

Act No. 150
Public Acts of 1990
Approved by the Governor
June 26, 1990
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Bennett, Stacey, Stopczynski, Giese, Randall, Niederstadt, Middaugh, Bankes,
Dunaskiss, Profit and Murphy

ENROLLED HOUSE BILL No. 5296

AN ACT to amend sections 202, 203, 305, 402, 410, and 413 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," sections 202, 305, and 402 as amended by Act No. 408 of the Public Acts of 1988 and section 410 as amended by Act No. 176 of the Public Acts of 1984, being sections 451.602, 451.603, 451.705, 451.802, 451.810, and 451.813 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 202, 203, 305, 402, 410, and 413 of Act No. 265 of the Public Acts of 1964, sections 202, 305, and 402 as amended by Act No. 408 of the Public Acts of 1988 and section 410 as amended by Act No. 176 of the Public Acts of 1984, being sections 451.602, 451.603, 451.705, 451.802, 451.810, and 451.813 of the Michigan Compiled Laws, are amended to read as follows:

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 in the case of a principal, \$30.00 in the case of an agent, and \$150.00 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 for the unexpired portion of the year. 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. 203. (a) Every registered broker-dealer, commodity issuer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the administrator by rule prescribes. All records so required shall be preserved for 3 years unless the administrator by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer, commodity issuer, and investment adviser shall file such financial reports as the administrator by rule prescribes.

(c) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the administrator, within or without

this state, as the administrator deems necessary or appropriate in the public interest or for the protection of investors. The expenses reasonably attributable to the examination of a matter arising under this section may be charged to the applicant or registrant involved. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as it deems it practicable in administering this subsection, may cooperate and exchange information with the securities and commodities administrators of other states, the securities and exchange commission, the commodity futures trading commission, and any national securities exchange or national securities association registered under the securities exchange act of 1934 and other appropriate law enforcement agencies. Failure of a registrant to promptly provide records for inspection shall be cause for a summary suspension order until conclusion of the examination of the records.

(e) A registered broker-dealer, commodity issuer, or investment adviser may not withdraw or terminate its registration unless the registrant has complied with all of the following:

(1) Filed a broker-dealer, commodity issuer, or investment adviser withdrawal form as prescribed by the administrator.

(2) Delivered all securities, commodities, and cash balances owing to all customers.

(3) Delivered all securities owing to other broker-dealers.

(4) Met other conditions as the administrator may by rule or order prescribe.

(5) Received a withdrawal order from the administrator approving the withdrawal request.

(f) Notwithstanding the provisions of subsection (e):

(1) A registrant may temporarily cease business by promptly advising the administrator in writing on or before the date of temporary cessation of business of the fact of cessation, the reasons for cessation, and the date or basis for reopening of the business.

(2) A registrant subject to a merger or acquisition where all obligations of the predecessor registrant are acquired by or transferred to the new broker-dealer, commodity issuer, or investment adviser which shall continue the business in an uninterrupted fashion shall comply with the provisions of section 202(c) instead of this section.

(3) The administrator may modify the aforementioned requirements by rule or order, in unusual and appropriate circumstances.

(g) A registered broker-dealer shall immediately notify the administrator of the appointment of a trustee for the registrant pursuant to the securities investor protection act of 1970. A broker-dealer for whom such a trustee has been appointed shall file with the administrator a broker-dealer withdrawal form in accordance with subsection (e). A broker-dealer's registration continues effective until entry of the withdrawal order by the administrator.

(h) A registrant or applicant for registration shall promptly notify the administrator in writing if any proceedings have been commenced or any sanction imposed by securities administrators or commodities administrators of other states, other state regulatory agencies, the securities and exchange commission, the commodity futures trading commission, or any national securities exchange, commodities exchange, or national securities association registered under the securities exchange act of 1934.

(i) The administrator may by rule or order require a broker-dealer or investment adviser to file all advertising for review and acceptance before use. All advertising shall be filed with the administrator contemporaneously with its use.

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 or more than \$1,250.00. 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 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 so long as the registration statement is effective or the issuer has a class of securities that have been subject to the reporting requirements of section 13 or 15(d) of title I of the securities exchange act of 1934, U.S.C. 78m and 78o, for not less than 9 months before the transaction and all reports required by that act have been filed for that period. 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, expense reimbursements, 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. 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 subsection (a)(3).

(10) Any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit sharing or similar benefit plan.

(11) 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) 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 subparagraph (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 subparagraph (B).

(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).

(12) A security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation national market system and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing. The administrator may, after providing notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:

(A) Deny or revoke this exemption by order for a specific issue of securities.

(B) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.

(C) Decertify the system by order if the administrator determines that the system's requirements are so changed from those listed in securities act release no. 33-6810, 53 Federal Register 52550 (Dec. 28, 1988), or insufficiently applied that the public interest and protection of investors contemplated by the requirements is no longer afforded.

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

(1) 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 in the payment of principal, interest, or dividends on the security.

(C) For purposes of this subdivision, an issuer or predecessor is in continuous operation only if it has gross operating revenue in each of the 5 years immediately preceding its claim of exemption and has had gross operating revenue of at least \$500,000.00 in not less than 3 of those 5 years.

(3) 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, a personal representative, 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 subparagraph (A) shall not apply to sales covered by subparagraph (D)(1) (i) and (ii).

(2) Sales to not more than 15 persons in this state within any 12-month period, in reliance upon this subparagraph, and the issuer provides to all such offerees at least 48 hours before sale a document:

(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 subdivision:
- (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 all of the following apply:
 - (i) The trust has an independent trustee;
 - (ii) The issuer makes inquiry and reasonably believes that the trust invests not more than 10% of its assets in the securities sold by the issuer; 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 within the 2-year period before the initial offer of the securities the issuer was not directly or indirectly connected with the formation or subsequent operation of the corporation or trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the corporation or trust, or in the case of a wholly owned subsidiary, its parent, was not formed to purchase the securities of the issuer and 1 of the following applies:

(i) a class of securities of the corporation or trust is registered pursuant to the securities exchange act of 1934,

(ii) the decision of the corporation or trust to acquire the shares of the issuer is directly or indirectly related to the business of the corporation or trust and not for investment purposes, and its principal business is not investing in securities, 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.

(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 all of the following apply:

(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 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. A person requesting a designation order shall pay a filing fee of \$100.00.

(18) The sale of capital stock issued by a professional service corporation formed under the professional service corporation act, 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. A person claiming under this subdivision shall pay a filing fee of \$100.00 at the time of filing the initial notice form.

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

(d) Offers or sales which are exempt under subsection (b)(1) through (20) may be combined to exempt an entire transaction or series of transactions.

Sec. 410. (a) Any person who does either of the following shall be liable to the person buying the security or commodity contract from him or her and the buyer may sue either at law or in equity to recover the consideration paid for the security or commodity contract, together with interest at 6% per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of income received on the security or commodity contract, upon the tender of the security or commodity contract, or, if he or she no longer owns the security or commodity contract, for damages which shall be the amount that would be recoverable upon a tender less the value of the security or commodity contract when the buyer disposed of it and interest at 6% per year from the date of disposition:

(1) Offers or sells a security or commodity contract in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304(d), 305(f), 305(g), or 412(g), or

(2) Offers or sells a security or commodity contract by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) A person may not bring an action under subsection (a)(1) more than 2 years after the contract of sale. A person may not bring an action under subsection (a)(2) more than 2 years after such person, in the exercise of reasonable care, knew or should have known of the untruth or omission, but in no event more than 4 years after the contract of sale. A person may not bring an action under this section if the buyer received a written offer,

before the action and at a time when he or she owned the security or commodity contract, to refund the consideration paid together with interest at 6% per year from the date of payment, less the amount of any income received on the security, and he or she failed to accept the offer within 30 days of its receipt, or if the buyer received such an offer before the action and at a time when he or she did not own the security or commodity contract, unless he or she rejected the offer in writing within 30 days of its receipt. The documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities or commodities shall be provided to the offeree concurrently with the written rescission offer. Such an offer shall not be made until 45 days after the date of sale of the securities and acceptance or rejection of the offer shall not be binding until 48 hours after receipt by the offeree. The rescission offer shall recite the provisions of this section. A rescission offer under this section shall not be valid unless the offeror substantiates that it has the ability to fund the offering and this information is set forth in the disclosure documents.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security or commodity contract to waive compliance with any provision of this act or any rule or order hereunder is void.

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section or section 202(e).

Sec. 413. (a) A document is filed when it is received by the administrator with the appropriate fee and all required forms.

(b) The administrator shall keep a register of all applications for registration and registration statements that are or have ever been effective under this act and all denial, suspension, or revocation orders that have been entered under this act. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, or report may be retained and stored by the administrator in the document's original form or by photostatic, micrographic, photographic, or optical disc media. Reproductions or copies of any registration statement, application, or report may be made available to the public under such rules as the administrator prescribes, except that the administrator may withhold from public inspection information, the disclosure of which is not necessary in the public interest and for the protection of investors.

(d) Upon request and for a reasonable charge as it prescribes, the administrator shall furnish to any person photostatic, micrographic, photographic, optical disc media reproductions, or other copies, certified under its seal of office if requested, of any entry in the register or any document that is a matter of public record. The charges made shall constitute reimbursement to the administrator for the cost of reproduction. In any proceeding or prosecution under this act, a copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The administrator may certify the nonexistence of a filing for any documents that this act permits to be filed with the administrator, upon certification that the documents are of a type that, if filed, would be filed with the administrator and that a personal search of the records has been made by the person so certifying. A certificate of nonexistence shall be prima facie evidence that such a document has not been filed with the administrator.

(f) The administrator in its discretion may honor requests from interested persons for interpretative opinions and may promulgate rules setting forth procedures for requesting those opinions.

Section 2. This amendatory act shall take effect November 30, 1990.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.