

HOUSE BILL No. 5624

May 10, 1988, Introduced by Rep. Bennett and referred to the Committee on Corporations and Finance.

A bill to amend sections 201, 202, 305, 401, 402, 408, and 409 of Act No. 265 of the Public Acts of 1964, entitled as amended

"Uniform securities act,"

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:

1 Section 1. Sections 201, 202, 305, 401, 402, 408, and 409
2 of Act No. 265 of the Public Acts of 1964, section 201 as amended
3 by Act No. 175 of the Public Acts of 1987, section 401 as amended
4 by Act No. 120 of the Public Acts of 1985, and section 402 as
5 amended by Act No. 194 of the Public Acts of 1987, being sections

1 451.601, 451.602, 451.705, 451.801, 451.802, 451.808, and 451.809
2 of the Michigan Compiled Laws, are amended to read as follows:

3 Sec. 201. (a) A person shall not transact business in this
4 state as a broker-dealer, commodity issuer, or agent unless reg-
5 istered under this act.

6 (b) A broker-dealer or issuer shall not employ an agent
7 unless the agent is registered. The registration of an agent is
8 not effective during any period when the agent is not associated
9 with a particular broker-dealer registered under this act or a
10 particular issuer. If an agent begins or terminates a connection
11 with a broker-dealer or issuer, or begins or terminates those
12 activities which make him or her an agent, the agent as well as
13 the broker-dealer or issuer shall promptly notify the administra-
14 tor in writing on a form prescribed by the administrator.

15 (c) Unless a broker-dealer is a member of a national securi-
16 ties exchange as defined in TITLE I OF the securities exchange
17 act of 1934, chapter 404, 48 Stat. 881, the administrator may by
18 rule or order require that a broker-dealer designate a person who
19 shall be registered as a principal of the broker-dealer in charge
20 of management, financial matters, or compliance. If so required,
21 a broker-dealer shall at all times designate and maintain a
22 principal. The registration of a principal is not effective
23 during any period when the principal is not associated with a
24 particular broker-dealer registered under this act. If a princi-
25 pal begins or terminates a connection with a broker-dealer, or
26 begins or terminates activities and designation as a principal,
27 the principal as well as the broker-dealer shall promptly notify

1 the administrator in writing on a form prescribed by the
2 administrator.

3 (d) A person shall not transact business in this state as an
4 investment adviser unless the person complies with 1 of the
5 following:

6 (1) The person is registered under this act.

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

9 (3) His or her only clients in this state are investment
10 companies as defined in section 3 of the investment company act
11 of 1940, 15 U.S.C. section 80a-3, or insurance companies, banks,
12 or trust companies.

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

20 (f) Unless the administrator by rule provides for such regu-
21 lation, the broker-dealer, commodity issuer, and agent registra-
22 tion provisions of this act shall not apply to a person engaged
23 in the commodities business in this state, whose transactions
24 with the public involve any of the following:

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

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

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

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

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

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

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

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

21 (i) A person licensed or registered as a mortgage broker,
22 mortgage lender, or mortgage servicer under the mortgage brokers,
23 lenders, and servicers licensing act, ACT NO. 173 OF THE PUBLIC
24 ACTS OF 1987, BEING SECTIONS 445.1651 TO 445.1683 OF THE MICHIGAN
25 COMPILED LAWS, shall be exempted from registering as a
26 broker-dealer under this act for the ~~purchase~~ OFFER or sale of
27 mortgage loans as defined under the mortgage brokers, lenders,

1 and servicers licensing act. EMPLOYEES OF PERSONS LICENSED UNDER
2 ACT NO. 173 OF THE PUBLIC ACTS OF 1987 ARE EXEMPTED FROM THE
3 AGENT REGISTRATION PROVISION OF THIS ACT FOR OFFER OR SALE OF
4 MORTGAGE LOANS AS DEFINED UNDER THAT ACT, WHEN ACTING AS EMPLOY-
5 EES OF THE LICENSED PERSONS.

6 Sec. 202. (a) A broker-dealer, principal, commodity issuer,
7 agent, or investment adviser may obtain an initial registration
8 by filing with the administrator an application together with a
9 consent to service of process pursuant to section 414(g). The
10 application shall contain whatever information the administrator
11 by rule requires concerning such matters as:

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

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

14 (3) The qualifications and business history of the appli-
15 cant; in the case of a broker-dealer or investment adviser, the
16 qualifications and business history of any partner, officer, or
17 director, any person occupying a similar status or performing
18 similar functions, or any person directly or indirectly control-
19 ling the broker-dealer or investment adviser; and, in the case of
20 an investment adviser, the qualifications and business history of
21 any employee;

22 (4) Any injunction or administrative order or conviction of
23 a misdemeanor or of a felony; and

24 (5) The applicant's financial condition and history. The
25 administrator may by rule or order require an applicant for ini-
26 tial registration to publish an announcement of the application
27 in 1 or more specified newspapers published in this state.

1 Registration becomes effective upon order of the administrator.
2 The administrator may by rule or order establish classes of or
3 otherwise condition the registration of broker-dealers, princi-
4 pals, commodities issuers, agents, or investment advisers.

5 (b) Every applicant for registration shall pay a filing fee
6 and every registrant shall pay an annual fee of ~~-\$250.00~~ \$500.00
7 in the case of a broker-dealer, ~~-\$250.00~~ \$500.00 in the case of
8 a commodity issuer, ~~-\$25.00~~ \$50.00 in the case of a principal,
9 ~~-\$15.00~~ \$50.00 in the case of an agent, and ~~-\$100.00~~ \$250.00 in
10 the case of an investment adviser. ~~A broker-dealer applicant~~
11 ~~who intends to maintain more than 1 office for the purpose of~~
12 ~~conducting his business within this state shall pay an additional~~
13 ~~filing fee of \$75.00 for each additional office and when a regis-~~
14 ~~trant an annual fee of \$75.00 for each additional office.~~ Every
15 applicant filing an application for registration of a successor
16 pursuant to section 202(c) shall pay a filing fee of ~~-\$50.00~~
17 \$100.00 for the unexpired portion of the year. A LICENSED AGENT
18 WHO HAS TERMINATED HIS OR HER CONNECTION WITH A BROKER-DEALER
19 SHALL PAY A TRANSFER FEE OF \$50.00 WHEN TRANSFERRING HIS OR HER
20 CONNECTION TO ANOTHER BROKER-DEALER. The administrator, in con-
21 nection with any examination pursuant to section 204(b)(6), may
22 require by rule the payment of a reasonable fee sufficient to
23 defray the expense of preparing, administering, scoring, and dis-
24 seminating information concerning the examination. The adminis-
25 trator may either collect this fee for, or direct that it be paid
26 in whole or in part to, any agency, ASSOCIATION, OR ORGANIZATION
27 cooperating in ~~giving~~ ADMINISTERING this examination.

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

5 (d) The administrator may by rule require a minimum capital
6 for registered broker-dealers, commodity issuers, and investment
7 advisers and prescribe a ratio between net capital and aggregate
8 indebtedness. If the registrant fails to comply with the minimum
9 net capital requirement, the registrant shall immediately cease
10 all investment advisory services, securities, or commodities
11 business operations and promptly notify the administrator of its
12 failure to maintain the required net capital, of the steps to be
13 taken to cure the net capital deficiency, and of its anticipated
14 date of reopening business operations. The registrant shall not
15 reactivate its securities or commodities or investment advisory
16 business without prior notification to the administrator.

17 (e) The administrator may by rule require registered
18 broker-dealers, commodity issuers, principals, agents, and
19 investment advisers to post surety bonds in amounts up to
20 \$100,000.00, and may determine their conditions. Any appropriate
21 deposit of cash or securities shall be accepted in lieu of any
22 bond required. A bond may not be required of any registrant
23 whose net capital, which may be defined by rule, exceeds
24 \$100,000.00. Every bond shall provide for action thereon by any
25 person who has a cause of action under section 410 and, if the
26 administrator by rule or order requires, by any person who has a
27 cause of action not arising under this act. Every bond shall

1 provide that action may not be maintained to enforce any
2 liability on the bond unless brought within 2 years after the
3 sale or other act upon which it is based. If a civil action is
4 maintained under the provisions of the bond, the court shall
5 require the person maintaining an action against the principal or
6 surety, or both, on the bond to place a notice in a newspaper of
7 general circulation in the county where the registrant maintains
8 its principal office, or if there is no principal office in this
9 state, then in the county of each registered office in this
10 state, for 3 successive days, stating that a claim has been made
11 under the provisions of the bond; or the court may provide for
12 alternative notice designed to advise prospective claimants
13 against the broker-dealer or surety. The court shall for a
14 period of 30 days thereafter permit other claimants against the
15 bond to join the action and claim under the provisions of the
16 bond.

17 (f) The administrator may by rule require registered
18 broker-dealers and investment advisers to carry fidelity bonds in
19 amounts up to \$400,000.00 in the case of broker-dealers and up to
20 \$100,000.00 in the case of investment advisers covering the
21 registrant's general partners and employees or covering its offi-
22 cers and employees.

23 (g) Unless the requirement is waived by rule or order of the
24 administrator all persons, including but not limited to partners,
25 officers, directors, and agents employed by a broker-dealer, com-
26 modity issuer, or investment adviser who are regularly employed
27 within this state shall, as a condition of employment, be

1 fingerprinted. The administrator may process the fingerprint
2 cards with the federal bureau of investigation and the department
3 of state police either directly or through the national associa-
4 tion of securities dealers. The fingerprints or information
5 relating to the fingerprints shall be used for the official use
6 of the administrator only.

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

10 (b) Every person filing a registration statement shall pay a
11 filing fee of 1/10 of 1% of the maximum aggregate offering price
12 at which the registered securities are to be offered in this
13 state, but the fee shall in no case be less than ~~-\$50.00-~~ \$100.00
14 or more than ~~-\$500.00-~~ \$1,250.00. When an application for regis-
15 tration is withdrawn before the effective date or a preeffective
16 stop order is issued, the administrator shall retain a fee of
17 ~~-\$50.00-~~ \$100.00 if the initial review has not been commenced,
18 and the full filing fee after review has been commenced.

19 (c) Every registration statement shall specify:

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

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

24 (3) Any withdrawal or any adverse order, judgment, or decree
25 entered in connection with the offering by the regulatory author-
26 ities in each state or by any court or the securities and
27 exchange commission.

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

5 (e) The administrator may by rule or otherwise permit the
6 omission of any item of information or document from any regis-
7 tration statement.

8 (f) The administrator may by rule or order require as a con-
9 dition of registration by qualification or coordination:

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

14 (2) That the proceeds from the sale of the registered secur-
15 ity in this state be impounded until the issuer receives a speci-
16 fied amount from the sale of the security either in this state or
17 elsewhere. The administrator may by rule or order determine the
18 conditions of any escrow or impounding required hereunder, and,
19 after prior notice and opportunity for hearing, may order the
20 cancellation in whole or in part of any such security deposited
21 in escrow where necessary for the protection of security
22 holders. The administrator may not reject a depository solely
23 because of location in another state.

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

1 (h) Every registration statement is effective for 1 year
2 from its effective date, ~~or any longer period during which the~~
3 ~~security is being offered or distributed in a nonexempted trans-~~
4 ~~action by or for the account of the issuer or other person on~~
5 ~~whose behalf the offering is being made or by any underwriter or~~
6 ~~broker dealer who is still offering part of an unsold allotment~~
7 ~~or subscription taken by him as a participant in the~~
8 ~~distribution,~~ except during the time a stop order is in effect
9 under section 306. A REGISTRATION STATEMENT MAY BE EXTENDED BY
10 THE ADMINISTRATOR BY RULE OR ORDER. All outstanding securities of
11 the same class as a registered security are considered to be reg-
12 istered for the purpose of any nonissuer transaction (1) so long
13 as the registration statement is effective and (2) between the
14 thirtieth day after the entry of any stop order suspending or
15 revoking the effectiveness of the registration statement under
16 section 306, if the registration statement did not relate in
17 whole or in part to a nonissuer distribution, and 1 year from the
18 effective date of the registration statement. A registration
19 statement may not be withdrawn for 1 year from its effective date
20 if any securities of the same class are outstanding. A registra-
21 tion statement may be withdrawn otherwise only in the discretion
22 of the administrator.

23 (i) So long as a registration statement is effective, the
24 administrator may by rule or order require the person who filed
25 the registration statement to file reports, not more often than
26 quarterly, to keep reasonably current the information contained

1 in the registration statement and to disclose the progress of the
2 offering.

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

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

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

3 (b) "Agent" means any individual other than a broker-dealer
4 who represents a broker-dealer or issuer in effecting or attempt-
5 ing to effect purchases or sales of securities or commodity
6 contracts. "Agent" does not include an individual who represents
7 an issuer in (1) effecting transactions in a security exempted by
8 section 402(a)(1), (2), (3), (4), (5), (9), or (10), (2) effect-
9 ing transactions exempted by section 402(b), or (3) effecting
10 transactions with existing employees, partners, officers, or
11 directors of the issuer or any of its subsidiaries and if, in
12 connection with all of these 3 cases, no commission is paid or
13 given directly or indirectly for soliciting any person in this
14 state. "Agent" does not include an officer or general partner of
15 an issuer whose securities are registered under the provisions of
16 this act, who represents the issuer in effecting transactions in
17 such registered securities, if no commission is paid or given
18 directly or indirectly for soliciting any person in this state.
19 "Agent" does not include a person acting solely as a finder and
20 registered pursuant to this act or acting as a finder under a
21 transaction exempt pursuant to section 402(b)(19). A partner,
22 officer, or director of a broker-dealer or issuer, or a person
23 occupying a similar status or performing similar functions, is an
24 agent only if he or she otherwise comes within this definition.
25 The administrator may by rule or order exclude other persons from
26 the definition of the word "agent".

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

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

25 (e) "Guaranteed" means guaranteed as to payment of princi-
26 pal, interest, or dividends.

1 (f) "Investment adviser" means any person who, for
2 consideration, engages in the business of advising others, either
3 directly or through publications or writings, as to the value of
4 securities or commodity contracts, or as to the advisability of
5 investing in, purchasing, or selling securities or commodity con-
6 tracts, who, for consideration and as a part of a regular busi-
7 ness, issues or promulgates analyses or reports concerning secur-
8 ities or commodity contracts, or who acts as a finder in conjunc-
9 tion with the offer, sale, or purchase of a security or
10 commodity. "Investment adviser" does not include (1) a bank,
11 savings institution, or trust company; (2) a lawyer, accountant,
12 engineer, geologist, geophysicist, or teacher whose performance
13 of these services is solely incidental to the practice of his or
14 her profession; (3) a broker-dealer or a registered agent acting
15 on behalf of a broker-dealer whose performance of these services
16 is solely incidental to the conduct of his or her business as a
17 broker-dealer; (4) a publisher of any bona fide newspaper, news
18 magazine, or business or financial publication of general, regu-
19 lar, and paid circulation; (5) a person who has no place of busi-
20 ness in this state if (A) his or her only clients in this state
21 are other investment advisers, broker-dealers, banks, savings
22 institutions, trust companies, insurance companies, investment
23 companies as defined in the investment company act of 1940, pen-
24 sion or profit-sharing trusts the assets of which are managed by
25 a bank or trust company or other institutional manager, or other
26 financial institutions or institutional buyers, whether acting
27 for themselves or as trustees, or (B) during any period of 12

1 consecutive months he or she does not direct business
2 communications into this state in any manner to more than 5 cli-
3 ents other than those specified in clause (A), whether or not he
4 or she or any of the persons to whom the communications are
5 directed is then present in this state; (6) any other persons not
6 within the intent of this paragraph as the administrator may by
7 rule or order designate; (7) a trustee whose custody of assets is
8 pursuant to judicial appointment, appointment under a trust
9 indenture, or agreement and who does not hold himself or herself
10 out to the general public as giving advice to others with respect
11 to securities and who maintains close contact with the personal
12 financial affairs of his or her clients as a part of his or her
13 fiduciary responsibilities, or a person who gives advice only to
14 such a trustee; or, (8) a county treasurer acting pursuant to his
15 or her authority under the local government investment pool act.

16 (g) "Issuer" means any person who issues or proposes to
17 issue any security or commodity contract, except that:

18 (1) For certificates of deposit, voting-trust certificates
19 or collateral-trust certificates, or with respect to certificates
20 of interest or shares in an unincorporated investment trust not
21 having a board of directors, or persons performing similar func-
22 tions or of the fixed, restricted management or unit type, the
23 term "issuer" means the person or persons performing the acts and
24 assuming the duties of depositor or manager pursuant to the pro-
25 visions of the trust or other agreement or instrument under which
26 the security is issued.

1 (2) For certificates of interest or participation in oil,
2 gas, or mining titles or leases, or in payments out of production
3 under titles or leases, the term "issuer" means the owner of the
4 oil, gas, or mining titles or leases or payments out of produc-
5 tion or any fractional part thereof who creates and sells certif-
6 icates of interest or participation therein.

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

13 (h) "Nonissuer" means not directly or indirectly for the
14 benefit of the issuer. A sale of securities shall be considered
15 to be indirectly for the benefit of the issuer if all of the fol-
16 lowing conditions are met:

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

22 (2) The sale, together with all sales made in this state by
23 or for the benefit of the issuer during the 6-month period imme-
24 diately before the date of the sale, otherwise than pursuant to a
25 registration statement or exemption order under this act, exceeds
26 1% of the outstanding securities of the class of securities being
27 sold.

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

4 (i) "Person" means an individual, a corporation, a partner-
5 ship, an association, a joint-stock company, a trust where the
6 interests of the beneficiaries are evidenced by a security, an
7 unincorporated organization, a government, or a political subdi-
8 vision of a government.

9 (j) (1) "Sale" or "sell" includes every contract of sale of,
10 contract to sell, or disposition of a security or commodity con-
11 tract, or interest in a security or commodity contract, for
12 value.

13 (2) "Offer" or "offer to sell" includes every attempt or
14 offer to dispose of, or solicitation of an offer to buy, a secur-
15 ity or commodity contract, or interest in a security or commodity
16 contract, for value.

17 (3) Any security or commodity contract given or delivered
18 with, or as a bonus on account of, any purchase of securities, or
19 commodity contracts, or any other thing is considered to consti-
20 tute part of the subject of the purchase and to have been offered
21 and sold for value.

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

24 (5) Every sale or offer of a warrant or right to purchase or
25 subscribe to another security or commodity contract of the same
26 or another issuer, as well as every sale or offer of a security
27 or commodity contract which gives the holder a present or future

1 right or privilege to convert into another security or commodity
2 contract of the same or another issuer, is considered to include
3 an offer of the other security or commodity contract.

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

5 ~~(A) Any bona fide loan.~~

6 (A) ~~(B)~~ Any stock dividend, whether the corporation dis-
7 tributing the dividend is the issuer of the stock or not, if
8 nothing of value is given by stockholders for the dividend other
9 than the surrender of a right to a cash or property dividend when
10 each stockholder may elect to take the dividend in cash or prop-
11 erty or in stock.

12 (B) ~~(C)~~ Any act incident to a judicially approved reorga-
13 nization in which a security is issued in exchange for 1 or more
14 outstanding securities, claims, or property interests, or partly
15 in such exchange and partly for cash.

16 (k) "Securities act of 1933", "securities exchange act of
17 1934", "public utility holding company act of 1935", "investment
18 company act of 1940", "investment advisers act of 1940",
19 "securities investor protection act of 1970", "commodity futures
20 trading commission act of 1974", and "small business investment
21 act of 1958", mean the federal statutes of those names as amended
22 before or after the effective date of this act.

23 (l) "Security" means any note; stock; treasury stock; bond;
24 debenture; evidence of indebtedness; certificate of interest or
25 participation in any profit-sharing agreement; collateral-trust
26 certificate; preorganization certificate or subscription;
27 transferable share; investment contract; voting-trust

1 certificate; certificate of deposit for a security; certificate
2 of interest or participation in an oil, gas, or mining title or
3 lease or in payments out of production under such a title or
4 lease; or, in general, any interest or instrument commonly known
5 as a "security", or any certificate of interest or participation
6 in, temporary or interim certificate for, receipt for, guarantee
7 of, or warrant or right to subscribe to or purchase, any of the
8 foregoing. "Security" includes any contractual or quasi contrac-
9 tual arrangement pursuant to which: (1) a person furnishes capi-
10 tal, other than services, to an issuer; (2) a portion of that
11 capital is subjected to the risks of the issuer's enterprise; (3)
12 the furnishing of that capital is induced by the representations
13 of an issuer, promoter, or their affiliates which give rise to a
14 reasonable understanding that a valuable tangible benefit will
15 accrue to the person furnishing the capital as a result of the
16 operation of the enterprise; (4) the person furnishing the capi-
17 tal does not intend to be actively involved in the management of
18 the enterprise in a meaningful way; and (5) a promoter or its
19 affiliates anticipate, at the time the capital is furnished, that
20 financial gain may be realized as a result thereof. "Security"
21 does not include an insurance or endowment policy or annuity con-
22 tract under which an insurance company promises to pay money
23 either in a lump sum or periodically for life or some other spec-
24 ified period or a commodity contract. The administrator may
25 exclude by rule or by order other transactions or agreements from
26 the definition of the word "security".

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

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

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

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

1 (q) "Promoter" means a person who, acting alone or in
2 conjunction with 1 or more persons, directly or indirectly takes
3 the initiative in founding and organizing the business or enter-
4 prise of an issuer; or a person who, in connection with the
5 founding or organizing of the business or enterprise of an
6 issuer, directly or indirectly receives in consideration of serv-
7 ices or property, 10% or more of the proceeds from the sale of
8 any class of securities or 10% or more of the equity interest in
9 the issuer after the offering is complete. However, a person who
10 receives such an amount of securities or proceeds either solely
11 as underwriting commissions pursuant to an offering of securities
12 registered under this act or solely in consideration of property
13 or legal or accounting services shall not be deemed a promoter
14 within the meaning of this subsection if the person does not oth-
15 erwise take part in founding and organizing the enterprise.

16 (r) "Commission" means any payment in cash, securities, or
17 goods for offering or selling, promise, or commitment to provide
18 payment in the future for offering or selling, or any other simi-
19 lar payment. Commission does not include a real estate commis-
20 sion commensurate with fees paid in the area for similar serv-
21 ices, paid to licensed real estate brokers solely for real estate
22 services which have been rendered, or payment by a person to a
23 lawyer or accountant in connection with advice or recommendations
24 made by a lawyer or accountant to the client with whom the lawyer
25 or accountant has an established professional relationship, if
26 disclosure of the payment and the interest of the lawyer or
27 accountant in the transaction or in the issuer or any affiliate

1 of the issuer, is made in writing to the client before the sale.
2 Officers, directors, and partners of an issuer or purchaser, or
3 persons occupying a similar status shall not be considered a
4 finder if their contact was purely incidental and their compensa-
5 tion was not directly or indirectly tied to or conditioned upon
6 involvement in securities or commodities solicitation or
7 purchase.

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

18 (t) "Affiliate" means a person that directly or indirectly
19 through 1 or more intermediaries controls, is controlled by, or
20 is under common control with a specified person.

21 (u) "Finder" means a person who, for consideration, partici-
22 pates in the offer to sell, sale, or purchase of securities or
23 commodities by locating, introducing, or referring potential pur-
24 chasers or sellers. The finder does not include a person whose
25 actions are solely incidental to a transaction exempt pursuant to
26 section 402(b)(19). The administrator may by rule or order
27 exclude other persons from this definition.

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

3 (1) Any security, including a revenue obligation, issued or
4 guaranteed by the United States, any state, any political subdi-
5 vision of a state, or any agency or corporate or other instrumen-
6 tality of 1 or more of the foregoing, ~~— or any certificate of~~
7 ~~deposit for any of the foregoing, —except that unless the issue~~
8 ~~is approved by the municipal finance commission, a revenue obli-~~
9 ~~gation of 1 of the foregoing payable from payments to be made in~~
10 ~~respect of property or money used under a lease, sale, or loan~~
11 ~~arrangement by or for a nongovernmental industrial or commercial~~
12 ~~enterprise or any guarantee or other obligation of such an~~
13 ~~enterprise made in connection therewith. —which may be consid-~~
14 ~~ered to be a security is not exempt unless a notice in writing is~~
15 ~~filed at least 10 days before the issuance of the security with~~
16 ~~the administrator specifying the terms of the offer together with~~
17 ~~copies of any prospectus and sales material.~~

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

25 (3) Any security issued by and representing an interest in
26 or a debt of, or guaranteed by, any bank organized under the laws

1 of the United States, or any bank, savings institution, or trust
2 company organized and supervised under the laws of any state.

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

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

13 (6) Any security issued or guaranteed by any railroad, other
14 common carrier, public utility, or public utility holding company
15 which is:

16 (A) A registered holding company under the public utility
17 holding company act of 1935 or a subsidiary of such a company
18 within the meaning of that act; or

19 (B) Regulated in respect of the issuance or guarantee of the
20 security by a governmental authority of the United States, any
21 state, Canada or any Canadian province; also, any equipment trust
22 certificate or equipment note or bond based on chattel mortgages,
23 leases, or agreements for conditional sales of cars, motive
24 power, or other rolling stock mortgages, leased or sold to or
25 furnished for the use of or upon such railroads, other common
26 carriers, public utilities, or holding companies supervised as
27 above, or equipment, notes, or bonds where the ownership or title

1 of such equipment is pledged or retained in accordance with the
2 provisions of the laws of the United States, any state, Canada or
3 any Canadian province, to secure the payment of such equipment
4 trust certificates, bonds, or notes.

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

14 (8) Any security issued by any person organized and operated
15 not for private profit but exclusively for religious, education-
16 al, benevolent, charitable, fraternal, social, athletic, or
17 reformatory purposes, or as a chamber of commerce or trade or
18 professional association. However, unless the securities are
19 part of an issue having an aggregate sales price of ~~\$50,000.00~~
20 \$250,000.00 or less and are sold only to bona fide members of the
21 issuing organization and are sold without payment of a commission
22 or consulting fee then the issuer shall do all of the following:

23 (i) Ten days before offer or sale of the security file with
24 the administrator an offering circular in a form the administra-
25 tor may by rule or order require together with a filing fee of
26 \$50.00, and the administrator does not disallow the exemption.

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

4 (iii) Sell only through registered securities broker-dealers
5 or through persons exempted from the definition of the term
6 "agent" by the administrator. In connection with all of the
7 foregoing, the administrator may by rule or order withdraw or
8 further condition this exemption, or waive the conditions con-
9 tained in subparagraphs (i) and (ii).

10 (9) Any prime quality negotiable commercial paper sold in an
11 aggregate amount of not less than \$25,000.00 to any purchaser
12 which arises out of a current transaction or the proceeds of
13 which have been or are to be used for current transactions, and
14 which evidences an obligation to pay cash at a fixed date within
15 9 months of the date of issuance, exclusive of days of grace, or
16 any nonautomatic renewal of such commercial paper which is like-
17 wise limited, or any guarantee of such commercial paper or of any
18 such renewal if the commercial paper is sold through a registered
19 broker-dealer or an institution whose securities are exempted
20 under subdivision (a)(3).

21 (10) Any investment contract or option issued in connection
22 with an employees' stock purchase, option, savings, pension,
23 profit sharing or similar benefit plan. ~~, if the administrator~~
24 ~~is notified in writing before the inception of the plan, or in~~
25 ~~the case of a stock option plan at least 10 days before the~~
26 ~~options granted thereunder have been exercised, except that~~
27 ~~notification shall not be required in the case of a plan which~~

~~1 does not distribute to the participants securities of the~~
~~2 employer or its affiliates establishing the plan.~~

3 (11) ANY SECURITY ISSUED BY AN ISSUER REGISTERED AS AN
4 OPEN-END MANAGEMENT INVESTMENT COMPANY OR UNIT INVESTMENT TRUST
5 UNDER SECTION 8 OF THE INVESTMENT COMPANY ACT OF 1940,
6 15 U.S.C. 80a-8, IF ALL OF THE FOLLOWING APPLY:

7 (A) IF EITHER 1 OF THE FOLLOWING APPLIES:

8 (1) THE ISSUER HAS ACTED, OR IS AFFILIATED WITH AN INVEST-
9 MENT ADVISER THAT HAS ACTED, AS AN INVESTMENT ADVISER TO 1 OR
10 MORE REGISTERED INVESTMENT COMPANIES OR UNIT INVESTMENT TRUSTS
11 FOR AT LEAST 3 YEARS NEXT PRECEDING AN OFFER OR SALE OF A SECUR-
12 ITY CLAIMED TO BE EXEMPT UNDER THIS SUBSECTION; AND THE ISSUER IS
13 ADVISED BY AN INVESTMENT ADVISER THAT:

14 (i) IS A DEPOSITORY INSTITUTION EXEMPT FROM REGISTRATION
15 UNDER THE INVESTMENT ADVISERS ACT OF 1940, 15 U.S.C. 80b-1 TO
16 80b-21.

17 (ii) IS CURRENTLY REGISTERED AS AN INVESTMENT ADVISER AND
18 HAS BEEN REGISTERED, OR IS AFFILIATED WITH AN ADVISER THAT HAS
19 BEEN REGISTERED, AS AN INVESTMENT ADVISER UNDER THE INVESTMENT
20 ADVISERS ACT OF 1940 FOR AT LEAST 3 YEARS NEXT PRECEDING AN OFFER
21 OR SALE OF A SECURITY CLAIMED TO BE EXEMPT UNDER THIS
22 SUBSECTION.

23 (2) THE ISSUER HAS A SPONSOR THAT HAS AT ALL TIMES THROUGH-
24 OUT THE 3 YEARS PRECEDING AN OFFER OR SALE OF A SECURITY CLAIMED
25 TO BE EXEMPT UNDER THIS SUBSECTION SPONSORED 1 OR MORE REGISTERED
26 INVESTMENT COMPANIES OR UNIT INVESTMENT TRUSTS THE AGGREGATE
27 TOTAL ASSETS OF WHICH HAVE EXCEEDED \$100,000,000.00.

1 (B) THE ADMINISTRATOR HAS RECEIVED, PRIOR TO ANY SALE
2 EXEMPTED UNDER THIS SUBSECTION, BOTH OF THE FOLLOWING:

3 (1) NOTICE OF INTENTION TO SELL ON A FORM SPECIFIED BY THE
4 ADMINISTRATOR WHICH HAS BEEN EXECUTED BY THE ISSUER SETTING FORTH
5 THE NAME AND ADDRESS OF THE ISSUER AND THE SECURITIES TO BE
6 OFFERED IN THIS STATE.

7 (2) A FILING FEE OF \$1,250.00 FOR THE OPEN-END MANAGEMENT
8 COMPANIES OR A FILING FEE OF \$750.00 FOR UNIT INVESTMENT TRUST.

9 (C) IN THE EVENT ANY OFFER OR SALE IS TO BE MADE MORE THAN
10 12 MONTHS AFTER THE DATE THE NOTICE UNDER SUBDIVISION (B) WAS
11 FILED WITH THE BUREAU UNDER THIS SUBSECTION, IT SHALL BE NECES-
12 SARY TO REFILE A NOTICE OF INTENTION TO SELL AND TO PAY THE
13 FILING FEE SET FORTH IN SUBDIVISION (B) ABOVE.

14 (D) FOR THE PURPOSE OF THIS SUBSECTION, AN INVESTMENT
15 ADVISER IS AFFILIATED WITH ANOTHER INVESTMENT ADVISER IF IT CON-
16 TROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE
17 OTHER INVESTMENT ADVISER.

18 (E) AN EXEMPTION UNDER THIS SUBSECTION DOES NOT GRANT AN
19 EXEMPTION FROM REGISTRATION FOR SALESPERSONS UNDER
20 SECTION 201(A).

21 (b) The following transactions are exempted from sections
22 301 and 403:

23 (1) Any isolated nonissuer transaction, and with respect to
24 a certificate of interest or participation in an oil, gas or
25 mining title or a lease or payment out of production under a
26 title or lease, any isolated transaction not involving an offer

1 or sale by a promoter, whether effected through a broker-dealer
2 or not.

3 (2) Any nonissuer distribution of an outstanding security
4 whose issuer and any predecessors have been in continuous opera-
5 tion for at least 5 years if:

6 (A) A recognized securities manual contains the names of the
7 issuer's officers and directors, a balance sheet of the issuer as
8 of a date within 18 months, and a profit and loss statement for
9 either the fiscal year preceding that date or the most recent
10 year of operations, or

11 (B) The security has a fixed maturity or a fixed interest or
12 dividend provision and there has been no default during the cur-
13 rent fiscal year or within the 3 preceding fiscal years, or
14 during the existence of the issuer and any predecessors if less
15 than 3 years, in the payment of principal, interest, or dividends
16 on the security.

17 (3) Any nonissuer transaction effected by or through a reg-
18 istered broker-dealer pursuant to an unsolicited order or offer
19 to buy; but the administrator may by rule require that the cus-
20 tomer acknowledge upon a specified form that the sale was unso-
21 licited, and that a signed copy of each such form be preserved by
22 the broker-dealer for a specified period.

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

26 (5) Any transaction not part of a series of transactions in
27 related or adjacent properties to individual investors, or any

1 transaction involving an offer or sale to a financial institution
2 as defined in subdivision (8), in a bond or other evidence of
3 indebtedness secured by a real or chattel mortgage or deed of
4 trust, or by an agreement for the sale of real estate or chat-
5 tels, if the entire mortgage, deed of trust, or agreement,
6 together with all the bonds or other evidences of indebtedness
7 secured thereby, is offered and sold as a unit.

8 (6) Any transaction by an executor, administrator, sheriff,
9 marshal, receiver, trustee in bankruptcy, guardian, or
10 conservator.

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

14 (8) Any offer or sale to a bank, savings institution, trust
15 company, insurance company, investment company as defined in the
16 investment company act of 1940, pension or profit sharing trust
17 the assets of which are managed by ~~a bank or trust company or~~
18 ~~other~~ AN institutional manager, ~~or~~ THE TREASURER OF THIS
19 STATE, other financial institution, ~~or institutional manager, or~~
20 ~~to a~~ broker-dealer, THE FEDERAL NATIONAL MORTGAGE ASSOCIATION,
21 THE FEDERAL HOME LOAN MORTGAGE CORPORATION, OR THE GOVERNMENT
22 NATIONAL MORTGAGE ASSOCIATE, whether the purchaser is acting for
23 itself or in some fiduciary capacity.

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

26 (A) The issuer and any person acting on its behalf shall
27 exercise reasonable care to assure that purchasers in this state

1 of the securities in the offering do not resell the securities
2 without compliance with state and federal securities laws. For
3 sales described in subparagraph (D)(2), (3), and (5) that reason-
4 able care shall include, where appropriate, but not necessarily
5 be limited to, all of the following:

6 (1) Making reasonable inquiry to determine if the purchaser
7 is acquiring the securities for his own account or on behalf of
8 other persons who may be considered as separate offerees or pur-
9 chasers;

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

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

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

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

24 (C) A commission is not paid or given directly or indirectly
25 for soliciting any prospective purchaser in this state, except to
26 a broker-dealer registered pursuant to this act who is not
27 affiliated with the issuer or its affiliates. Those payments

1 shall be reflected on the books and records of the broker-dealer,
2 and shall be fully disclosed in writing to each prospective
3 purchaser. The broker-dealer or issuer shall file with the
4 administrator on such forms as the administrator prescribes, a
5 confidential report of offering within 30 days after initiation
6 of the offering in this state and every 90 days thereafter until
7 the final report of completion of the offering.

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

10 (1) Sales to any of the following classes of persons:

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

20 (ii) Not more than 15 persons whose principal business is
21 the line of business to which the offering relates, and who are
22 qualified by previous experience to evaluate the risks of the
23 investment.

24 The provisions of subsection (A) shall not apply to sales
25 covered by subparagraphs (i) and (ii).

26 (2) Sales to not more than 15 persons in this state within
27 any 12-month period, in reliance upon this subparagraph, and the

1 issuer provides to all such offerees at least 48 hours before
2 sale a document:

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

5 (ii) Disclosing in reasonable detail the current financial
6 condition of the issuer and in the case of a limited partnership
7 or oil and gas venture, the current financial condition of the
8 general partner or oil and gas issuer; except that in the case of
9 a limited partnership interest or interest in oil or gas, the
10 document may merely state that the general partner or oil and gas
11 issuer has a net worth, determined in accordance with generally
12 accepted accounting principles, in excess of a stated sum, and
13 that its net worth exceeds the obligations undertaken by the gen-
14 eral partner or oil and gas issuer, and that the assets or opera-
15 tions of the general partner or oil and gas issuer will generate
16 sufficient cash to meet these obligations as they come due;

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

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

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

26 (vi) Stating, except in the case of a corporate issuer, that
27 each investor or his designated representative may inspect the

1 books and records of the issuer or the venture at any reasonable
2 time for proper purposes;

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

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

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

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

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

23 (ii) The administrator by order finds the offering consis-
24 tent with the provisions of section 306 and declares this exemp-
25 tion effective;

1 (iii) The offering is made upon such conditions and with
2 such information or provisions in the offering circular as the
3 administrator may require;

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

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

11 (5) Sales made to a person who the seller has reasonable
12 grounds to believe and does believe meets 1 of the following
13 conditions:

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

20 (ii) An individual who after the purchase has an investment
21 of more than \$50,000.00 in the securities of the issuer, includ-
22 ing installment payments to be made within 1 year after purchase
23 by the investor; has either personal income before taxes in
24 excess of \$100,000.00 for his last fiscal year or latest 12-month
25 period and is capable of bearing the economic risk, or net worth
26 in excess of \$1,000,000.00; and has such knowledge and experience
27 in financial and business matters that he is capable of

1 evaluating the merits and risks of the prospective investment or
2 has obtained the advice of an attorney, certified public account-
3 tant, or investment adviser registered under the investment
4 advisers act of 1940, or an investment adviser registered under
5 this act, with respect to the merits and risks of the prospective
6 investment.

7 (F) For purposes of this subparagraph:

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

11 (i) The trust has an independent trustee;

12 (ii) The issuer makes inquiry and reasonably believes that
13 the trust invests not more than 10% of its assets in the securi-
14 ties sold by the issuer; and

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

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

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

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

8 (3) Each offer or sale made to a corporation or business
9 trust shall be deemed to have been made to each security holder
10 of the corporation or business trust as an individual unless (i)
11 a class of securities of the corporation or trust is registered
12 pursuant to the securities exchange act of 1934, (ii) the deci-
13 sion of the corporation or trust to acquire the shares of the
14 issuer is directly or indirectly related to the business of the
15 corporation or trust and not for investment purposes, and its
16 principal business is not investing in securities, or (iii) the
17 issuer makes inquiry and reasonably believes that the corporation
18 or trust invests not more than 10% of its assets in the securi-
19 ties offered or sold by the issuer, and as to each of the above,
20 within the 2-year period before the initial offer of the securi-
21 ties the issuer was not directly or indirectly connected with the
22 formation or subsequent operation of the corporation or trust or
23 solicitation of its investors and the issuer makes inquiry and
24 reasonably believes that the corporation or trust, or in the case
25 of a wholly owned subsidiary, its parent, was not formed to pur-
26 chase the securities of the issuer.

1 (4) An offer or sale to an investment company registered
2 under the investment company act of 1940 shall constitute an
3 offer or sale to an individual.

4 (5) Husband, wife, and children living as a family are con-
5 sidered to be 1 individual.

6 (6) Each client of an investment adviser, each customer of a
7 broker-dealer, or a person with a similar relationship shall be
8 considered an offeree or purchaser for purposes of this subdivi-
9 sion regardless of the amount of discretion given to the invest-
10 ment adviser, broker-dealer, or other person to act on behalf of
11 the client, customer, or trust.

12 (G) The administrator may by rule or order as to any secur-
13 ity or transaction, or any type of security or transaction,
14 increase the number of offerees or purchasers, waive any condi-
15 tions, and in conjunction with a request to exercise its discre-
16 tion under these provisions, the administrator may further condi-
17 tion this exemption.

18 (10) Any offer or sale of a preorganization certificate or
19 subscription in a corporation, and the issuance of securities
20 pursuant thereto, if:

21 (A) No commission is paid or given directly or indirectly
22 for soliciting any prospective subscriber;

23 (B) There are not more than 10 purchasers;

24 (C) Advertising is not published or circulated unless it has
25 been reviewed and no objection thereto is made by the administra-
26 tor in writing;

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

4 (E) The administrator may by rule or order waive the condi-
5 tions in subparagraph (A) and require reports of sales under this
6 exemption.

7 (11) Any transaction pursuant to an offer to existing secur-
8 ity holders of the issuer, including persons who at the time of
9 the transaction are holders of convertible securities, nontrans-
10 ferable warrants, or transferable warrants exercisable within not
11 more than 90 days of their issuance, if either of the following
12 occurs:

13 (A) A commission, other than a standby commission, is not
14 paid or given directly or indirectly for soliciting any security
15 holder in this state and the offer is made either to holders of
16 the convertible securities or warrants and relates to the under-
17 lying security, or the securities are purchased by not more than
18 25 security holders in this state within a 12-month period.

19 (B) Twenty business days before any offer the issuer files
20 with the administrator the offering circular or other materials
21 proposed to be sent to security holders and other persons
22 describing the terms of the offer together with a filing fee of
23 ~~-\$50.00~~ \$100.00 and the administrator does not by order disallow
24 the exemption within the next 20 business days.

25 (12) Any offer, but not a sale, of a security for which a
26 registration statement or exemption order request was filed under
27 this act if a stop order is not in effect and a public proceeding

1 or examination looking toward such an order is not pending and if
2 made in compliance with section 307.

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

6 (14) Any offer or sale of a security as contemplated under
7 the small business investment act of 1958 (1) to the federal
8 small business administration, or (2) by a small business concern
9 to a small business investment company or to a development com-
10 pany for equity capital provided or loans made, or (3) by a small
11 business investment company to a small business concern as a con-
12 dition to providing the latter with equity capital or loans.

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

18 (16) The distribution by a cooperative corporation of its
19 securities to its patrons as patronage refunds or returns dis-
20 tributed on a patronage basis.

21 (17) Any nonissuer transaction effected by or through a
22 broker-dealer in any outstanding security of the same class as
23 that which has been designated by order by the administrator as
24 eligible for trading in this state, or that was registered for
25 general public sale under this act or a predecessor act before
26 January 1, 1978, if either the issuer has a class of securities
27 registered under the securities exchange act of 1934 and has

1 filed with the securities and exchange commission all reports
2 required to be filed by it under that statute for the 12-month
3 period preceding the date of sale, or the issuer has made pub-
4 licly available such information as the administrator determines
5 by rule or order as sufficient for the protection of investors
6 and that information is on file with the administrator. The
7 administrator, if it finds such action in the public interest, by
8 order, may withdraw or condition this exemption as to any secur-
9 ity or issuer. A person requesting a designation order shall pay
10 a filing fee of ~~-\$50.00-~~ \$100.00.

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

15 (19) Any transaction incident to a class vote by sharehold-
16 ers pursuant to the certificate of incorporation or the applica-
17 ble corporation statute, on a merger, consolidation, reclassifi-
18 cation of securities, or sale of corporate assets in considera-
19 tion of the issuance of securities of another corporation.

20 (20) Any transaction that the administrator by order exempts
21 from the registration provisions of this act after a determina-
22 tion that registration is not necessary in the public interest
23 and for the protection of investors. An order may be granted
24 either before or after consummation of the transaction upon the
25 petition of any interested party in the transaction.

26 (21) ANY TRANSACTION MADE PURSUANT TO A UNIFORM LIMITED
27 OFFERING EXEMPTION FILING. A PERSON CLAIMING UNDER THIS

1 SUBDIVISION SHALL PAY A FILING FEE OF \$100.00 AT THE TIME OF
2 FILING THE INITIAL NOTICE FORM.

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

6 (d) Offers or sales which are exempt under ~~this section of~~
7 ~~the act~~ SUBDIVISIONS (1) THROUGH (20) OF SUBSECTION (B) may be
8 combined ~~with offers or sales exempt under any part of subsec-~~
9 ~~tion (b)~~ to exempt an entire transaction or series of
10 transactions.

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

23 (b) A person who has been ordered to cease and desist may
24 file with the administrator within 15 days after service on him
25 or her of the order a written request for a hearing. The admin-
26 istrator within 15 days after the filing shall issue a notice of
27 hearing and set a date for the hearing. If a hearing is not

1 requested by the person or is not ordered by the administrator
2 within 15 days, the order will stand as entered. The administra-
3 tor shall hold the hearing in accordance with THE ADMINISTRATIVE
4 PROCEDURES ACT OF 1969, Act No. 306 of the Public Acts of 1969,
5 as amended, being sections 24.201 to ~~24.315~~ 24.328 of the
6 Michigan Compiled Laws, and shall have all the powers granted
7 thereunder. The administrator shall issue a decision sustaining,
8 modifying, or dismissing the original order.

9 (c) The administrator, if it finds such action to be in the
10 public interest and that any person has violated or is about to
11 violate any provision of this act or any rule or order hereunder,
12 may by order deny or revoke any exemption specified in section
13 402(a)(1), (6), (7), (8), (9), or (10) or section 402(b) with
14 respect to a specific security, issuer or transaction, or a
15 person's right to sell exempt securities or engage in exempt
16 transactions in the future without compliance with the registra-
17 tion provisions of this act. The order shall list the individual
18 exemptions revoked and the rationale for the revocation. An
19 order may not be entered without appropriate prior notice to all
20 interested parties, opportunity for hearing, and written findings
21 of fact and conclusions of law, except that the administrator may
22 by order summarily deny or revoke any of the specific exemptions
23 pending final determination of a proceeding under this
24 subsection. Upon the entry of a summary order the administrator
25 shall promptly notify all interested parties that the order has
26 been entered and the reasons therefor and that within 15 days
27 after receipt of a written request the matter will be set down

1 for hearing. If a hearing is not requested within 15 days and
2 none is ordered by the administrator, the order will remain in
3 effect until it is modified or vacated by the administrator. If
4 a hearing is requested or ordered, the administrator, after
5 notice of an opportunity for hearing to all interested persons,
6 may modify or vacate the order or extend it until final
7 determination. An order under this subsection may operate
8 retroactively. A person does not violate section 301 or 403 by
9 reason of any offer or sale effected after the entry of an order
10 under this subsection if that person sustains the burden of proof
11 that he did not know, and in the exercise of reasonable care
12 could not have known, of the order.

13 (d) None of the remedies provided for in this act are mutu-
14 ally exclusive and the administrator in its discretion may use as
15 many remedies as it deems necessary. The administrator in seek-
16 ing a remedy shall consider the present actions and the possibil-
17 ity of future violations by the parties against whom proceedings
18 are contemplated, together with actions taken to mitigate harm to
19 the public. THE ADMINISTRATOR MAY IMPOSE A CIVIL PENALTY OF NOT
20 MORE THAN \$1,000.00 FOR EACH VIOLATION OF THIS ACT, NOT TO EXCEED
21 A TOTAL OF \$10,000.00.

22 (e) The administrator shall not commence any action or pro-
23 ceeding under this act more than 6 years after the violation.

24 Sec. 409. (a) Any person who ~~wilfully~~ WILLFULLY violates
25 sections 101, 102, 103, 201, 203(h), 301, 402, 405(b), or 406(b),
26 or who engages in conduct prohibited by section 204(a)(1)(J) to
27 (S) and (V) to (Z), or who ~~wilfully~~ WILLFULLY violates section

1 404 knowing the statement made to be false or misleading in any
2 material respect, shall upon conviction be fined not more than
3 \$25,000.00 FOR EACH VIOLATION, or imprisoned not more than ~~7~~ 10
4 years, or both.

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

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

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