

HOUSE BILL No. 5296

November 15, 1989, Introduced by Reps. Bennett, Stacey, Stopczynski, Giese, Randall, Niederstadt, Middaugh, Bankes, Dunaskiss, Profit and Murphy and referred to the Committee on Corporations and Finance.

A bill to amend sections 202, 203, 305, 401, 402, and 410 of Act No. 265 of the Public Acts of 1964, entitled as amended "Uniform securities act," sections 202, 305, 401, 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, 451.801, 451.802, and 451.810 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 202, 203, 305, 401, 402, and 410 of Act
2 No. 265 of the Public Acts of 1964, sections 202, 305, 401, and
3 402 as amended by Act No. 408 of the Public Acts of 1988 and
4 section 410 as amended by Act No. 176 of the Public Acts of 1984,
5 being sections 451.602, 451.603, 451.705, 451.801, 451.802, and

1 451.810 of the Michigan Compiled Laws, are amended to read as
2 follows:

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

10 (1) The applicant's form and place of organization. ~~—~~

11 (2) The applicant's proposed method of doing business. ~~—~~

12 (3) The qualifications and business history of the
13 applicant. ~~—, in~~ IN the case of a broker-dealer or investment
14 adviser, the qualifications and business history of ~~any partner,~~
15 ~~officer, or director, any person~~ ALL PARTNERS, OFFICERS, DIREC-
16 TORS, OR PERSONS occupying a similar status or performing similar
17 functions, or ~~any person~~ PERSONS directly or indirectly con-
18 trolling the broker-dealer or investment adviser. ~~—, and, in~~ IN
19 the case of an investment adviser, the qualifications and busi-
20 ness history of ~~any employee,~~ ALL EMPLOYEES.

21 (4) ~~Any~~ AN injunction or administrative order or convic-
22 tion of a misdemeanor or of a felony. ~~—, and~~

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

27 Registration becomes effective upon order of the administrator.

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

4 (b) ~~Every~~ AN applicant for registration shall pay a filing
5 fee and ~~every~~ A registrant shall pay an annual fee of \$250.00
6 in the case of a broker-dealer, \$250.00 in the case of a commod-
7 ity issuer, \$30.00 ~~until December 1, 1990 and \$25.00 on and~~
8 ~~after December 1, 1990~~ in the case of a principal, \$30.00 ~~until~~
9 ~~December 1, 1990 and \$15.00 on and after December 1, 1990~~ in the
10 case of an agent, and \$150.00 ~~until December 1, 1990 and \$100.00~~
11 ~~on and after December 1, 1990~~ in the case of an investment
12 adviser. ~~Every~~ AN applicant filing an application for regis-
13 tration of a successor pursuant to section 202(c) shall pay a
14 filing fee of \$100.00 ~~until December 1, 1990 and \$50.00 on and~~
15 ~~after December 1, 1990~~ for the unexpired portion of the year.
16 ~~Until December 1, 1990, a~~ A licensed agent who has terminated
17 his or her connection with a broker-dealer shall pay a transfer
18 fee of \$10.00 when transferring his or her connection to another
19 broker-dealer. The administrator, in connection with any exami-
20 nation pursuant to section 204(b)(6), may require by rule the
21 payment of a reasonable fee sufficient to defray the expense of
22 preparing, administering, scoring, and disseminating information
23 concerning the examination. The administrator may either collect
24 this fee for, or direct that it be paid in whole or in part to,
25 any agency, association, or organization cooperating in adminis-
26 tering 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~~ AN
21 appropriate deposit of cash or securities shall be accepted in
22 lieu of ~~any~~ THE bond required. A bond may not be required of
23 any registrant whose net capital, which may be defined by rule,
24 exceeds \$100,000.00. ~~Every~~ THE bond shall provide for action
25 ~~thereon~~ by any person who has a cause of action under section
26 410 and, if the administrator by rule or order requires, by any
27 person who has a cause of action not arising under this act.

1 ~~Every~~ THE bond shall provide that action may not be maintained
2 to enforce any liability on the bond unless brought within 2
3 years after the sale or other act upon which it is based. If a
4 civil action is maintained under the provisions of the bond, the
5 court shall require the person maintaining an action against the
6 principal or surety, or both, on the bond to place a notice in a
7 newspaper of general circulation in the county where the regis-
8 trant maintains its principal office, or if there is no principal
9 office in this state, then in the county of each registered
10 office in this state, for 3 successive days, stating that a claim
11 has been made under the provisions of the bond. ~~—, or the~~ THE
12 court may provide for alternative notice designed to advise pro-
13 spective claimants against the broker-dealer or surety. The
14 court shall for a period of 30 days ~~thereafter~~ FROM THE DATE OF
15 THE NOTICE permit other claimants against the bond to join the
16 action and claim under the provisions of the 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~~ EXCEPT WHEN the requirement is waived by rule
24 or order of the administrator all persons, including, but not
25 limited to, partners, officers, directors, and agents employed by
26 a broker-dealer, commodity issuer, or investment adviser who are
27 regularly employed within this state, shall ~~—~~ as a condition of

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

7 Sec. 203. (a) ~~Every~~ A registered broker-dealer, commodity
8 issuer, and investment adviser shall make and keep ~~such~~
9 accounts, correspondence, memoranda, papers, books, and other
10 records as the administrator by rule prescribes. All records so
11 required shall be preserved for 3 years unless the administrator
12 by rule prescribes otherwise for particular types of records.

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

16 (c) If the information contained in ~~any~~ A document filed
17 with the administrator is or becomes inaccurate or incomplete in
18 any material respect, the registrant shall promptly file a cor-
19 recting amendment unless notification of the correction has been
20 given under section 201(b).

21 (d) All the records referred to in subsection (a) are
22 subject at any time or from time to time to ~~such~~ reasonable
23 periodic, special, or other examinations by representatives of
24 the administrator, within or without this state, as the adminis-
25 trator ~~deems~~ CONSIDERS necessary or appropriate in the public
26 interest or for the protection of investors. THE EXPENSES
27 REASONABLY ATTRIBUTABLE TO THE EXAMINATION OF A MATTER ARISING

1 UNDER THIS SECTION MAY BE CHARGED TO THE APPLICANT OR REGISTRANT
2 INVOLVED. For the purpose of avoiding unnecessary duplication of
3 examinations, the administrator, ~~insofar as it deems it~~ AS IS
4 practicable in administering this subsection, may cooperate and
5 exchange information with the securities and commodities adminis-
6 trators of other states, the securities and exchange commission,
7 the commodity futures trading commission, and ~~any~~ A national
8 securities exchange or national securities association registered
9 under the securities exchange act of 1934, CHAPTER 404, 48
10 STAT. 881, and other appropriate law enforcement agencies.

11 Failure of a registrant to promptly provide records for inspec-
12 tion shall be cause for a summary suspension order until conclu-
13 sion of the examination of the records.

14 (e) A registered broker-dealer, commodity issuer, or invest-
15 ment adviser ~~may~~ SHALL not withdraw or terminate its registra-
16 tion unless the registrant has complied with all of the
17 following:

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

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

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

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

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

1 (f) ~~Notwithstanding the provisions of subsection (e)~~

2 SUBSECTION (E) SHALL NOT APPLY FOR ANY OF THE FOLLOWING:

3 (1) ~~A~~ IF THE registrant ~~may~~ temporarily ~~cease~~ CEASES
4 business ~~by~~ AND promptly ~~advising~~ ADVISES the administrator
5 in writing on or before the date of temporary cessation of busi-
6 ness of the fact of cessation, the reasons for cessation, and the
7 date or basis for reopening of the business.

8 (2) ~~A~~ IF THE registrant IS subject to a merger or acquisi-
9 tion where all obligations of the predecessor registrant are
10 acquired by or transferred to the new broker-dealer, commodity
11 issuer, or investment adviser which shall continue the business
12 in an uninterrupted fashion, THEN THE REGISTRANT shall comply
13 with the provisions of section 202(c) instead of this section.

14 (3) ~~The administrator may modify the aforementioned~~ FOR
15 UNUSUAL OR APPROPRIATE CIRCUMSTANCES, THE ADMINISTRATOR MODIFIES
16 THE requirements OF SUBSECTION (E) by rule or order. ~~in~~
17 ~~unusual and appropriate circumstances.~~

18 (g) A registered broker-dealer shall immediately notify the
19 administrator of the appointment of a trustee for the registrant
20 pursuant to the securities investor protection act of 1970,
21 PUBLIC LAW 91-598, 15 U.S.C. 78aaa TO 78lll. A broker-dealer for
22 whom ~~such~~ a trustee has been appointed shall file with the
23 administrator a broker-dealer withdrawal form in accordance with
24 subsection (e). A broker-dealer's registration continues effec-
25 tive until entry of the withdrawal order by the administrator.

26 (h) A registrant or applicant for registration shall
27 promptly notify the administrator in writing if ~~any proceedings~~

1 ~~have~~ A PROCEEDING HAS been commenced or ~~any~~ A sanction imposed
 2 by A securities ~~administrators~~ ADMINISTRATOR or commodities
 3 ~~administrators~~ ADMINISTRATOR of ~~other states, other~~ ANOTHER
 4 STATE, ANOTHER state regulatory ~~agencies~~ AGENCY, the securities
 5 and exchange commission, the commodity futures trading commis-
 6 sion, or ~~any~~ A national securities exchange, commodities
 7 exchange, or national securities association registered under the
 8 securities exchange act of 1934.

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

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

16 (b) ~~Every~~ A person filing a registration statement shall
 17 pay a filing fee of 1/10 of 1% of the maximum aggregate offering
 18 price at which the registered securities are to be offered in
 19 this state, but the fee shall in no case be less than \$100.00
 20 ~~until December 1, 1990 and \$50.00 on and after December 1, 1990~~
 21 or more than \$1,250.00. ~~until December 1, 1990 and \$500.00 on~~
 22 ~~and after December 1, 1990. When an~~ IF THE application for reg-
 23 istration is withdrawn before the effective date or a preeffec-
 24 tive stop order is issued, THEN the administrator shall retain a
 25 fee of \$100.00 ~~until December 1, 1990 and \$50.00 on and after~~
 26 ~~December 1, 1990~~ if the initial review has not been commenced,
 27 and the full filing fee after review has been commenced.

1 (c) ~~Every~~ THE registration statement shall specify ALL OF
2 THE FOLLOWING:

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

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

7 (3) ~~Any~~ A withdrawal or any adverse order, judgment, or
8 decree entered in connection with the offering by the regulatory
9 authorities in each state, ~~or~~ by ~~any~~ A court, or the securi-
10 ties and exchange commission.

11 (d) ~~Any~~ A document filed under this act or a predecessor
12 act within 5 years preceding the filing of a registration state-
13 ment may be incorporated by reference in the registration state-
14 ment to the extent that the document is currently accurate.

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

18 (f) The administrator may by rule or order require as a con-
19 dition of registration by qualification or coordination ANY OF
20 THE FOLLOWING:

21 (1) That ~~any~~ A security issued or to be issued to a pro-
22 moter for a consideration substantially different from the public
23 offering price, or to ~~any~~ A person for a consideration other
24 than cash, be deposited in escrow. ~~—, and—~~

25 (2) That the proceeds from the sale of the registered secur-
26 ity in this state be impounded until the issuer receives a
27 specified amount from the sale of the security either in this

1 state or elsewhere. The administrator may by rule or order
 2 determine the conditions of any REQUIRED escrow or impounding
 3 ~~required hereunder,~~ and, after prior notice and opportunity for
 4 hearing, may order the cancellation in whole or in part of any
 5 ~~such~~ security deposited in escrow where necessary for the pro-
 6 tection of security holders. The administrator may not reject a
 7 depository solely because of location in another state.

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

12 (h) ~~Every~~ A registration statement is effective for 1 year
 13 from its effective date, except during the time a stop order is
 14 in effect under section 306. A registration statement may be
 15 extended by the administrator by rule or order. All outstanding
 16 securities of the same class as a registered security are consid-
 17 ered to be registered for the purpose of ~~any~~ A nonissuer trans-
 18 action ~~(1)~~ so long as the registration statement is effective
 19 ~~and (2) between the thirtieth day after the entry of any stop~~
 20 ~~order suspending or revoking the effectiveness of the registra-~~
 21 ~~tion statement under section 306, if the registration statement~~
 22 ~~did not relate in whole or in part to a nonissuer distribution,~~
 23 ~~and 1 year from the effective date of the registration statement~~
 24 OR THE ISSUER HAS A CLASS OF SECURITIES THAT HAVE BEEN SUBJECT TO
 25 THE REPORTING REQUIREMENTS OF SECTION 13 OR 15(d) OF TITLE I OF
 26 THE SECURITIES EXCHANGE ACT OF 1934, U.S.C. 78m AND 78o, FOR NOT
 27 LESS THAN 9 MONTHS BEFORE THE TRANSACTION AND ALL REPORTS

1 REQUIRED BY THAT ACT HAVE BEEN FILED FOR THAT PERIOD. A
2 registration statement may not be withdrawn for 1 year from its
3 effective date if any securities of the same class are
4 outstanding. A registration statement may be withdrawn otherwise
5 only in the discretion of the administrator.

6 (i) ~~So long as a~~ DURING THE PERIOD THE registration state-
7 ment is effective, the administrator may by rule or order require
8 the person who filed the registration statement to file reports,
9 not more often than quarterly, to keep reasonably current the
10 information contained in the registration statement and to dis-
11 close the progress of the offering.

12 (j) A registration statement relating to a security may be
13 amended after its effective date so as to increase the securities
14 specified as proposed to be offered. ~~As to~~ FOR THE securities
15 not yet sold, ~~such as~~ THE amendment becomes effective when the
16 administrator so orders. In the case of securities which are
17 sold in an amount in excess of the amount or number of securities
18 specified in an effective registration statement, as proposed to
19 be offered, the person or persons who filed the registration
20 statement may, in accordance with rules the administrator shall
21 promulgate as necessary or appropriate in the public interest and
22 for the protection of investors, elect to have the registration
23 of those securities deemed effective as of the time of their
24 sale, upon payment to the administrator, within 6 months after
25 the sale, of a registration fee equal to the difference between
26 the registration fee previously paid and the amount of the fee
27 which would have otherwise been applicable to those additional

1 securities had they been included in the registration statement,
 2 if any, plus a late registration fee of \$250.00. Upon such an
 3 election and payment, the registration statement shall be consid-
 4 ered to have been in effect with respect to those shares.

5 ~~Every~~ A person filing an amendment under this subsection shall
 6 pay a filing fee, calculated in the manner specified in subsec-
 7 tion (b), with respect to the additional securities.

8 (k) Fees, EXPENSE REIMBURSEMENTS, and fines received pursu-
 9 ant to this act shall be deposited in the state treasury to the
 10 credit of the administrator, to be used pursuant to legislative
 11 appropriation by the corporation and securities bureau in carry-
 12 ing out those duties required by law. After the payment of the
 13 amounts appropriated by the legislature for the necessary
 14 expenses incurred in the administration of this act, the money
 15 remaining shall be credited to the general fund of the state.

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

18 Sec. 401. ~~When~~ AS used in this act, unless the context
 19 otherwise requires:

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

22 (b) "Agent" means ~~any~~ AN individual other than a
 23 broker-dealer who represents a broker-dealer or issuer in effect-
 24 ing or attempting to effect purchases or sales of securities or
 25 commodity contracts. "Agent" does not include an individual who
 26 represents an issuer in ~~(+)~~ effecting transactions in a
 27 security exempted by section 402(a)(1), (2), (3), (4), (5), (9),

1 or (10), ~~(2)~~ effecting transactions exempted by section 402(b),
 2 or ~~(3)~~ effecting transactions with existing employees, part-
 3 ners, officers, or directors of the issuer or any of its subsidi-
 4 aries and ~~if, in connection with all of these 3 cases,~~ no com-
 5 mission is paid or given directly or indirectly for soliciting
 6 ~~any~~ A person in this state. "Agent" does not include an offi-
 7 cer or general partner of an issuer whose securities are regis-
 8 tered under the provisions of this act, who represents the issuer
 9 in effecting transactions in ~~such~~ THE registered securities, if
 10 no commission is paid or given directly or indirectly for solici-
 11 ting any person in this state. "Agent" does not include a
 12 person acting solely as a finder and registered pursuant to this
 13 act or acting as a finder under a transaction exempt pursuant to
 14 section 402(b)(19). A partner, officer, or director of a
 15 broker-dealer or issuer, or a person occupying a similar status
 16 or performing similar functions, is an agent only if he or she
 17 otherwise comes within this definition. The administrator may by
 18 rule or order exclude other persons from the definition of the
 19 word "agent".

20 (c) "Broker-dealer" means ~~any~~ A person engaged in the
 21 business of effecting transactions in securities or commodity
 22 contracts for the account of others or for his or her own
 23 account. "Broker-dealer" does not include ANY OF THE FOLLOWING:

24 (1) ~~an~~ AN agent. ~~—~~

25 (2) ~~an~~ AN issuer. ~~—~~

26 (3) ~~a~~ A bank, savings institution, or trust company. ~~—~~

1 (4) ~~a~~ A person who has no place of business in this state
2 if EITHER OF THE FOLLOWING APPLIES:

3 (A) ~~he~~ HE or she effects transactions in this state exclu-
4 sively with or through ANY OF THE FOLLOWING:

5 (i) ~~the~~ THE issuers of the securities or commodity con-
6 tracts involved in the transactions. ~~—~~

7 (ii) ~~other~~ OTHER broker-dealers. ~~, or~~

8 (iii) ~~banks~~ BANKS, savings institutions, trust companies,
9 insurance companies, investment companies as defined in the
10 investment company act of 1940, TITLE I OF CHAPTER 686, 54
11 STAT. 789, pension or profit-sharing trusts, or other financial
12 institutions or institutional buyers, whether acting for them-
13 selves or as trustees. ~~, or~~

14 (B) ~~during~~ DURING any period of 12 consecutive months he
15 or she does not direct more than 15 offers to sell or buy into
16 this 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~~

19 (5) ~~a~~ A person acting solely as a finder and registered
20 pursuant to this act or acting as a finder under a transaction
21 exempt pursuant to section 402(b)(19). ~~The~~

22 (6) OTHER PERSONS THE administrator ~~may~~ HAS by rule or
23 order ~~exclude other persons~~ EXCLUDED from the definition of the
24 word "broker-dealer".

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

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

3 (f) "Investment adviser" means ~~any~~ A person who, for con-
4 sideration, engages in the business of advising others, either
5 directly or through publications or writings, as to the value of
6 securities or commodity contracts, or as to the advisability of
7 investing in, purchasing, or selling securities or commodity con-
8 tracts, who, for consideration and as a part of a regular busi-
9 ness, issues or promulgates analyses or reports concerning secur-
10 ities or commodity contracts, or who acts as a finder in conjunc-
11 tion with the offer, sale, or purchase of a security or
12 commodity. "Investment adviser" does not include ANY OF THE
13 FOLLOWING:

14 (1) ~~a~~ A bank, savings institution, or trust company. ~~—~~

15 (2) ~~a~~ A lawyer, accountant, engineer, geologist, geophysi-
16 cist, or teacher whose performance of these services is solely
17 incidental to the practice of his or her profession. ~~—~~

18 (3) ~~a~~ A broker-dealer or a registered agent acting on
19 behalf of a broker-dealer whose performance of these services is
20 solely incidental to the conduct of his or her business as a
21 broker-dealer. ~~—~~

22 (4) ~~a~~ A publisher of ~~any~~ A bona fide newspaper, news
23 magazine, or business or financial publication of general, regu-
24 lar, and paid circulation. ~~—~~

25 (5) ~~a~~ A person who has no place of business in this state
26 if EITHER OF THE FOLLOWING APPLIES:

1 (A) ~~his~~ HIS or her only clients in this state are other
 2 investment advisers, broker-dealers, banks, savings institutions,
 3 trust companies, insurance companies, investment companies as
 4 defined in the investment company act of 1940, pension or
 5 profit-sharing trusts the assets of which are managed by a bank
 6 or trust company or other institutional manager, or other finan-
 7 cial institutions or institutional buyers, whether acting for
 8 themselves or as trustees. ~~, or~~

9 (B) ~~during~~ DURING any period of 12 consecutive months he
 10 or she does not direct business communications into this state in
 11 any manner to more than 5 clients other than those specified in
 12 clause (A), whether or not he or she or any of the persons to
 13 whom the communications are directed is then present in this
 14 state. ~~,~~

15 (6) ~~any~~ ANY other persons not within the intent of this
 16 ~~paragraph~~ SUBDIVISION as the administrator may by rule or order
 17 designate. ~~,~~

18 (7) ~~a~~ A trustee whose custody of assets is pursuant to
 19 judicial appointment, appointment under a trust indenture, or
 20 agreement and who does not hold himself or herself out to the
 21 general public as giving advice to others with respect to securi-
 22 ties and who maintains close contact with the personal financial
 23 affairs of his or her clients as a part of his or her fiduciary
 24 responsibilities, or a person who gives advice only to ~~such a~~
 25 THE trustee. ~~, or~~

26 (8) ~~a~~ A county treasurer acting pursuant to his or her
 27 authority under the local government investment pool act.

1 (g) "Issuer" means ~~any~~ A person who issues or proposes to
2 issue any security or commodity contract, except ~~that~~ AS
3 FOLLOWS:

4 (1) For certificates of deposit, voting-trust certificates
5 or collateral-trust certificates, or with respect to certificates
6 of interest or shares in an unincorporated investment trust not
7 having a board of directors, or persons performing similar func-
8 tions or of the fixed, restricted management or unit type, the
9 term "issuer" means the person or persons performing the acts and
10 assuming the duties of depositor or manager pursuant to the pro-
11 visions of the trust or other agreement or instrument under which
12 the security is issued.

13 (2) For certificates of interest or participation in oil,
14 gas, or mining titles or leases, or in payments out of production
15 under titles or leases, the term "issuer" means the owner of the
16 oil, gas, or mining titles or leases or payments out of produc-
17 tion or any fractional part ~~thereof~~ OF THE TITLES OR LEASES who
18 creates and sells certificates of interest or participation
19 ~~therein~~ IN THE TITLES OR LEASES.

20 (3) For commodity contracts, "issuer" means a person engaged
21 in the operation of a market on which commodities contracts are
22 traded, and a person providing services or performing a function
23 including, but not limited to, clearing, constituting a portion
24 of the market.

25 (4) ~~The~~ ANY PERSON THE administrator may by rule or order
26 exempt ~~any person~~ from the definition of "commodity issuer".

1 (h) "Nonissuer" means not directly or indirectly for the
2 benefit of the issuer. A sale of securities shall be considered
3 to be indirectly for the benefit of the issuer if ~~all~~ BOTH of
4 the following conditions are met:

5 (1) The sale is directly or indirectly made for the benefit
6 of a director, or executive officer of the issuer, or a person
7 occupying a similar status or performing similar functions, or a
8 beneficial owner of 10% or more of ~~any~~ A class of equity secur-
9 ities of the issuer.

10 (2) The sale, together with all sales made in this state by
11 or for the benefit of the issuer during the 6-month period imme-
12 diately before the date of the sale, otherwise than pursuant to a
13 registration statement or exemption order under this act, exceeds
14 1% of the outstanding securities of the class of securities being
15 sold.

16 ~~(3) The securities are not of a class that has been desig-~~
17 ~~nated by the administrator as eligible for trading in this~~
18 ~~state.~~

19 (i) "Person" means an individual, a corporation, a partner-
20 ship, an association, a joint-stock company, a trust where the
21 interests of the beneficiaries are evidenced by a security, an
22 unincorporated organization, a government, or a political subdi-
23 vision of a government.

24 (j) (1) "Sale" or "sell" includes every contract of sale of,
25 contract to sell, or disposition of a security or commodity con-
26 tract, or interest in a security or commodity contract, for
27 value.

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

5 (3) ~~Any~~ A security or commodity contract given or deliv-
6 ered with, or as a bonus on account of, any purchase of securi-
7 ties ~~—~~ or commodity contracts, or any other thing is considered
8 to constitute part of the subject of the purchase and to have
9 been offered and sold for value.

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

12 (5) ~~Every~~ A sale or offer of a warrant or right to pur-
13 chase or subscribe to another security or commodity contract of
14 the same or another issuer, as well as ~~every~~ A sale or offer of
15 a security or commodity contract which gives the holder a present
16 or future right or privilege to convert into another security or
17 commodity contract of the same or another issuer, is considered
18 to include an offer of the other security or commodity contract.

19 (6) The terms defined in this subsection do not include
20 EITHER OF THE FOLLOWING:

21 (A) ~~Any~~ A stock dividend, whether the corporation distrib-
22 uting the dividend is the issuer of the stock or not, if nothing
23 of value is given by stockholders for the dividend other than the
24 surrender of a right to a cash or property dividend when each
25 stockholder may elect to take the dividend in cash or property,
26 or in stock.

1 (B) ~~Any~~ AN act incident to a judicially approved
 2 reorganization in which a security is issued in exchange for 1 or
 3 more outstanding securities, claims, or property interests, or
 4 partly in such exchange and partly for cash.

5 ~~(k) "Securities act of 1933", "securities exchange act of~~
 6 ~~1934", "public utility holding company act of 1935", "investment~~
 7 ~~company act of 1940", "investment advisers act of 1940",~~
 8 ~~"securities investor protection act of 1970", "commodity futures~~
 9 ~~trading commission act of 1974", and "small business investment~~
 10 ~~act of 1958", mean the federal statutes of those names as amended~~
 11 ~~before or after the effective date of this act.~~

12 (K) ~~(1)~~ (1) "Security" means ~~any~~ A note, ~~—~~ stock, ~~—~~
 13 treasury stock, ~~—~~ bond, ~~—~~ debenture, ~~—~~ evidence of
 14 indebtedness, ~~—~~ certificate of interest or participation in any
 15 profit-sharing agreement, ~~—~~ collateral-trust certificate, ~~—~~
 16 preorganization certificate or subscription, ~~—~~ transferable
 17 share, ~~—~~ investment contract, ~~—~~ voting-trust certificate, ~~—~~
 18 certificate of deposit for a security, ~~—~~ certificate of inter-
 19 est or participation in an oil, gas, or mining title or lease or
 20 in payments out of production under such a title or lease, ~~—~~
 21 or, in general, any interest or instrument commonly known as a
 22 "security", or any certificate of interest or participation in,
 23 temporary or interim certificate for, receipt for, guarantee of,
 24 or warrant or right to subscribe to or purchase, any of the
 25 foregoing. "Security" includes any contractual or quasi contrac-
 26 tual arrangement pursuant to which ALL OF THE FOLLOWING APPLY:

1 (i) ~~(1) a~~ A person furnishes capital, other than services,
2 to an issuer. ~~;(2) a~~

3 (ii) A portion of ~~that~~ THE capital is subjected to the
4 risks of the issuer's enterprise. ~~;(3) the~~

5 (iii) THE furnishing of ~~that~~ THE capital is induced by the
6 representations of an issuer, promoter, or their affiliates which
7 give rise to a reasonable understanding that a valuable tangible
8 benefit will accrue to the person furnishing the capital as a
9 result of the operation of the enterprise. ~~;(4) the~~

10 (iv) THE person furnishing the capital does not intend to be
11 actively involved in the management of the enterprise in a mean-
12 ingful way. ~~; and (5) a~~

13 (v) A promoter or its affiliates anticipate, at the time the
14 capital is furnished, that financial gain may be realized as a
15 result ~~thereof~~ OF THE CONTRACTUAL OR QUASI-CONTRACTUAL
16 ARRANGEMENT.

17 (2) "Security" does not include an insurance or endowment
18 policy or annuity contract under which an insurance company prom-
19 ises to pay money either in a lump sum or periodically for life
20 or some other specified period or a commodity contract.

21 (3) The administrator may exclude by rule or by order other
22 transactions or agreements from the definition of the word
23 "security".

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

26 (M) ~~(n)~~ "Commodity" means ~~;(1) Those~~ THOSE goods
27 defined as commodities in ~~the commodity futures trading~~

1 ~~commission act of 1974~~ SECTION 2(a)(1) OF THE COMMODITY EXCHANGE
 2 ACT, CHAPTER 369, 42 STAT. 998, 7 U.S.C. 2, ~~(2)~~ those goods
 3 commonly classified as commodities within the normal course of
 4 business dealings, ~~(3)~~ anything movable which is traded or for
 5 which contracts are executed or issued on ~~any~~ A board of trade,
 6 or commodity exchange or market, or ~~(4)~~ precious metals. The
 7 administrator may by rule further define "commodity". ~~or~~
 8 "~~commodity contract~~".

9 (N) ~~(e)~~ "Commodity contract" means the transactions deal-
 10 ing in, resulting in, or relating to contracts of purchase or
 11 sale of a commodity ~~—~~ for ~~(1)~~ delivery in the future at a
 12 specified time or a time to be determined or where delivery is
 13 not customarily made, including puts, calls, or any combinations
 14 thereof, ~~—(2)~~ for present delivery where the value of the com-
 15 modity is difficult to ascertain except by a person expert in the
 16 analysis of the commodity, and the commodity is offered for sale
 17 to the general public as an investment, ~~—(3)~~ other options, ~~—~~
 18 ~~(4)~~ margin contracts, ~~—(5)~~ or, in general, any interest in an
 19 instrument commonly known as a commodity contract. THE ADMINIS-
 20 TRATOR MAY BY RULE FURTHER DEFINE "COMMODITY CONTRACT".

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

1 (P) ~~(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~~ A person
10 who receives such an amount of securities or proceeds either
11 solely as underwriting commissions pursuant to an offering of
12 securities registered under this act or solely in consideration
13 of property or legal or accounting services shall not be deemed a
14 promoter within the meaning of this subsection if the person does
15 not otherwise take part in founding and organizing the
16 enterprise.

17 (Q) ~~(r)~~ "Commission" means ~~any~~ A payment in cash, secur-
18 ities, or goods for offering or selling, promise, or commitment
19 to provide payment in the future for offering or selling, or any
20 other similar payment. Commission does not include a real estate
21 commission commensurate with fees paid in the area for similar
22 services, paid to licensed real estate brokers solely for real
23 estate services which have been rendered, or payment by a person
24 to a lawyer or accountant in connection with advice or recommen-
25 dations made by a lawyer or accountant to the client with whom
26 the lawyer or accountant has an established professional
27 relationship, if disclosure of the payment and the interest of

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

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

20 (S) ~~(t)~~ "Affiliate" means a person that directly or indi-
 21 rectly through 1 or more intermediaries controls, is controlled
 22 by, or is under common control with a specified person.

23 (T) ~~(u)~~ "Finder" means a person who, for consideration,
 24 participates in the offer to sell, sale, or purchase of securi-
 25 ties or commodities by locating, introducing, or referring poten-
 26 tial purchasers or sellers. The finder does not include a person
 27 whose actions are solely incidental to a transaction exempt

1 pursuant to section 402(b)(19). The administrator may by rule or
2 order exclude other persons from this definition.

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

5 (1) ~~Any~~ A security, including a revenue obligation, issued
6 or guaranteed by the United States, ~~any~~ A state, ~~any~~ A polit-
7 ical subdivision of a state, or ~~any~~ AN agency or corporate or
8 other instrumentality of 1 or more of the foregoing, or any cer-
9 tificate of deposit for any of the foregoing, or any guarantee or
10 other obligation made in connection ~~therewith~~ WITH THE
11 SECURITY.

12 (2) ~~Any~~ A security issued or guaranteed by Canada, ~~any~~ A
13 Canadian province ~~, any~~ OR A political subdivision of any
14 ~~such~~ province, ~~any~~ AN agency or corporate or other instrumen-
15 tality of 1 or more of the foregoing, or any other foreign gov-
16 ernment with which the United States currently maintains diplo-
17 matic relations, if the security is recognized as a valid obliga-
18 tion by the issuer or guarantor.

19 (3) ~~Any~~ A security issued by and representing an interest
20 in or a debt of, or guaranteed by, ~~any~~ A bank organized under
21 the laws of the United States, or ~~any~~ A bank, savings institu-
22 tion, or trust company organized and supervised under the laws of
23 ~~any~~ A state.

24 (4) ~~Any~~ A security issued by and representing an interest
25 in or a debt of, or guaranteed by, ~~any~~ A federal savings and
26 loan association, or ~~any~~ A building and loan or similar

1 association organized under the laws of ~~any~~ A state and
2 authorized to do business in this state.

3 (5) ~~Any~~ A security issued or guaranteed by ~~any~~ A federal
4 credit union, ~~any~~ A credit union organized and supervised under
5 the laws of this state or any other state or territory of the
6 United States, or ~~any~~ AN industrial loan association, or simi-
7 lar association organized and supervised under the laws of this
8 state.

9 (6) ~~Any~~ A security issued or guaranteed by ~~any~~ A rail-
10 road, other common carrier, public utility, or public utility
11 holding company which is ANY OF THE FOLLOWING:

12 (A) A registered holding company under the public utility
13 holding company act of 1935, TITLE I OF THE PUBLIC ACTS OF 1935,
14 CHAPTER 687, 49 STAT. 803, 15 U.S.C. 79 TO 79z-6, or a subsidiary
15 of ~~such~~ a company within the meaning of that act. ~~or~~

16 (B) Regulated in respect of the issuance or guarantee of the
17 security by a governmental authority of the United States, ~~any~~
18 A state, Canada or ~~any~~ A Canadian province. ~~also, any~~

19 (C) AN equipment trust certificate or equipment note or bond
20 based on chattel mortgages, leases, or agreements for conditional
21 sales of cars, motive power, or other rolling stock mortgages,
22 leased or sold to or furnished for the use of or upon such rail-
23 roads, other common carriers, public utilities, or holding com-
24 panies supervised as above, or equipment, notes, or bonds where
25 the ownership or title of ~~such~~ THE equipment is pledged or
26 retained in accordance with the provisions of the laws of the
27 United States, ~~any~~ A state, Canada or ~~any~~ A Canadian

1 province, to secure the payment of ~~such~~ THE equipment trust
2 certificates, bonds, or notes.

3 (7) ~~Any~~ A security listed or approved for listing upon
4 notice of issuance on the New York or American stock exchanges,
5 ~~or~~ any other security of the same issuer which is of senior or
6 substantially equal rank, ~~any~~ A security called for by sub-
7 scription rights or warrants so listed or approved, ~~or~~ or ~~any~~
8 A warrant or right to purchase or subscribe to any of the
9 foregoing. The administrator may by rule exempt securities
10 listed on other exchanges or may establish criteria for designat-
11 ing other classifications of exempt securities.

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

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

25 (ii) Not pay a commission or consulting fee to ~~any~~ A
26 person except a registered broker-dealer in connection with the
27 offer or sale of the security.

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

7 (9) ~~Any~~ A prime quality negotiable commercial paper sold
 8 in an aggregate amount of not less than \$25,000.00 to any 1 pur-
 9 chaser which arises out of a current transaction or the proceeds
 10 of which have been or are to be used for current transactions,
 11 and which evidences an obligation to pay cash at a fixed date
 12 within 9 months of the date of issuance, exclusive of days of
 13 grace, or any nonautomatic renewal of ~~such~~ THE commercial paper
 14 which is likewise limited, or ~~any~~ A guarantee of ~~such~~ THE
 15 commercial paper or of ~~any such~~ A renewal if the commercial
 16 paper is sold through a registered broker-dealer or an institu-
 17 tion whose securities are exempted under ~~subdivision~~ SUBSECTION
 18 (a)(3).

19 (10) ~~Any~~ AN investment contract or option issued in con-
 20 nection with an employees' stock purchase, option, savings, pen-
 21 sion, profit sharing or similar benefit plan.

22 (11) ~~Any~~ A security issued by an issuer registered as an
 23 open-end management investment company or unit investment trust
 24 under section 8 of the investment company act of 1940, TITLE I OF
 25 CHAPTER 686, 54 STAT. 789, 15 U.S.C. 80a-8, if all of the follow-
 26 ing 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 4 for at least 3 years next preceding an offer or sale of a security 5 claimed to be exempt under this subsection ~~—~~ and the issuer 6 is advised by an investment adviser that:

(i) ~~—Is—~~ THE ISSUER IS a depository institution exempt from 8 registration under the investment advisers act of 1940, TITLE II 9 OF CHAPTER 686, 54 STAT. 789, 15 U.S.C. 80b-1 to 80b-21.

(ii) ~~—Is—~~ THE ISSUER IS currently registered as an investment 11 adviser and has been registered, or is affiliated with an 12 adviser that has been registered, as an investment adviser under 13 the investment advisers act of 1940 for at least 3 years next 14 preceding an offer or sale of a security claimed to be exempt 15 under this subsection.

(2) The issuer has a sponsor that has at all times throughout 17 the 3 years preceding an offer or sale of a security claimed 18 to be exempt under this subsection sponsored 1 or more registered 19 investment companies or unit investment trusts the aggregate 20 total assets of which have exceeded \$100,000,000.00.

(B) The administrator has received, prior to ~~any~~ A sale 22 exempted under this subsection, both of the following:

(1) Notice of intention to sell on a form specified by the 24 administrator which has been executed by the issuer setting forth 25 the name and address of the issuer and the securities to be 26 offered in this state.

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

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

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

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

17 (12) A SECURITY LISTED OR APPROVED FOR LISTING UPON NOTICE
18 OF ISSUANCE ON THE NATIONAL ASSOCIATION OF SECURITIES DEALERS
19 AUTOMATED QUOTATION NATIONAL MARKET SYSTEM AND ANY OTHER SECURITY
20 OF THE SAME ISSUER THAT IS OF SENIOR OR SUBSTANTIALLY EQUAL RANK,
21 A SECURITY CALLED FOR BY SUBSCRIPTION RIGHTS OR WARRANTS SO
22 LISTED OR APPROVED, OR A WARRANT OR RIGHT TO PURCHASE OR SUB-
23 SCRIBE TO ANY OF THE FOREGOING. THE ADMINISTRATOR MAY, AFTER
24 PROVIDING NOTICE OF HEARING TO ALL INTERESTED PARTIES, OPPORTU-
25 NITY FOR HEARING, WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF
26 LAW, AND A RIGHT TO JUDICIAL APPEAL, DO ANY OF THE FOLLOWING:

1 (A) DENY OR REVOKE THIS EXEMPTION BY ORDER FOR A SPECIFIC
2 ISSUE OF SECURITIES.

3 (B) DENY THIS EXEMPTION BY RULE OR ORDER TO A CATEGORY OF
4 SECURITIES WHEN NECESSARY IN THE PUBLIC INTEREST AND FOR THE PRO-
5 TECTION OF INVESTORS.

6 (C) DECERTIFY THE SYSTEM BY ORDER IF THE ADMINISTRATOR
7 DETERMINES THAT THE SYSTEM'S REQUIREMENTS ARE SO CHANGED FROM
8 THOSE LISTED IN SECURITIES ACT RELEASE NO. 33-6810, 53 FEDERAL
9 REGISTER 52550 (DEC. 28, 1988), OR INSUFFICIENTLY APPLIED THAT
10 THE PUBLIC INTEREST AND PROTECTION OF INVESTORS CONTEMPLATED BY
11 THE REQUIREMENTS IS NO LONGER AFFORDED.

12 (b) The following transactions are exempted from sections
13 301 and 403:

14 (1) ~~Any~~ AN isolated nonissuer transaction, and with
15 respect to a certificate of interest or participation in an oil,
16 gas or mining title or ~~a~~ lease or payment out of production
17 under a title or lease, ~~any~~ AN isolated transaction not involv-
18 ing an offer or sale by a promoter, whether OR NOT effected
19 through a broker-dealer. ~~or not.~~

20 (2) ~~Any~~ A nonissuer distribution of an outstanding secur-
21 ity whose issuer and any predecessors have been in continuous
22 operation for at least 5 years if EITHER OF THE FOLLOWING
23 APPLIES:

24 (A) A recognized securities manual contains the names of the
25 issuer's officers and directors, a balance sheet of the issuer as
26 of a date within 18 months, and a profit and loss statement for

1 either the fiscal year preceding that date or the most recent
2 year of operations. ~~—or—~~

3 (B) The security has a fixed maturity or a fixed interest or
4 dividend provision and there has been no default during the cur-
5 rent fiscal year or within the 3 preceding fiscal years, or
6 during the existence of the issuer and any predecessors if less
7 than 3 years, in the payment of principal, interest, or dividends
8 on the security. FOR PURPOSES OF THIS SUBDIVISION, AN ISSUER OR
9 PREDECESSOR IS IN CONTINUOUS OPERATION ONLY IF IT HAS GROSS OPER-
10 ATING REVENUE IN EACH OF THE 5 YEARS IMMEDIATELY PRECEDING ITS
11 CLAIM OF EXEMPTION AND HAS HAD GROSS OPERATING REVENUE OF AT
12 LEAST \$500,000.00 IN NOT LESS THAN 3 OF THOSE 5 YEARS.

13 (3) ~~Any~~ A nonissuer transaction effected by or through a
14 registered broker-dealer pursuant to an unsolicited order or
15 offer to buy, ~~—~~ but the administrator may by rule require that
16 the customer acknowledge upon a specified form that the sale was
17 unsolicited ~~—~~ and that a signed copy of each ~~such~~ form be
18 preserved by the broker-dealer for a specified period.

19 (4) ~~Any~~ A transaction between the issuer or other person
20 on whose behalf the offering is made and an underwriter, or among
21 underwriters.

22 (5) ~~Any~~ A transaction not part of a series of transactions
23 in related or adjacent properties to individual investors, or
24 ~~any~~ A transaction involving an offer or sale to a financial
25 institution as defined in subdivision (8), in a bond or other
26 evidence of indebtedness secured by a real or chattel mortgage or
27 deed of trust, or by an agreement for the sale of real estate or

1 chattels, if the entire mortgage, deed of trust, or agreement,
2 together with all the bonds or other evidences of indebtedness
3 secured thereby, is offered and sold as a unit.

4 (6) ~~Any~~ A transaction by ~~an executor~~ A PERSONAL
5 REPRESENTATIVE, administrator, sheriff, marshal, receiver,
6 trustee in bankruptcy, guardian, or conservator.

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

10 (8) ~~Any~~ AN offer or sale to a bank, savings institution,
11 trust company, insurance company, investment company as defined
12 in the investment company act of 1940, TITLE I OF CHAPTER 686,
13 54 STAT. 789, the federal national mortgage association, the fed-
14 eral home loan mortgage corporation, or the government national
15 mortgage association, pension or profit sharing trust the assets
16 of which are managed by an institutional manager, the treasurer
17 of this state, other financial institution, broker-dealer,
18 whether the purchaser is acting for itself or in some fiduciary
19 capacity, or a lender approved by the federal housing administra-
20 tion and who has satisfied any additional requirements estab-
21 lished by the administrator by rule or order.

22 (9) ~~Any~~ A transaction pursuant to an offering which satis-
23 fies in full ~~each~~ ALL of the following requirements:

24 (A) The issuer and any person acting on its behalf shall
25 exercise reasonable care to assure that purchasers in this state
26 of the securities in the offering do not resell the securities
27 without compliance with state and federal securities laws. For

1 sales described in subparagraph (D)(2), (3), and (5) OF THIS
2 SUBDIVISION that reasonable care shall include, where appropri-
3 ate, but not ~~necessarily be~~ limited to, all of the following:

4 (1) Making reasonable inquiry to determine if the purchaser
5 is acquiring the securities for his OR HER own account or on
6 behalf of other persons who may be considered as separate
7 offerees or purchasers. —

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

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

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

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

23 (C) A commission is not paid or given directly or indirectly
24 for soliciting any prospective purchaser in this state, except to
25 a broker-dealer registered pursuant to this act who is not affil-
26 iated with the issuer or its affiliates. Those payments shall be
27 reflected on the books and records of the broker-dealer, and

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

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

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

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

19 (ii) Not more than 15 persons whose principal business is
20 the line of business to which the offering relates, and who are
21 qualified by previous experience to evaluate the risks of the
22 investment. The provisions of ~~subsection~~ SUBPARAGRAPH (A)
23 shall not apply to sales covered by ~~subparagraphs~~ SUBPARAGRAPH
24 (D)(1) (i) and (ii).

25 (2) Sales to not more than 15 persons in this state within
26 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 WHICH DOES ALL OF THE FOLLOWING:

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

5 ~~—~~

6 (ii) ~~Disclosing~~ DISCLOSES in reasonable detail the current
7 financial condition of the issuer and in the case of a limited
8 partnership or oil and gas venture, the current financial condi-
9 tion of the general partner or oil and gas issuer, ~~—~~ except
10 that in the case of a limited partnership interest or interest in
11 oil or gas, the document may merely state that the general part-
12 ner or oil and gas issuer has a net worth, determined in accord-
13 ance with generally accepted accounting principles, in excess of
14 a stated sum, and that its net worth exceeds the obligations
15 undertaken by the general partner or oil and gas issuer, and that
16 the assets or operations of the general partner or oil and gas
17 issuer will generate sufficient cash to meet these obligations as
18 they come due. ~~—~~

19 (iii) ~~Disclosing~~ DISCLOSES in ~~all~~ reasonable detail ALL
20 direct or indirect compensation or remuneration to be received by
21 a promoter or affiliates of the promoter and fully identifying
22 the persons who shall be recipients of ~~that~~ THE compensation.

23 ~~—~~

24 (iv) ~~Disclosing~~ DISCLOSES the form, date, and jurisdiction
25 under which formed ~~—~~ and nature of business of the issuer. ~~—~~

1 (v) ~~Disclosing~~ DISCLOSES the kind and amount of securities
2 to be offered and the offering price or method by which the
3 offering price is computed. —

4 (vi) ~~Stating~~ STATES, except in the case of a corporate
5 issuer, that each investor or his OR HER designated representa-
6 tive may inspect the books and records of the issuer or the ven-
7 ture at any reasonable time for proper purposes. —

8 (vii) ~~Stating~~ STATES, except in the case of a corporate
9 issuer, that the issuer shall promptly call an informational
10 meeting of all investors upon THE request ~~by 25% in interest or~~
11 ~~more of the~~ ANY investors HOLDING 25% OR MORE IN INTEREST in
12 any class of securities who are unaffiliated with a promoter or
13 affiliate of the promoter. —

14 (viii) ~~Stating~~ STATES, except in the case of a corporate
15 issuer, that the issuer shall agree to maintain at its offices a
16 list of names and addresses of all investors in the entity avail-
17 able to any investor or the designated representative of any
18 investor. —

19 (ix) ~~Stating~~ STATES that the issuer shall provide all
20 investors with a detailed written statement of the application of
21 the proceeds of the offering within 6 months after commencement
22 of the offering or upon completion, whichever occurs first, and
23 with annual current balance sheets and income statements to
24 investors thereafter.

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

1 (i) The offeror files with the administrator an exemption
2 application, an offering circular, and a \$100.00 filing fee. —

3 (ii) The administrator by order finds the offering consis-
4 tent with the provisions of section 306 and declares this exemp-
5 tion effective. —

6 (iii) The offering is made upon ~~such~~ conditions and with
7 ~~such~~ information or provisions in the offering circular as the
8 administrator may require. —

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

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

16 (5) Sales made to a person who the seller has reasonable
17 grounds to believe and does believe meets 1 of the following
18 conditions:

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

25 (ii) An individual who after the purchase has an investment
26 of \$50,000.00 or more in the securities of the issuer, including
27 installment payments to be made within 1 year after purchase by

1 the investor, ~~—~~ has either personal income before taxes in
 2 excess of \$100,000.00 for his or her last fiscal year or latest
 3 12-month period and is capable of bearing the economic risk ~~—~~
 4 or net worth in excess of \$1,000,000.00, ~~—~~ and has ~~such~~ THE
 5 knowledge and experience in financial and business matters that
 6 he or she is capable of evaluating the merits and risks of the
 7 prospective investment or has obtained the advice of an attorney,
 8 certified public accountant, or investment adviser registered
 9 under the investment advisers act of 1940, title II of chapter
 10 686, 54 Stat. 789, 15 U.S.C. 80b-1 to 80b-21, or an investment
 11 adviser registered under this act, with respect to the merits and
 12 risks of the prospective investment.

13 (F) For purposes of this ~~subparagraph~~ SUBDIVISION:

14 (1) Each offer or sale made to a pension or profit sharing
 15 trust shall be ~~deemed~~ CONSIDERED to have been made to each ben-
 16 eficiary as an individual offeree unless ALL OF THE FOLLOWING
 17 APPLY:

18 (i) The trust has an independent trustee. ~~—~~

19 (ii) The issuer makes inquiry and reasonably believes that
 20 the trust invests not more than 10% of its assets in the securi-
 21 ties sold by the issuer. ~~—, and~~

22 (iii) Within the 2-year period before the initial offer of
 23 the securities, the issuer was not directly or indirectly con-
 24 nected with the formation or subsequent operation of the trust or
 25 solicitation of its investors and the issuer makes inquiry and
 26 reasonably believes that the trust was not formed to purchase the
 27 securities of the issuer.

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

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

7 (ii) Within the 2-year period before the initial offer of
8 the securities, the issuer was not directly or indirectly con-
9 nected with the formation or subsequent operation of the partner-
10 ship or association or solicitation of its investors and the
11 issuer makes inquiry and reasonably believes that the partnership
12 or association was not formed to purchase the securities of the
13 issuer.

14 (3) Each offer or sale made to a corporation or business
15 trust shall be ~~deemed~~ CONSIDERED to have been made to each
16 security holder of the corporation or business trust as an indi-
17 vidual unless WITHIN THE 2-YEAR PERIOD BEFORE THE INITIAL OFFER
18 OF THE SECURITIES THE ISSUER WAS NOT DIRECTLY OR INDIRECTLY CON-
19 NECTED WITH THE FORMATION OR SUBSEQUENT OPERATION OF THE CORPORA-
20 TION OR TRUST OR SOLICITATION OF ITS INVESTORS AND THE ISSUER
21 MAKES INQUIRY AND REASONABLY BELIEVES THAT THE CORPORATION OR
22 TRUST, OR IN THE CASE OF A WHOLLY OWNED SUBSIDIARY, ITS PARENT,
23 WAS NOT FORMED TO PURCHASE THE SECURITIES OF THE ISSUER AND 1 OF
24 THE FOLLOWING APPLIES:

25 (i) ~~a~~ A class of securities of the corporation or trust is
26 registered pursuant to the securities exchange act of 1934,
27 CHAPTER 404, 48 STAT. 881.

1 (ii) ~~the~~ THE decision of the corporation or trust to
 2 acquire the shares of the issuer is directly or indirectly
 3 related to the business of the corporation or trust and not for
 4 investment purposes ~~,~~ and its principal business is not invest-
 5 ing in securities. ~~,~~ ~~or~~

6 (iii) ~~the~~ THE issuer makes inquiry and reasonably believes
 7 that the corporation or trust invests not more than 10% of its
 8 assets in the securities offered or sold by the issuer. ~~,~~ ~~and as~~
 9 ~~to each of the above, within the 2 year period before the initial~~
 10 ~~offer of the securities the issuer was not directly or indirectly~~
 11 ~~connected with the formation or subsequent operation of the cor-~~
 12 ~~poration or trust or solicitation of its investors and the issuer~~
 13 ~~makes inquiry and reasonably believes that the corporation or~~
 14 ~~trust, or in the case of a wholly owned subsidiary, its parent,~~
 15 ~~was not formed to purchase the securities of the issuer.~~

16 (4) An offer or sale to an investment company registered
 17 under the investment company act of 1940, TITLE I OF CHAPTER 686,
 18 54 STAT. 789, shall constitute an offer or sale to an
 19 individual.

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

22 (6) ~~Each~~ A client of an investment adviser, ~~each~~ A cus-
 23 tomer of a broker-dealer, or a person with a similar relationship
 24 shall be considered an offeree or purchaser for purposes of this
 25 subdivision regardless of the amount of discretion given to the
 26 investment adviser, broker-dealer, or other person to act on
 27 behalf of the client, customer, or trust.

1 (G) The administrator may by rule or order as to any
2 security or transaction, or any type of security or transaction,
3 increase the number of offerees or purchasers, waive any condi-
4 tions, and in conjunction with a request to exercise its discre-
5 tion under these provisions, the administrator may further condi-
6 tion this exemption.

7 (10) ~~Any~~ AN offer or sale of a preorganization certificate
8 or subscription in a corporation, and the issuance of securities
9 pursuant ~~thereto~~ TO THE OFFER OR SALE, if ALL OF THE FOLLOWING
10 APPLY:

11 (A) No commission is paid or given directly or indirectly
12 for soliciting ~~any~~ A prospective subscriber. ~~—~~

13 (B) There are not more than 10 purchasers. ~~—~~

14 (C) Advertising is not published or circulated unless it has
15 been reviewed and no objection ~~thereto~~ is made by the adminis-
16 trator in writing;

17 (D) The seller reasonably believes that all the buyers in
18 this state, other than those designated in ~~this~~ subsection
19 (b)(8), are purchasing for investment. ~~—~~

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

23 (11) ~~Any~~ A transaction pursuant to an offer to existing
24 security holders of the issuer, including persons who at the time
25 of the transaction are holders of convertible securities, non-
26 transferable warrants, or transferable warrants exercisable

1 within not more than 90 days of their issuance, if either of the
2 following occurs:

3 (A) A commission, other than a standby commission, is not
4 paid or given directly or indirectly for soliciting ~~any~~ A
5 security holder in this state and the offer is made either to
6 holders of the convertible securities or warrants and relates to
7 the underlying security, or the securities are purchased by not
8 more than 25 security holders in this state within a 12-month
9 period.

10 (B) Twenty business days before ~~any~~ AN offer, the issuer
11 files with the administrator the offering circular or other mate-
12 rials proposed to be sent to security holders and other persons
13 describing the terms of the offer together with a filing fee of
14 \$100.00 ~~until December 1, 1990 and \$50.00 on and after~~
15 ~~December 1, 1990~~ and the administrator does not by order disal-
16 low the exemption within the next 20 business days.

17 (12) ~~Any~~ AN offer, but not a sale, of a security for which
18 a registration statement or exemption order request was filed
19 under this act if a stop order is not in effect and a public pro-
20 ceeding or examination looking toward ~~such an~~ THE order is not
21 pending and if made in compliance with section 307.

22 (13) ~~Any~~ AN offer, sale, or issuance of securities pursu-
23 ant to an investment contract or option which is exempt under
24 subsection (a)(10).

25 (14) ~~Any~~ AN offer or sale of a security as contemplated
26 under the small business investment act of 1958, ~~(11)~~ PUBLIC LAW
27 85-699, 72 STAT. 689, to the federal small business

1 administration, ~~or (2)~~ by a small business concern to a small
 2 business investment company or to a development company for
 3 equity capital provided or loans made, or ~~(3)~~ by a small busi-
 4 ness investment company to a small business concern as a condi-
 5 tion to providing the latter with equity capital or loans.

6 (15) ~~Any~~ AN offer or sale of ~~any~~ A security by a non-
 7 profit development corporation, formed and existing under the
 8 laws of this state, if the primary purpose of the corporation is
 9 to promote and assist the growth and development of business
 10 enterprises in the area covered by its operations.

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

14 ~~(17) Any nonissuer transaction effected by or through a~~
 15 ~~broker dealer in any outstanding security of the same class as~~
 16 ~~that which has been designated by order by the administrator as~~
 17 ~~eligible for trading in this state, or that was registered for~~
 18 ~~general public sale under this act or a predecessor act before~~
 19 ~~January 1, 1978, if either the issuer has a class of securities~~
 20 ~~registered under the securities exchange act of 1934 and has~~
 21 ~~filed with the securities and exchange commission all reports~~
 22 ~~required to be filed by it under that statute for the 12 month~~
 23 ~~period preceding the date of sale, or the issuer has made pub-~~
 24 ~~licly available such information as the administrator determines~~
 25 ~~by rule or order as sufficient for the protection of investors~~
 26 ~~and that information is on file with the administrator. The~~
 27 ~~administrator, if it finds such action in the public interest, by~~

1 ~~order, may withdraw or condition this exemption as to any~~
2 ~~security or issuer. A person requesting a designation order~~
3 ~~shall pay a filing fee of \$100.00 until December 1, 1990 and~~
4 ~~\$50.00 on and after December 1, 1990.~~

5 (17) ~~(18)~~ The sale of capital stock issued by a profes-
6 sional service corporation formed under the professional service
7 corporation act, Act No. 192 of the Public Acts of 1962, as
8 amended, being sections 450.221 to 450.235 of the Michigan
9 Compiled Laws.

10 (18) ~~(19) Any~~ A transaction incident to a class vote by
11 shareholders pursuant to the certificate of incorporation or the
12 applicable corporation statute, on a merger, consolidation,
13 reclassification of securities, or sale of corporate assets in
14 consideration of the issuance of securities of another
15 corporation.

16 (19) ~~(20) Any~~ A transaction that the administrator by
17 order exempts from the registration provisions of this act after
18 a determination that registration is not necessary in the public
19 interest and for the protection of investors. An order may be
20 granted either before or after consummation of the transaction
21 upon the petition of ~~any~~ AN interested party in the
22 transaction.

23 (20) ~~(21) Any~~ A transaction made pursuant to a uniform
24 limited offering exemption filing. ~~Until December 1, 1990, a~~ A
25 person claiming under this subdivision shall pay a filing fee of
26 \$100.00 at the time of filing the initial notice form.

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

4 (d) Offers or sales which are exempt under ~~subdivisions~~
 5 SUBSECTION (B)(1) through (20) ~~of subsection (b)~~ may be com-
 6 bined to exempt an entire transaction or series of transactions.

7 Sec. 410. (a) ~~Any~~ A person who DOES EITHER OF THE FOL-
 8 LOWING SHALL BE LIABLE TO THE PERSON BUYING THE SECURITY OR COM-
 9 MODITY CONTRACT FROM HIM OR HER AND THE BUYER MAY SUE EITHER AT
 10 LAW OR IN EQUITY TO RECOVER THE CONSIDERATION PAID FOR THE SECUR-
 11 ITY OR COMMODITY CONTRACT, TOGETHER WITH INTEREST AT 6% PER YEAR
 12 FROM THE DATE OF PAYMENT, COSTS, AND REASONABLE ATTORNEYS' FEES,
 13 LESS THE AMOUNT OF INCOME RECEIVED ON THE SECURITY OR COMMODITY
 14 CONTRACT, UPON THE TENDER OF THE SECURITY OR COMMODITY CONTRACT,
 15 OR, IF HE OR SHE NO LONGER OWNS THE SECURITY OR COMMODITY CON-
 16 TRACT, FOR DAMAGES WHICH SHALL BE THE AMOUNT THAT WOULD BE RECOV-
 17 ERABLE UPON A TENDER LESS THE VALUE OF THE SECURITY OR COMMODITY
 18 CONTRACT WHEN THE BUYER DISPOSED OF IT AND INTEREST AT 6% PER
 19 YEAR FROM THE DATE OF DISPOSITION:

20 (1) Offers or sells a security or commodity contract in vio-
 21 lation of section 201(a), 301, or 405(b), or of ~~any~~ A rule or
 22 order under section 403 which requires the affirmative approval
 23 of sales literature before it is used, or of ~~any~~ A condition
 24 imposed under section 304(d), 305(f), 305(g), or 412(g). ~~or~~

25 (2) Offers or sells a security or commodity contract by
 26 means of ~~any~~ AN untrue statement of a material fact or ~~any~~ AN
 27 omission to state a material fact necessary in order to make the

1 statements made, in the light of the circumstances under which
 2 they are made, not misleading, the buyer not knowing of the
 3 untruth or omission, and who does not sustain the burden of proof
 4 that he or she did not know, and in the exercise of reasonable
 5 care could not have known, of the untruth or omission.

6 ~~(3) Is liable to the person buying the security or commod-~~
 7 ~~ity contract from him or her, who may sue either at law or in~~
 8 ~~equity to recover the consideration paid for the security or com-~~
 9 ~~modity contract, together with interest at 6% per year from the~~
 10 ~~date of payment, costs and reasonable attorneys' fees, less the~~
 11 ~~amount of any income received on the security or commodity con-~~
 12 ~~tract, upon the tender of the security or commodity contract, or~~
 13 ~~for damages if he or she no longer owns the security or commodity~~
 14 ~~contract. Damages are the amount that would be recoverable upon~~
 15 ~~a tender less the value of the security or commodity contract~~
 16 ~~when the buyer disposed of it and interest at 6% per year from~~
 17 ~~the date of disposition.~~

18 (b) ~~Every~~ A person who directly or indirectly controls a
 19 seller liable under subsection (a), ~~every~~ A partner, officer,
 20 or director of ~~such a~~ THE seller, ~~every~~ A person occupying a
 21 similar status or performing similar functions, ~~every~~ AN
 22 employee of ~~such a~~ THE seller who materially aids in the sale,
 23 and ~~every~~ A broker-dealer or agent who materially aids in the
 24 sale are also liable jointly and severally with and to the same
 25 extent as the seller, unless the nonseller who is so liable sus-
 26 tains the burden of proof that he or she did not know, and in
 27 exercise of reasonable care could not have known, of the

1 existence of the facts by reason of which the liability is
2 alleged to exist. There is contribution as in cases of contract
3 among the several persons so liable.

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

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

9 (e) A person may not bring an action under subsection (a)(1)
10 more than 2 years after THE DATE OF the contract of sale. A
11 person may not bring an action under subsection (a)(2) more than
12 2 years after ~~such~~ THE DATE THE person, in the exercise of rea-
13 sonable care, knew or should have known of the untruth or omis-
14 sion, but in no event more than 4 years after THE DATE OF the
15 contract of sale. A person may not bring an action under this
16 section if the buyer received a written offer, before the action
17 and at a time when he or she owned the security or commodity con-
18 tract, to refund the consideration paid together with interest at
19 6% per year from the date of payment, less the amount of any
20 income received on the security, and he or she failed to accept
21 the offer within 30 days of its receipt, or if the buyer received
22 ~~such an~~ THE offer before the action and at a time when he or
23 she did not own the security or commodity contract, unless he or
24 she rejected the offer in writing within 30 days of its receipt.
25 The documents making full written disclosure about the financial
26 and business condition of the issuer and the financial and
27 business risks associated with the retention of the securities or

1 commodities shall be provided to the offeree concurrently with
2 the written rescission offer. ~~Such an~~ THE offer shall not be
3 made until 45 days after the date of sale of the securities and
4 acceptance or rejection of the offer shall not be binding until
5 48 hours after receipt by the offeree. The rescission offer
6 shall recite the provisions of this section. A rescission offer
7 under this section shall not be valid unless the offeror substan-
8 tiates that it has the ability to fund the offering and this
9 information is set forth in the disclosure documents.

10 (f) ~~A~~ NO person who has ~~not~~ made or engaged in the per-
11 formance of ~~any~~ A contract in violation of ~~any~~ A provision of
12 this act or ~~any~~ A rule or order ~~hereunder~~ PROVIDED FOR UNDER
13 THIS ACT, or who has acquired ~~any~~ A purported right under ~~any~~
14 such A contract with knowledge of the facts by reason of which
15 its making or performance was in violation, may base ~~any~~ A suit
16 on the contract.

17 (g) ~~Any~~ A condition, stipulation, or provision binding
18 ~~any~~ A person acquiring ~~any~~ A security or commodity contract
19 to waive compliance with ~~any~~ A provision of this act or ~~any~~ A
20 rule or order ~~hereunder~~ PROVIDED FOR UNDER THIS ACT is void.

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