to the advisability of investing in, purchasing, or selling securities or commodity contracts, who, for consideration and as a part of a regular business, issues or promulgates analyses or reports concerning securities or commodity contracts, or who acts as a finder in conjunction with the offer, sale, or purchase of a security or commodity. "Investment adviser" does not include (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; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (5) a person who has no place of business in this state if (A) his or her only clients in this state are other investment 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, or (B) during any period of 12 consecutive months he or she does not direct business communications into this state in any manner to more than 5 clients other than those specified in clause (A), whether or not he or she or any of the persons to whom the communications are directed is then present in this state; (6) any other persons not within the intent of this paragraph as the administrator may by rule or order designate; (7) a trustee whose custody of assets is pursuant to judicial appointment, 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; or, (8) a county treasurer acting pursuant to his or her authority under the local government investment pool act.

(g) "Issuer" means any person who issues or proposes to issue any security or commodity contract, 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.

(3) For commodity contracts, issuer means a person engaged in the operation of a market on which commodities contracts are traded, and a person providing services or performing a function including, but not limited to, clearing, constituting a portion of the market. The administrator may by rule or order exempt any person from the definition of commodity issuer.

(h) "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.

(i) "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.

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

(3) Any security or commodity contract given or delivered with, or as a bonus on account of, any purchase of securities, or commodity contracts, 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 or commodity contract of the same or another issuer, as well as every sale or offer of a security or commodity contract which gives the holder a present or future right or privilege to convert into another security or commodity contract of the same or another issuer, is considered to include an offer of the other security or commodity contract.

(6) The terms defined in this subsection 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 such exchange and partly for cash.

(k) "Securities act of 1933", "securities exchange act of 1934", "public utility holding company act of 1935", "investment company act of 1940", "investment advisers act of 1940", "securities investor protection act of 1970", "commodity futures trading commission act of 1974", and "small business investment act of 1958", mean the federal statutes of those names as amended before or after the effective date of this act.

(l) "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".

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

(n) "Commodity" means: (1) Those goods defined as commodities in the commodity futures trading commission act of 1974, (2) those goods commonly classified as commodities within the normal course of business dealings, (3) anything movable which is traded or for which contracts are executed or issued on any board of trade, or commodity exchange or market, or (4) precious metals. The administrator may by rule further define "commodity" or "commodity contract".

(o) "Commodity contract" means the transactions dealing in, resulting in, or relating to contracts of purchase or sale of a commodity: for (1) delivery in the future at a specified time or a time to be determined or where delivery is not customarily made, including puts, calls, or any combinations thereof; (2) for present delivery where the value of the commodity is difficult to ascertain except by a person expert in the analysis of the commodity, and the commodity is offered for sale to the general public as an investment; (3) other options; (4) margin contracts; (5) or in general, any interest in an instrument commonly known as a commodity contract.

(p) "Principal" means a person associated with a broker-dealer who is actively engaged in the management of the broker-dealer's commodities, investment banking, or securities business, including supervision, solicitation, conduct of business, or training of persons associated with a broker-dealer for any of these functions.

(q) "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 deemed a promoter within the meaning of this subsection if the person does not otherwise take part in founding and organizing the enterprise.

(r) "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 or commodities solicitation or purchase.

(s) "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.

(t) "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.

(u) "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. The 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.

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 such 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 which is:

(A) 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

(B) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any 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 such railroads, other common carriers, public utilities, or holding companies supervised as above, or equipment, notes, or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, any state, Canada or any Canadian province, to secure the payment of such 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 and are sold only to bona fide members of the issuing organization and are sold without payment of a commission or consulting fee then the issuer shall do all of the following:

(i) 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.

(ii) 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.

(iii) 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 (i) and (ii).

(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 such commercial paper which is likewise limited, or any guarantee of such 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 subdivision (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) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under section 8 of the investment company act of 1940, 15 U.S.C. 80a-8, if all of the following apply:

(A) If either 1 of the following applies:

(1) The issuer has acted, or is affiliated with an investment adviser that has acted, as an investment adviser to 1 or more registered investment companies or unit investment trusts for at least 3 years next preceding an offer or sale of a security claimed to be exempt under this subsection; and the issuer is advised by an investment adviser that:

(i) Is a depository institution exempt from registration under the investment advisers act of 1940, 15 U.S.C. 80b-1 to 80b-21.

(ii) Is currently registered as an investment adviser and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the investment advisers act of 1940 for at least 3 years next preceding an offer or sale of a security claimed to be exempt under this subsection.

(2) The issuer has a sponsor that has at all times throughout the 3 years preceding an offer or sale of a security claimed to be exempt under this subsection sponsored 1 or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded \$100,000,000.00.

(B) The administrator has received, prior to any sale exempted under this subsection, both of the following:

(1) Notice of intention to sell on a form specified by the administrator which has been executed by the issuer setting forth the name and address of the issuer and the securities to be offered in this state.

(2) Until December 1, 1990, a filing fee of \$1,250.00 for the open-end management companies or a filing fee of \$750.00 for unit investment trust.

(C) In the event any offer or sale is to be made more than 12 months after the date the notice under subdivision (B) was filed with the bureau under this subsection, it shall be necessary to refile a notice of intention to sell and to pay the filing fee set forth in subdivision (B) above.

(D) For the purpose of this subsection, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

(E) An exemption under this subsection does not grant an exemption from registration for salespersons under section 201(a).

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

(1) Any 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) Any nonissuer distribution of an outstanding security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(A) 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

(B) 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, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

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

(5) Any transaction not part of a series of transactions in related or adjacent properties to individual investors, or any transaction involving an offer or sale to a financial institution as defined 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) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

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

(8) Any 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) Any 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 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 such 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) Sales 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 subsection (A) shall not apply to sales covered by subparagraphs (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:

(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 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 the provisions of section 306 and declares this exemption effective;

(iii) The offering is made upon such conditions and with such 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 meets 1 of the following conditions:

(i) A business entity having either (i) net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or (ii) 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 such 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, or investment adviser registered under the investment advisers act of 1940, title II of chapter 686, 54 Stat. 789, 15 U.S.C. 80b-1 to 80b-21, or an investment adviser registered under this act, with respect to the merits and risks of the prospective investment.

(F) For purposes of this subparagraph:

(1) Each offer or sale made to a pension or profit sharing trust shall be deemed to have been made to each beneficiary as an individual offeree unless:

(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; and

(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 all 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 deemed to have been made to each security holder of the corporation or business trust as an individual unless (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, or (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, and as to each of the above, 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.

- (4) An offer or sale to an investment company registered under the investment company act of 1940 shall constitute 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, 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, broker-dealer, or other person to act on behalf of the client, customer, or trust.
- (G) 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:
- (A) No commission is paid or given directly or indirectly for soliciting any prospective subscriber;
 - (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 this subsection (b)(8), are purchasing for investment;
 - (E) The administrator may by rule or order waive the conditions in subparagraph (A) and require reports of sales under this exemption.
- (11) Any 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 until December 1, 1990 and \$50.00 on and after December 1, 1990 and the administrator does not by order disallow the exemption within the next 20 business days.
- (12) Any 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 such an order is not pending and if made in compliance with section 307.
- (13) Any offer, sale, or issuance of securities pursuant to an investment contract or option which is exempt under subsection (a)(10).
- (14) Any offer or sale of a security as contemplated under the small business investment act of 1958 (1) to the federal small business administration, or (2) by a small business concern to a small business investment company or to a development company for equity capital provided or loans made, or (3) by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans.
- (15) Any 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) Any 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, or that was registered for general public sale under this act or a predecessor act before January 1, 1978, if either the issuer has a class of securities registered under the securities exchange act of 1934 and has filed with the securities and exchange commission all reports required to be filed by it under that statute for the 12-month period preceding the date of sale, or the issuer has made publicly available such information as the administrator determines by rule or order as sufficient for the protection of investors and that information is on file with the administrator. The administrator, if it finds such action in the public interest, by order, may withdraw or condition this exemption as to any security or issuer. A person requesting a designation order shall pay a filing fee of \$100.00 until December 1, 1990 and \$50.00 on and after December 1, 1990.

(18) The sale of capital stock issued by a professional service corporation formed under the professional service corporation act, Act No. 192 of the Public Acts of 1962, as amended, being sections 450.221 to 450.235 of the Michigan Compiled Laws.

(19) Any 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) Any 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) Any transaction made pursuant to a uniform limited offering exemption filing. Until December 1, 1990, 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 subdivisions (1) through (20) of subsection (b) may be combined to exempt an entire transaction or series of transactions.

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.

Sec. 409. (a) Any person who willfully violates sections 101, 102, 103, 201, 203(h), 301, 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.

Section 2. This amendatory act shall take effect December 1, 1988.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 850 of the 84th Legislature is enacted into law.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

.....
Governor.