

**SUBSTITUTE FOR  
HOUSE BILL NO. 5763**

A bill to amend 1964 PA 265, entitled  
"Uniform securities act,"  
by amending the title and sections 101, 102, 103, 201, 202, 203,  
204, 301, 304a, 305, 401, 402, 403, 405, 406, 409, 410, 412, 413,  
414, and 417 (MCL 451.501, 451.502, 451.503, 451.601, 451.602,  
451.603, 451.604, 451.701, 451.704a, 451.705, 451.801, 451.802,  
451.803, 451.805, 451.806, 451.809, 451.810, 451.812, 451.813,  
451.814, and 451.817), section 201 as amended by 1996 PA 349,  
sections 202, 203, 402, and 410 as amended by 1990 PA 150, sec-  
tion 304a as added and section 305 as amended by 1996 PA 529,  
sections 401 and 409 as amended by 1988 PA 408, and section 413  
as amended by 1992 PA 207, and by adding sections 202a and 308.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

1  
2       An act to enact the uniform securities act relating to the  
3 issuance, offer, sale, or purchase of securities; ~~and commodity~~  
4 ~~contracts;~~ to prohibit fraudulent practices in relation  
5 ~~thereto~~ TO SECURITIES; to establish civil and criminal  
6 ~~penalties~~ SANCTIONS for violations of the act and civil  
7 ~~penalties~~ SANCTIONS for violation of the rules promulgated pur-  
8 suant to the act; to require the registration of broker-dealers,  
9 ~~and their principals,~~ agents, investment advisers, ~~commodity~~  
10 ~~issuers,~~ and securities; to make uniform the law with reference  
11 ~~thereto~~ TO SECURITIES; and to repeal ~~certain~~ acts and parts  
12 of acts.

13       Sec. 101. It is unlawful for any person, in connection with  
14 the offer, sale, or purchase of any security, ~~or commodity~~  
15 ~~contract,~~ directly or indirectly:

16       (1) To employ any device, scheme, or artifice to defraud.

17       (2) To make any untrue statement of a material fact or to  
18 omit to state a material fact necessary in order to make the  
19 statements made, in the light of the circumstances under which  
20 they are made, not misleading.

21       (3) To engage in any act, practice, or course of business  
22 which operates or would operate as a fraud or deceit upon any  
23 person.

24       Sec. 102. (a) ~~It is unlawful for any person who receives~~  
25 ~~any consideration from another person primarily for advising the~~  
26 ~~other person as to the value of securities or commodity contracts~~  
27 ~~or their purchase or sale, whether through the issuance of~~

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1 ~~analyses or reports or otherwise~~ EXCEPT AS OTHERWISE PROVIDED IN  
2 THIS SUBSECTION, AN INVESTMENT ADVISER, A FEDERALLY COVERED  
3 ADVISER, OR A PERSON WHO REPRESENTS AN INVESTMENT ADVISER OR A  
4 FEDERALLY COVERED ADVISER SHALL NOT, DIRECTLY OR INDIRECTLY, DO  
5 ANY OF THE FOLLOWING:

6 (1) ~~To employ any~~ EMPLOY A device, scheme, or artifice to  
7 defraud ~~the other person.~~ A CLIENT OR PROSPECTIVE CLIENT.

8 (2) ~~To engage~~ ENGAGE in ~~any~~ AN act, practice, or course  
9 of business ~~which~~ THAT operates or ~~would~~ COULD operate as a  
10 fraud or deceit upon ~~the other person.~~ A CLIENT OR PROSPECTIVE  
11 CLIENT.

12 (3) Acting as principal for his OR HER own account, know-  
13 ingly ~~to~~ sell any security ~~or commodity contract to~~ or pur-  
14 chase any security ~~or commodity contract~~ from an investment  
15 advisory client, or acting as a broker for a person other than  
16 that client, knowingly ~~to~~ effect any sale or purchase of any  
17 security ~~or commodity contract~~ for the account of that client,  
18 without disclosing to the client in writing before the completion  
19 of the transaction the capacity in which he OR SHE is acting and  
20 obtaining the consent of the client in writing to the  
21 transaction. The prohibitions of this subdivision ~~shall~~ DO not  
22 apply to a FEDERALLY COVERED ADVISER OR TO ANY transaction with a  
23 customer of a broker-dealer if the broker-dealer is not acting as  
24 an adviser in relation to the transaction.

25 (b) It is unlawful for any investment adviser to enter into,  
26 extend, or renew any investment advisory contract unless it  
27 provides in writing ALL OF THE FOLLOWING:

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1 (1) That the investment adviser shall not be compensated on  
2 the basis of a share of capital gains upon or capital apprecia-  
3 tion of the funds or any portion of the funds of the client. ~~+~~

4 (2) That no assignment of the INVESTMENT ADVISORY contract  
5 may be made by the investment adviser without the consent of the  
6 other party to the contract. ~~+~~ ~~and~~

7 (3) That the investment adviser, if a partnership, shall  
8 notify the other party to the INVESTMENT ADVISORY contract of any  
9 change in the membership of the partnership within a reasonable  
10 time after the change.

11 (c) It is unlawful for any investment adviser acting as a  
12 finder to DO ANY OF THE FOLLOWING:

13 (1) Take possession of funds or securities in connection  
14 with the transaction for which payment is made for services as a  
15 finder.

16 (2) Fail to disclose clearly and conspicuously in writing to  
17 all persons involved in the transaction as a result of his or her  
18 finding activities before the sale or purchase that the person is  
19 acting as a finder, ~~a~~ ANY payment for services as a finder, the  
20 method and amount of payment, as well as any beneficial interest,  
21 direct or indirect, of the finder or a member of the finder's  
22 immediate family in the issue of the securities ~~or commodities~~  
23 that are the subject of services as a finder.

24 (3) Participate in the offer, purchase, or sale of a secur-  
25 ity ~~or commodity~~ in violation of section 301. However, if the  
26 investment adviser makes a reasonable effort to ascertain if a  
27 registration has been effected or an exemption order granted in

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1 this state ~~—, or alternatively—~~ TO ASCERTAIN the basis for an  
2 exemption claim and does not have knowledge that the proposed  
3 transaction would violate section 301, his or her activities as a  
4 finder ~~—shall—~~ DO not violate section 301.

5       (4) Participate in the offer, purchase, or sale of a secur-  
6 ity ~~—or commodity—~~ without obtaining information relative to the  
7 risks of the transaction, the direct or indirect compensation to  
8 be received by promoters, partners, officers, directors, or their  
9 affiliates, the financial condition of the issuer, and the use of  
10 proceeds to be received from investors, or fail to read any  
11 offering materials obtained. This section ~~—shall—~~ DOES not  
12 require independent investigation or alteration of offering mate-  
13 rials furnished to the finder.

14       (5) Fail to inform or otherwise ~~—insure—~~ ENSURE disclosure  
15 to all persons involved in the transaction as a result of his or  
16 her finding activities of any material information which the  
17 finder knows, or in the exercise of reasonable care should know  
18 based on the information furnished to him or her, is material in  
19 making an investment decision, until conclusion of the  
20 transaction.

21       (6) Locate, introduce, or refer persons that the finder  
22 knows, or after a reasonable inquiry should know, are not suit-  
23 able investors by reason of their financial condition, age,  
24 experience, or need to diversify investments.

25       (D) ~~—(7)—~~ The finder is not required to independently gener-  
26 ate information.

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1 (E) UNLESS WAIVED BY THE ADMINISTRATOR, AN INVESTMENT  
2 ADVISER REGISTERED OR REQUIRED TO BE REGISTERED UNDER THIS ACT  
3 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, FURNISH  
4 EACH ADVISORY CLIENT AND PROSPECTIVE ADVISORY CLIENT WITH A WRIT-  
5 TEN DISCLOSURE STATEMENT IN A FORM ESTABLISHED BY THE ADMINISTRA-  
6 TOR BY RULE OR ORDER. AN INVESTMENT ADVISER SHALL DELIVER THE  
7 DISCLOSURE STATEMENT REQUIRED BY THIS SECTION TO A CLIENT OR PRO-  
8 SPECTIVE CLIENT NOT LESS THAN 48 HOURS PRIOR TO ENTERING INTO AN  
9 INVESTMENT ADVISORY CONTRACT WITH THE CLIENT OR PROSPECTIVE  
10 CLIENT, OR AT THE TIME OF ENTERING INTO THE INVESTMENT ADVISORY  
11 CONTRACT IF THE ADVISORY CLIENT HAS A RIGHT TO RESCIND THE  
12 INVESTMENT ADVISORY CONTRACT WITHOUT PENALTY WITHIN 5 BUSINESS  
13 DAYS OF ENTERING INTO THE INVESTMENT ADVISORY CONTRACT.

14 (F) AN INVESTMENT ADVISER SHALL ANNUALLY AND WITHOUT CHARGE  
15 DELIVER OR OFFER TO DELIVER TO EACH OF ITS ADVISORY CLIENTS THE  
16 DISCLOSURE STATEMENT REQUIRED BY THIS SECTION. ANY DISCLOSURE  
17 STATEMENT REQUIRED BY THIS SECTION AND REQUESTED IN WRITING BY AN  
18 ADVISORY CLIENT PURSUANT TO AN OFFER TO DELIVER MUST BE MAILED OR  
19 DELIVERED WITHIN 5 BUSINESS DAYS OF THE REQUEST. THE DELIVERY OR  
20 OFFER TO DELIVER REQUIRED BY THIS SECTION NEED NOT BE MADE TO  
21 ADVISORY CLIENTS RECEIVING ADVISORY SERVICES SOLELY PURSUANT TO A  
22 CONTRACT WITH AN INVESTMENT COMPANY REGISTERED PURSUANT TO SEC-  
23 TION 15(c) OF THE INVESTMENT COMPANY ACT OF 1940, 15  
24 U.S.C. 80a-15.

25 (G) ~~-(d)- Subsection (b)(1) of this section shall not be~~  
26 ~~construed to~~ DOES NOT prohibit an investment advisory contract  
27 which provides for compensation based upon the total value of a

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1 fund averaged over a definite period, or as of definite dates, or  
2 taken as of a definite date, ~~or shall~~ AND DOES not apply to ~~an~~  
3 ~~investment advisory contract with an investment company regis-~~  
4 ~~tered under the investment company act of 1940, or~~ any person,  
5 except a trust, collective trust fund, or separate account  
6 referred to in section 3(c)(11) of the investment company act of  
7 1940, 15 U.S.C. 80a-3, if the INVESTMENT ADVISORY contract  
8 relates to the investment of assets in excess of \$1,000,000.00,  
9 and the INVESTMENT ADVISORY contract provides for compensation  
10 based on the asset value of the company or fund under management  
11 averaged over a specific period and increasing and decreasing  
12 proportionately with the investment performance of the company or  
13 fund over a specific period in relation to the investment record  
14 of an appropriate index of securities prices, or ~~such other~~  
15 ANOTHER measure of investment performance as the administrator by  
16 rule, regulation, or order may specify. For purposes of deter-  
17 mining whether subsection (b)(1) applies to an investment  
18 advisory contract, the point from which increases and decreases  
19 in compensation are measured shall be the fee which is paid or  
20 earned when the investment performance of the company or fund is  
21 equivalent to that of the index or other measure of performance,  
22 and an index of securities prices shall be ~~deemed~~ CONSIDERED  
23 appropriate unless the administrator by order shall determine  
24 otherwise. The definition of the term "assignment" and the other  
25 terms used in this section shall be the same as the definitions  
26 of those terms in the investment advisers act of 1940. ~~, as~~  
27 ~~amended.~~

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1       (H) ~~-(e)-~~ Unless the administrator by rule or order permits  
2 ~~such~~ TAKING OR HAVING custody, it is unlawful for any invest-  
3 ment adviser not registered as a broker-dealer to take or have  
4 custody of any securities or funds ~~or commodity contracts~~ of  
5 any client.

6       (I) ~~-(f)-~~ It is unlawful for an agent registered with a  
7 broker-dealer to conduct business as an investment adviser OR AN  
8 INVESTMENT ADVISER REPRESENTATIVE except through the  
9 broker-dealer with which the agent is registered and with the  
10 written consent of the broker-dealer filed with the administra-  
11 tor, in a form and subject to terms and conditions acceptable to  
12 the administrator.

13       Sec. 103. It is unlawful for any person with intent to  
14 deceive to make, offer, or sell imitation or false ingots, bars  
15 of ~~bullion~~ BULLION, wafers, medals, or similar artifacts, or  
16 certificates or other instruments representing securities. ~~or~~  
17 ~~commodities.~~

18       Sec. 201. (a) A person shall not transact business in this  
19 state as a broker-dealer ~~, commodity issuer,~~ or agent unless  
20 registered under this act.

21       (b) A broker-dealer or issuer shall not employ an agent  
22 unless the agent is registered. The registration of an agent is  
23 not effective during any period when the agent is not associated  
24 with a particular broker-dealer registered under this act or a  
25 particular issuer. ~~-If-~~ WHEN an agent begins or terminates a  
26 connection with a broker-dealer or issuer, or begins or  
27 terminates those activities that make him or her an agent, the



1 agent as well as the broker-dealer or issuer shall immediately  
2 notify the administrator in writing on a form prescribed by the  
3 administrator.

4 ~~-(c) Unless a broker-dealer is a member of a national secur-~~  
5 ~~ities exchange as defined in title I of the securities exchange~~  
6 ~~act of 1934, chapter 404, 48 Stat. 881, the administrator may by~~  
7 ~~rule or order require that a broker-dealer designate a person who~~  
8 ~~shall be registered as a principal of the broker-dealer in charge~~  
9 ~~of management, financial matters, or compliance and the~~  
10 ~~broker-dealer shall at all times designate and maintain a~~  
11 ~~principal. The registration of a principal is not effective~~  
12 ~~during any period when the principal is not associated with a~~  
13 ~~particular broker-dealer registered under this act. If a princi-~~  
14 ~~pal begins or terminates a connection with a broker-dealer, or~~  
15 ~~begins or terminates activities and designation as a principal,~~  
16 ~~the principal as well as the broker-dealer shall immediately~~  
17 ~~notify the administrator in writing on a form prescribed by the~~  
18 ~~administrator.~~

19 (C) ~~-(d)~~ A person shall not transact business in this state  
20 as an investment adviser unless the person ~~complies with~~ MEETS  
21 1 or more of the following:

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

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

25 (3) The person's only clients in this state are ~~investment~~  
26 ~~companies as defined in section 3 of the investment company act~~  
27 ~~of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-3,~~

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1 ~~or~~ insurance companies, FEDERALLY COVERED ADVISERS, banks, or  
2 trust companies.

3 (4) THE PERSON IS AN INVESTMENT ADVISER WHO IS NOT REQUIRED  
4 TO BE REGISTERED AS AN INVESTMENT ADVISER UNDER THE INVESTMENT  
5 ADVISERS ACT OF 1940 IF ANY OF THE FOLLOWING APPLY:

6 (A) THE INVESTMENT ADVISER'S ONLY CLIENTS IN THIS STATE ARE  
7 OTHER INVESTMENT ADVISERS, FEDERALLY COVERED ADVISERS,  
8 BROKER-DEALERS, OR INSTITUTIONAL INVESTORS.

9 (B) THE INVESTMENT ADVISER HAS NO PLACE OF BUSINESS IN THIS  
10 STATE AND THE INVESTMENT ADVISER DIRECTS BUSINESS COMMUNICATIONS  
11 IN THIS STATE TO A PERSON WHO IS AN EXISTING CUSTOMER AND WHOSE  
12 PRINCIPAL PLACE OF RESIDENCE IS NOT IN THIS STATE.

13 (C) THE INVESTMENT ADVISER HAS NO PLACE OF BUSINESS IN THIS  
14 STATE AND THE INVESTMENT ADVISER DURING THE PRECEDING 12-MONTH  
15 PERIOD HAS HAD NOT MORE THAN 5 CLIENTS, OTHER THAN THOSE SPECI-  
16 FIED IN SUBPARAGRAPH (A), WHO ARE RESIDENTS OF THIS STATE.

17 (5) ~~-(4)-~~ The person's only clients in this state are indi-  
18 viduals who access the person's services through a 1-900 or  
19 ~~1-800~~ TOLL-FREE telephone number and the services are generic  
20 in nature and not customized or specific to an individual and  
21 would not otherwise be considered the offering of investment  
22 advice.

23 (D) ~~-(e)-~~ A registration under this section ~~shall be~~ IS  
24 effective ~~until it is withdrawn, terminated, revoked, or~~  
25 ~~canceled. A registrant shall be required to file or have filed~~  
26 ~~an annual report with such information as the administrator may~~  
27 ~~require. The administrator may by rule or order reduce the~~

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1 ~~filing fee for registration applications received more than 6~~  
2 ~~months after the beginning of the fiscal year.~~ UPON ORDER OF THE  
3 ADMINISTRATOR AND EXPIRES ON DECEMBER 31 OF THAT YEAR. IF A  
4 PERSON DOES NOT FILE AN ANNUAL REPORT, WITH THE INFORMATION  
5 REQUIRED BY THE ADMINISTRATOR, BEFORE DECEMBER 31 OF EACH YEAR,  
6 THE PERSON SHALL NOT CONTINUE TO TRANSACT BUSINESS IN THIS STATE  
7 AS AN INVESTMENT ADVISER, BROKER-DEALER, OR AGENT.

8 ~~(f) Unless the administrator by rule provides for regula-~~  
9 ~~tion, the broker-dealer, commodity issuer, and agent registration~~  
10 ~~provisions of this act do not apply to a person engaged in the~~  
11 ~~commodities business in this state and whose transactions with~~  
12 ~~the public involve 1 or more of the following:~~

13 ~~(1) A sale with delivery into the possession of the buyer of~~  
14 ~~the commodity sold, within 10 days after the cash payment, if,~~  
15 ~~with respect to the sales the seller does not do any of the~~  
16 ~~following:~~

17 ~~(i) Guarantee or promise the repurchase of the commodity~~  
18 ~~from the buyer in the future.~~

19 ~~(ii) Promise or agree to act as a broker or dealer on behalf~~  
20 ~~of the buyer in connection with a future resale of the commodity~~  
21 ~~by the buyer.~~

22 ~~(iii) Advertise the commodity except under a plan accepted~~  
23 ~~by the administrator.~~

24 ~~(iv) Pay a commission directly or indirectly for soliciting~~  
25 ~~any prospective buyer.~~

26 ~~(2) Except for investment purposes, the sale or purchase of~~  
27 ~~the commodity from a person using or processing the commodity in~~

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1 ~~a trade or business, including the resale of the commodity,~~  
2 ~~whether or not for immediate delivery.~~

3 ~~(g) The registration provisions of this act do not apply to~~  
4 ~~all commodities accounts, agreements, and transactions excluded~~  
5 ~~from state jurisdiction under the commodity exchange act, chapter~~  
6 ~~369, 42 Stat. 998, 7 U.S.C. 1 to 9b, 10a to 13, 13a to 13c, 15,~~  
7 ~~16, 17, and 18 to 25.~~

8 ~~(E) (h)~~ The registration provisions of this act do not  
9 apply to a county treasurer acting under his or her authority  
10 under the local government investment pool act, ~~Act No. 121 of~~  
11 ~~the Public Acts of 1985, being sections 129.141 to 129.150 of the~~  
12 ~~Michigan Compiled Laws 1985 PA 121, MCL 129.141 TO 129.150.~~

13 ~~(F) (i)~~ A person licensed or registered as a mortgage  
14 broker, mortgage lender, or mortgage servicer under the mortgage  
15 brokers, lenders, and servicers licensing act, ~~Act No. 173 of~~  
16 ~~the Public Acts of 1987, being sections 445.1651 to 445.1683 of~~  
17 ~~the Michigan Compiled Laws, shall be~~ 1987 PA 173, MCL 445.1651  
18 TO 445.1684, IS exempted from registering as a broker-dealer  
19 under this act for the offer or sale of mortgage loans as defined  
20 under ~~Act No. 173 of the Public Acts of 1987~~ THE MORTGAGE BRO-  
21 KERS, LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173,  
22 MCL 445.1651 TO 445.1684. ~~Employees~~ AN EMPLOYEE of ~~persons~~ A  
23 PERSON licensed or registered under ~~Act No. 173 of the Public~~  
24 ~~Acts of 1987 are~~ THE MORTGAGE BROKERS, LENDERS, AND SERVICERS  
25 LICENSING ACT, 1987 PA 173, MCL 445.1651 TO 445.1684, IS exempted  
26 from the agent registration provision of this act for THE offer  
27 or sale of mortgage loans as defined under ~~that act~~ THE

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1 MORTGAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT, 1987  
2 PA 173, MCL 445.1651 TO 445.1684, when acting as ~~employees~~ AN  
3 EMPLOYEE of the licensed ~~persons~~ OR REGISTERED PERSON.

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

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

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

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

21 (4) Any injunction or administrative order or conviction of  
22 a misdemeanor or of a felony. ~~— and —~~

23 (5) The applicant's financial condition and history.

24 (B) The administrator may by rule or order require an appli-  
25 cant for initial registration to publish an announcement of the  
26 application in 1 or more specified newspapers published in this  
27 state. Registration becomes effective upon order of the

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

5 (C) ~~(b)~~ Every applicant for registration shall pay a  
6 filing fee and every registrant shall pay an annual fee of  
7 \$250.00 in the case of a broker-dealer, ~~\$250.00 in the case of a~~  
8 ~~commodity issuer, \$30.00 in the case of a principal,~~ \$30.00 in  
9 the case of an agent, and \$150.00 in the case of an investment  
10 adviser. Every applicant filing an application for registration  
11 of a successor pursuant to ~~section 202(c)~~ SUBSECTION (D) shall  
12 pay a filing fee of \$100.00 for the unexpired portion of the  
13 year. A ~~licensed~~ REGISTERED agent who has terminated his or  
14 her connection with a broker-dealer shall pay a transfer fee of  
15 \$10.00 when transferring his or her connection to another  
16 broker-dealer. ~~The administrator, in connection with any exami-~~  
17 ~~nation pursuant to section 204(b)(6), may require by rule the~~  
18 ~~payment of a reasonable fee sufficient to defray the expense of~~  
19 ~~preparing, administering, scoring, and disseminating information~~  
20 ~~concerning the examination. The administrator may either collect~~  
21 ~~this fee for, or direct that it be paid in whole or in part to,~~  
22 ~~any agency, association, or organization cooperating in adminis-~~  
23 ~~tering this examination.~~

24 (D) ~~(c)~~ A registered broker-dealer ~~, commodity issuer,~~  
25 or investment adviser may file an application for registration of  
26 a successor, whether or not the successor is then in existence.  
27 The administrator may grant or deny the application.

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1 (E) AN APPLICANT FOR REGISTRATION UNDER THIS ACT OR AN  
2 ISSUER WHO OFFERS OR SELLS A SECURITY IN THIS STATE THROUGH ANY  
3 PERSON SHALL FILE WITH THE ADMINISTRATOR, IN THE FORM PRESCRIBED  
4 BY THE ADMINISTRATOR BY RULE OR ORDER, AN IRREVOCABLE CONSENT TO  
5 SERVICE OF PROCESS.

6 (F) ~~-(d) The~~ SUBJECT TO THE REQUIREMENTS OF SECTION 15 OF  
7 TITLE I OF THE SECURITIES EXCHANGE ACT OF 1934, 15 U.S.C. 78o, [AND  
SECTION 222 OF THE INVESTMENT ADVISERS ACT OF 1940, 15 U.S.C. 80b-  
18a,]

8 THE administrator may by rule OR ORDER require a minimum capital  
9 for registered broker-dealers ~~-, commodity issuers,~~ and invest-  
10 ment advisers and prescribe a ratio between net capital and  
11 aggregate indebtedness. If the registrant fails to comply with  
12 the minimum net capital requirement, the registrant shall immedi-  
13 ately cease all investment advisory ~~services,~~ OR securities ~~-,~~  
14 ~~or commodities~~ business operations and promptly notify the  
15 administrator of its failure to maintain the required net capi-  
16 tal, of the steps to be taken to cure the net capital deficiency,  
17 and of its anticipated date of reopening business operations.  
18 The registrant shall not reactivate its securities ~~-or~~  
19 ~~commodities~~ or investment advisory business OPERATIONS without  
20 prior notification to the administrator.

21 ~~-(e) The administrator may by rule require registered~~  
22 ~~broker-dealers, commodity issuers, principals, agents, and~~  
23 ~~investment advisers to post surety bonds in amounts up to~~  
24 ~~\$100,000.00, and may determine their conditions. Any appropriate~~  
25 ~~deposit of cash or securities shall be accepted in lieu of any~~  
26 ~~bond required. A bond may not be required of any registrant~~  
27 ~~whose net capital, which may be defined by rule, exceeds~~

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~~1 \$100,000.00. Every bond shall provide for action thereon by any  
2 person who has a cause of action under section 410 and, if the  
3 administrator by rule or order requires, by any person who has a  
4 cause of action not arising under this act. Every bond shall  
5 provide that action may not be maintained to enforce any liabil-  
6 ity on the bond unless brought within 2 years after the sale or  
7 other act upon which it is based. If a civil action is main-  
8 tained under the provisions of the bond, the court shall require  
9 the person maintaining an action against the principal or surety,  
10 or both, on the bond to place a notice in a newspaper of general  
11 circulation in the county where the registrant maintains its  
12 principal office, or if there is no principal office in this  
13 state, then in the county of each registered office in this  
14 state, for 3 successive days, stating that a claim has been made  
15 under the provisions of the bond; or the court may provide for  
16 alternative notice designed to advise prospective claimants  
17 against the broker-dealer or surety. The court shall for a  
18 period of 30 days thereafter permit other claimants against the  
19 bond to join the action and claim under the provisions of the  
20 bond.~~

~~21 (f) The administrator may by rule require registered  
22 broker-dealers and investment advisers to carry fidelity bonds in  
23 amounts up to \$400,000.00 in the case of broker-dealers and up to  
24 \$100,000.00 in the case of investment advisers covering the  
25 registrant's general partners and employees or covering its offi-  
26 cers and employees.~~



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17

1 (G) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE  
2 ADMINISTRATOR MAY REQUIRE A FIDELITY BOND FROM A BROKER-DEALER,  
3 AGENT, OR INVESTMENT ADVISER WHO IS REQUIRED TO BE REGISTERED  
4 UNDER THIS ACT. THE ADMINISTRATOR MAY NOT REQUIRE A BOND FROM A  
5 BROKER-DEALER THAT IS REGISTERED UNDER THE SECURITIES EXCHANGE  
6 ACT OF 1934 OR AN INVESTMENT ADVISER THAT MAINTAINS ITS PRINCIPAL  
7 PLACE OF BUSINESS IN A STATE OTHER THAN THIS STATE IF THE INVEST-  
8 MENT ADVISER IS REGISTERED IN THAT OTHER STATE AND IS IN COMPLI-  
9 ANCE WITH THAT STATE'S BONDING REQUIREMENTS, IF ANY.

10 (H) ~~(g)~~ Unless the requirement is waived by rule or order  
11 of the administrator, all persons, including but not limited to  
12 partners, officers, directors, and agents employed by a  
13 broker-dealer ~~, commodity issuer,~~ or investment adviser who are  
14 regularly employed within this state shall, as a condition of  
15 employment, be fingerprinted. The administrator may process the  
16 fingerprint cards with the federal bureau of investigation and  
17 the department of state police either directly or through the  
18 national association of securities dealers. The fingerprints or  
19 information relating to the fingerprints shall be used for the  
20 official use of the administrator only.

21 SEC. 202A. (A) EXCEPT AS PROVIDED IN SUBSECTION (B), BEFORE  
22 CONDUCTING BUSINESS IN THIS STATE, A FEDERALLY COVERED ADVISER  
23 SHALL FILE WITH THE ADMINISTRATOR OR THROUGH THE INVESTMENT  
24 ADVISER REGISTRATION DEPOSITORY A COMPLETE AND CURRENT COPY OF  
25 THE ADVISER'S FORM ADV AS FILED WITH THE SECURITIES AND EXCHANGE  
26 COMMISSION. A NOTICE FILING SHALL BE ACCOMPANIED BY A CONSENT TO  
27 SERVICE OF PROCESS AND A FEE OF \$150.00.

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1 (B) THE PROVISIONS OF SUBSECTION (A) DO NOT APPLY TO A  
2 FEDERALLY COVERED ADVISER THAT MEETS 1 OF THE FOLLOWING:

3 (1) HE OR SHE IS A REGISTERED BROKER-DEALER THAT IS NOT  
4 SUBJECT TO A CONDITION IMPOSED UNDER SECTION 204(B)(5).

5 (2) HIS OR HER ONLY CLIENTS IN THIS STATE ARE INDIVIDUALS  
6 WHO ACCESS HIS OR HER SERVICES THROUGH A TOLL-FREE TELEPHONE  
7 NUMBER AND THE SERVICES ARE GENERIC IN NATURE, ARE NOT CUSTOMIZED  
8 OR SPECIFIC TO AN INDIVIDUAL, AND ARE NOT OTHERWISE THE OFFERING  
9 OF INVESTMENT ADVICE.

10 (C) A NOTICE FILING SHALL BE EFFECTIVE UPON RECEIPT BY THE  
11 ADMINISTRATOR AND SHALL EXPIRE ON DECEMBER 31 OF THE YEAR OF  
12 FILING. A NOTICE FILING MAY BE RENEWED BY THE FEDERALLY COVERED  
13 ADVISER FILING WITH THE ADMINISTRATOR, EITHER DIRECTLY OR THROUGH  
14 THE INVESTMENT ADVISER REGISTRATION DEPOSITORY, A COPY OF THE  
15 LAST ANNUAL UPDATE TO FORM ADV THAT THE ADVISER FILED WITH THE  
16 SECURITIES AND EXCHANGE COMMISSION, TOGETHER WITH AN ANNUAL  
17 RENEWAL FEE OF \$150.00.

18 (D) A FEDERALLY COVERED ADVISER MAY TERMINATE OR WITHDRAW A  
19 NOTICE FILING BY NOTIFYING THE ADMINISTRATOR OF THE TERMINATION  
20 OR WITHDRAWAL IN WRITING. A TERMINATION OR WITHDRAWAL IS EFFEC-  
21 TIVE UPON RECEIPT BY THE ADMINISTRATOR OF THE WRITTEN  
22 NOTIFICATION.

23 (E) A FEDERALLY COVERED ADVISER THAT ACQUIRES THE BUSINESS  
24 OF AN INVESTMENT ADVISER OR ANOTHER FEDERALLY COVERED ADVISER, OR  
25 AN INVESTMENT ADVISER THAT ACQUIRES THE BUSINESS OF A FEDERALLY  
26 COVERED ADVISER, SHALL MAKE A NOTICE FILING.

1 (F) IF A FEDERALLY COVERED ADVISER FILES AN AMENDMENT WITH  
2 THE SECURITIES AND EXCHANGE COMMISSION TO CORRECT INFORMATION  
3 THAT IS OR BECOMES INACCURATE OR INCOMPLETE IN A DOCUMENT ALSO  
4 FILED WITH THE ADMINISTRATOR AS PART OF A NOTICE FILING, THE FED-  
5 ERALLY COVERED ADVISER SHALL FILE A COPY OF THE AMENDMENT WITH  
6 THE ADMINISTRATOR, EITHER DIRECTLY OR THROUGH THE INVESTMENT  
7 ADVISER REGISTRATION DEPOSITORY.

8 (G) FOR PURPOSES OF THIS SECTION, "NOTICE FILING" MEANS THE  
9 DOCUMENTS FILED WITH THE ADMINISTRATOR UNDER SUBSECTION (A).

10 Sec. 203. (a) Every registered broker-dealer ~~—, commodity~~  
11 ~~issuer,~~ and investment adviser shall make and keep ~~—such—~~  
12 accounts, correspondence, memoranda, papers, books, and other  
13 records as the administrator by rule OR ORDER prescribes. All  
14 records ~~so~~ required shall be preserved for 3 years unless the  
15 administrator by rule OR ORDER prescribes otherwise for particu-  
16 lar types of records.

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

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

25 (d) All the records referred to in subsection (a) are  
26 subject at any time or from time to time to ~~—such—~~ reasonable  
27 periodic, special, or other examinations by representatives of

1 the administrator, within or without this state, as the  
2 administrator ~~deems~~ CONSIDERS necessary or appropriate in the  
3 public interest or for the protection of investors. The expenses  
4 reasonably attributable to the examination of a matter arising  
5 under this section may be charged to the applicant or registrant  
6 involved. For the purpose of avoiding unnecessary duplication of  
7 examinations, the administrator, insofar as it deems it practica-  
8 ble in administering this subsection, may cooperate and exchange  
9 information with the securities and commodities administrators of  
10 other states, the securities and exchange commission, the commod-  
11 ity futures trading commission, ~~and~~ any national securities  
12 exchange or national securities association registered under the  
13 securities exchange act of 1934, and other appropriate law  
14 enforcement agencies. Failure of a registrant to promptly pro-  
15 vide records for inspection shall be cause for a summary suspen-  
16 sion order until conclusion of the examination of the records.

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

20 (1) Filed a broker-dealer ~~, commodity issuer,~~ or invest-  
21 ment adviser withdrawal form as prescribed by the administrator.

22 (2) Delivered all securities ~~, commodities,~~ and cash bal-  
23 ances owing to all customers.

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

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

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

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

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

9 (2) A registrant OR FEDERALLY COVERED ADVISER subject to a  
10 merger or acquisition where all obligations of the predecessor  
11 registrant OR FEDERALLY COVERED ADVISER are acquired by or trans-  
12 ferred to the new broker-dealer ~~, commodity issuer,~~ or invest-  
13 ment adviser ~~which shall continue~~ OR FEDERALLY COVERED ADVISER  
14 THAT CONTINUES the business in an uninterrupted fashion shall  
15 comply with ~~the provisions of~~ section ~~202(c)~~ 202(D) OR  
16 202A(E), WHICHEVER IS APPLICABLE, instead of this section.

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

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

1 (h) A registrant or applicant for registration shall  
2 promptly notify the administrator in writing if any proceedings  
3 have been commenced or any sanction imposed by securities admin-  
4 istrators ~~or commodities administrators~~ of other states, other  
5 state regulatory agencies, the securities and exchange commis-  
6 sion, ~~the commodity futures trading commission,~~ or any national  
7 securities exchange ~~, commodities exchange,~~ or national securi-  
8 ties association registered under the securities exchange act of  
9 1934.

10 (i) ~~The~~ EXCEPT FOR ADVERTISING RELATED TO A FEDERALLY COV-  
11 ERED SECURITY, THE administrator may by rule or order require a  
12 broker-dealer or investment adviser to file all advertising for  
13 review and acceptance before FIRST use. ~~All advertising shall~~  
14 ~~be filed with the administrator contemporaneously with its use.~~

15 (J) THE ADMINISTRATOR SHALL NOT REQUIRE ANY OF THE  
16 FOLLOWING:

17 (1) THAT A BROKER-DEALER THAT IS REGISTERED UNDER THE SECUR-  
18 ITIES EXCHANGE ACT OF 1934 MAKE, MAINTAIN, OR PRESERVE ANY  
19 RECORDS OTHER THAN THOSE REQUIRED TO BE MADE, MAINTAINED, AND  
20 PRESERVED UNDER THE SECURITIES EXCHANGE ACT OF 1934.

21 (2) THAT AN INVESTMENT ADVISER THAT MAINTAINS ITS PRINCIPAL  
22 PLACE OF BUSINESS IN ANOTHER STATE MAKE, MAINTAIN, OR PRESERVE  
23 ANY RECORDS OTHER THAN THOSE REQUIRED BY THAT STATE, PROVIDED  
24 THAT THE INVESTMENT ADVISER IS REGISTERED IN THAT STATE AND IS IN  
25 COMPLIANCE WITH ANY RECORD-KEEPING REQUIREMENTS OF THAT STATE.

26 (3) THAT A BROKER-DEALER THAT IS REGISTERED UNDER THE  
27 SECURITIES EXCHANGE ACT OF 1934 FILE A FINANCIAL REPORT THAT IS

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1 NOT REQUIRED TO BE CREATED AND FILED UNDER THE SECURITIES  
2 EXCHANGE ACT OF 1934.

3 (4) THAT AN INVESTMENT ADVISER THAT MAINTAINS ITS PRINCIPAL  
4 PLACE OF BUSINESS IN ANOTHER STATE CREATE OR FILE A FINANCIAL  
5 REPORT THAT IS NOT REQUIRED BY THAT STATE, PROVIDED THAT THE  
6 INVESTMENT ADVISER IS REGISTERED IN THAT STATE AND IS IN COMPLI-  
7 ANCE WITH ANY FINANCIAL REPORTING REQUIREMENTS OF THAT STATE.

8 Sec. 204. (a) The administrator may by order, if it finds  
9 the order in the public interest, deny, suspend, or revoke any  
10 registration, or censure a registrant, if it finds that 1 OR MORE  
11 OF THE FOLLOWING APPLY:

12 (1) The applicant or registrant or, in the case of a  
13 broker-dealer ~~—, commodity issuer,~~ or investment adviser, any  
14 partner, officer, ~~—principal,~~ or director, any person occupying  
15 a similar status or performing similar functions, or any person  
16 directly or indirectly controlling the broker-dealer ~~—, commodity~~  
17 ~~issuer,~~ or investment adviser:

18 (A) Has filed an application for registration which as of  
19 its effective date, or as of any date after filing in the case of  
20 an order denying effectiveness, was incomplete in any material  
21 respect or contained any statement which was, in light of the  
22 circumstances under which it was made, false or misleading with  
23 respect to any material fact. ~~—~~

24 (B) Has violated or failed to comply with any provision of  
25 this act or a predecessor act or any rule or order under this act  
26 or a predecessor act. ~~—~~

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1 (C) Has been convicted of any misdemeanor involving moral  
2 turpitude or any felony. ~~+~~

3 (D) Is permanently or temporarily enjoined by any court of  
4 competent jurisdiction from engaging in or continuing any conduct  
5 or practice involving any aspect of the securities ~~or commodity~~  
6 ~~contracts~~ business. ~~+~~

7 (E) Is the subject of an order of the administrator denying,  
8 suspending, or revoking registration as a broker-dealer, agent,  
9 or investment adviser. ~~+~~

10 (F) Is the subject of an order entered by the securities ~~or~~  
11 ~~commodities~~ administrator of any other state or by the securi-  
12 ties and exchange commission ~~or the commodity futures trading~~  
13 ~~commission~~ denying, suspending, or revoking registration as a  
14 broker-dealer, ~~future commission merchant,~~ floor broker,  
15 ~~commodity exchange, commodity solicitor, commodity option~~  
16 ~~issuer, commodity salesman, commodity adviser, commodity trading~~  
17 ~~adviser, commodity pool operator,~~ agent, or investment adviser,  
18 or the substantial equivalent of those terms as defined in this  
19 act, or is the subject of an order of the securities and exchange  
20 commission suspending or expelling him OR HER from a national  
21 securities exchange or national securities association registered  
22 under the securities exchange act of 1934 or in the case of an  
23 individual, is subject to an order by the securities and exchange  
24 commission barring the individual from association with a  
25 broker-dealer or investment adviser ~~or equivalent order of the~~  
26 ~~commodity futures trading commission~~ or is the subject of an  
27 order of a national securities exchange or a national securities



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1 association registered under the securities EXCHANGE act of 1934  
2 suspending or expelling him OR HER from membership, or is the  
3 subject of a United States post office fraud order. The adminis-  
4 trator may by order deny, suspend, or revoke any broker-dealer —  
5 ~~commodity issuer,~~ OR investment adviser —, ~~or principal~~ regis-  
6 tration if the applicant or registrant has been associated with a  
7 broker-dealer which was liquidated pursuant to the securities  
8 investor protection act of 1970, or if 1 or more of the  
9 applicant's or registrant's partners, officers, OR directors —  
10 ~~or principals has~~ HAVE been associated with a broker-dealer liq-  
11 uidated under that act, unless the association was terminated 12  
12 months or more before the commencement of litigation under that  
13 act, or unless the associated person establishes that he or she  
14 did not engage in dishonest or unethical business practices or  
15 violate or fail to comply with any provisions of this act or a  
16 predecessor act, or any rule or order ~~thereunder~~ UNDER THIS ACT  
17 OR A PREDECESSOR ACT, during association with that broker-dealer.  
18 —

19 (G) Has engaged in dishonest or unethical business  
20 practices. —

21 (H) Is insolvent, either in the sense that his OR HER  
22 liabilities exceed his OR HER assets or in the sense that he OR  
23 SHE cannot meet his OR HER obligations as they mature; but the  
24 administrator may not enter an order against a broker-dealer or  
25 investment adviser under this ~~clause~~ SUBDIVISION without a  
26 finding of insolvency as to the broker-dealer or investment  
27 adviser. —

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1 (I) Is not qualified on the basis of such factors as  
2 training, experience, and knowledge of the securities ~~or commod-~~  
3 ~~ities businesses~~ BUSINESS, except as otherwise provided in sub-  
4 section (b). ~~+~~

5 (J) Has delayed unreasonably delivery of securities ~~or~~  
6 ~~commodities~~ to the extent that the registrant is in a position  
7 to control or direct the delivery of the securities. The burden  
8 of proof of inability to CONTROL OR DIRECT delivery shall rest  
9 with the registrant. ~~+~~

10 (K) Has represented that securities will be listed or that  
11 application for listing will be made, without basis in fact for  
12 the representation. ~~+~~

13 (L) Has induced excessive trading in a customer's account,  
14 or induced trading beyond the customer's known financial  
15 resources, if done with the intent to produce profits and commis-  
16 sions for the registrant or an agent in disregard of the  
17 customer's best interests as they reasonably appeared at the time  
18 of the transaction, and if improper under the then existing  
19 circumstances. ~~+~~

20 (M) Has recommended to a customer the purchase, sale, or  
21 exchange of any ~~security or commodity contract~~ SECURITY without  
22 reasonable grounds to believe that the recommendation is suitable  
23 for the customer on the basis of information furnished by the  
24 customer after reasonable inquiry as may be necessary under the  
25 circumstances concerning the customer's investment objectives,  
26 financial situation and needs, and other information known by the  
27 person making the recommendation. ~~+~~

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1 (N) Has recommended speculative low priced securities to  
2 customers without knowledge of or an attempt to obtain informa-  
3 tion concerning the customer's other securities holdings, finan-  
4 cial situation, investment objectives, and ability to bear the  
5 risks inherent in the purchase of those securities, or has recom-  
6 mended the securities in disregard of the information. ~~—~~

7 (O) Has executed a transaction on behalf of a customer with-  
8 out authority to do so. ~~—~~

9 (P) Has executed transactions pursuant to general discre-  
10 tionary authority for the account of a customer without first  
11 obtaining general discretionary authority in writing from the  
12 customer. However, written authority is not required if the dis-  
13 cretionary authority relates solely to the execution of an order  
14 and is limited in scope. ~~—~~

15 (Q) Has acted on an agency basis for both the seller and the  
16 purchaser of a security ~~or commodity contract~~ without disclos-  
17 ing that fact to both on the confirmation. ~~—~~

18 (R) Has, while acting on an agency basis for a customer in  
19 any transaction, charged the customer more than a fair commission  
20 or service charge, taking into consideration all relevant circum-  
21 stances including market conditions with respect to a security  
22 ~~or commodity~~ at the time of the transaction, the expense of  
23 executing the order and the value of any service rendered by  
24 reason of experience in and knowledge of the security, ~~or~~  
25 ~~commodity,~~ and the market ~~therefor~~ FOR THE SECURITY; or ~~while~~  
26 ~~acting on a principal basis for a customer in any transaction,~~  
27 has sold at an excessive markup in relation to the market price

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1 of the security ~~or commodity~~ at the time of sale in light of  
2 the volume of securities ~~or commodities~~ traded at that time.  
3 ~~—~~

4 (S) Has entered into a transaction with a customer in a  
5 security ~~or commodity~~ at a price not reasonably related to the  
6 market price of the security. ~~or commodity;~~

7 (T) Has extended credit to a customer in violation of the  
8 securities exchange act of 1934 or the regulations of the federal  
9 reserve board. ~~—~~

10 (U) Has employed in connection with the purchase or sale of  
11 a security ~~or commodity~~ a manipulative or deceptive device or  
12 contrivance. ~~—~~

13 (V) Has sold a security to or purchased a security from a  
14 customer without disclosing that the broker-dealer is acting as a  
15 market maker ~~is~~ IN that security or has a substantial position  
16 in the market. ~~—~~

17 (W) Has, while registered as an agent or investment  
18 ~~advisor~~ ADVISER, borrowed money from a customer. ~~—~~

19 (X) Has made unauthorized use of the funds of a customer; or  
20 has hypothecated a customer's securities ~~or commodity~~ contract  
21 without having a lien thereon unless written consent of the cus-  
22 tomer was first obtained. ~~—~~

23 (Y) Has, while registered as an agent, effected securities  
24 ~~or commodity contract~~ transactions when those transactions were  
25 not recorded on the records of the employer broker-dealer. ~~—~~

26 (Z) Has operated an account under a fictitious name.

1 (2) The applicant or registrant has failed reasonably to  
2 supervise its agents if it is a broker-dealer or its employees if  
3 an investment adviser. ~~or~~

4 (3) The applicant or registrant has failed to pay the proper  
5 filing fee. ~~but the~~ THE administrator may enter only a denial  
6 order under this ~~clause~~ SUBDIVISION, and it shall vacate ~~such~~  
7 ~~an~~ THE DENIAL order when the deficiency has been corrected.

8 (b) The following provisions govern the application of  
9 ~~section 204(a)(1)(I)~~ SUBSECTION (A)(1)(I):

10 (1) The administrator may not enter an order against a  
11 broker-dealer on the basis of the lack of qualification of any  
12 person other than the broker-dealer ~~himself~~ if he OR SHE is an  
13 individual or an agent of the broker-dealer.

14 (2) The administrator may not enter an order against an  
15 investment adviser on the basis of the lack of qualification of  
16 any person other than the investment adviser ~~himself~~ if he OR  
17 SHE is an individual or any other person who represents the  
18 investment adviser in doing any of the acts which make him OR HER  
19 an investment adviser.

20 (3) The administrator may not enter an order solely on the  
21 basis of lack of experience if the applicant or registrant is  
22 qualified by training or knowledge or both.

23 (4) The administrator shall consider that an agent who will  
24 work under the supervision of a registered broker-dealer need not  
25 have the same qualifications as a broker-dealer.

26 (5) The administrator shall consider that an investment  
27 adviser is not necessarily qualified solely on the basis of

1 experience as a broker-dealer or agent. When it finds that an  
2 applicant for registration as a broker-dealer is not qualified as  
3 an investment adviser, it may by order condition the applicant's  
4 registration as a broker-dealer upon his OR HER not transacting  
5 business in this state as an investment adviser.

6 (6) The administrator may by rule provide for an examina-  
7 tion, which may be written or oral or both, to be taken by any  
8 class of or all applicants, as well as persons who represent or  
9 will represent an investment adviser in doing any of the acts  
10 which make him OR HER an investment adviser.

11 (c) The administrator may by order summarily postpone or  
12 suspend registration pending final determination of any proceed-  
13 ing under this section. Upon the entry of the order, the admin-  
14 istrator shall promptly notify the applicant or registrant, as  
15 well as the employer or prospective employer if the applicant or  
16 registrant is an agent, that ~~it~~ THE ORDER has been entered and  
17 of the reasons therefor and that within 15 days after the receipt  
18 of a written request the matter will be set down for hearing. If  
19 a hearing is not requested and none is ordered by the administra-  
20 tor, the order will remain in effect until it is modified or  
21 vacated by the administrator. If a hearing is requested or  
22 ordered, the administrator, after notice of and opportunity for  
23 hearing, may modify or vacate the order or extend it until final  
24 determination.

25 (d) If the administrator finds that any registrant or appli-  
26 cant for registration is no longer in existence or has ceased to  
27 do business as a broker-dealer, ~~commodity issuer, principal,~~

1 agent, or investment adviser, or is subject to an adjudication of  
2 mental incompetence or to the control of a committee, conserva-  
3 tor, or guardian, or cannot be located after reasonable search,  
4 the administrator may by order cancel the registration or  
5 application.

6 (e) The administrator may institute a revocation or suspen-  
7 sion proceeding under ~~section 204(a)(1)(B)~~ SUBSECTION (A)(1)(B)  
8 within 1 year after withdrawal from registration of a  
9 broker-dealer, ~~commodity issuer, principal,~~ agent, or invest-  
10 ment adviser became effective and enter a revocation or suspen-  
11 sion order as of the last date on which registration was  
12 effective.

13 (f) An order may not be entered under any part of this sec-  
14 tion except the first sentence of subsection (c) without ALL OF  
15 THE FOLLOWING:

16 (1) Appropriate prior notice to the applicant or registrant,  
17 as well as to the employer or prospective employer if the appli-  
18 cant or registrant is an agent. ~~+~~

19 (2) Opportunity for hearing. ~~+~~ ~~and~~

20 (3) Written findings of fact and conclusions of law.

21 (g) The administrator may by order, if it finds the order to  
22 be in the public interest, impose a civil ~~penalty~~ FINE of  
23 \$1,000.00 on any registrant if it finds that the registrant, or  
24 in the case of a broker-dealer ~~, commodity issuer,~~ or invest-  
25 ment adviser, any partner, officer, ~~principal~~ or director, any  
26 person occupying a similar status or performing similar  
27 functions, or any person directly or indirectly controlling the

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1 broker-dealer  ~~, commodity issuer,~~  or investment adviser, has  
2 engaged in conduct prohibited by  ~~sections 204(a)(1)(B)~~   
3 SUBSECTION (A)(1)(B), (G), or (J) to (Z).

4 (h) A violation of a provision of THIS section  ~~204~~  or  
5 action of the administrator pursuant to THIS section  ~~204~~  shall  
6 not subject a registrant to civil liability to a customer of the  
7 registrant  ~~, except as~~  UNLESS that violation or action is con-  
8 trary to another provision of this act.

9 Sec. 301. It is unlawful for any person to offer or sell  
10 any security in this state unless 1 OF THE FOLLOWING IS MET:

11 (1)  ~~it~~  IT is registered under this act.  ~~or~~

12 (2)  ~~the~~  THE security or transaction is exempted under sec-  
13 tion 402.

14 (3) THE SECURITY IS A FEDERALLY COVERED SECURITY.

15 Sec. 304a. (1) A security that is exempt from registration  
16 under the federal exemption set forth in 17 C.F.R. 230.504 may be  
17 registered under this section. An issuer eligible to register a  
18 security under this section shall use a registration form  
19 approved by the administrator as the disclosure document for the  
20 offering. A registration under this section shall be known as a  
21 small  ~~corporate~~  COMPANY offering registration.

22 (2) An application for a small  ~~corporate~~  COMPANY offering  
23 registration shall comply with this section. THE OFFERING IS  
24 EXEMPT PURSUANT TO 17 C.F.R. 230.504, 17 C.F.R. 230.251, OR SEC-  
25 TION 3(a)(11) OF THE SECURITIES ACT OF 1933. However, the admin-  
26 istrator may waive provisions of this section.



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1 (3) A small ~~corporate~~ COMPANY offering registration under  
2 this section is not available to either of the following:

3 (a) Investment companies subject to the investment company  
4 act of 1940. ~~, title I of chapter 686, 54 Stat. 789, 15~~  
5 ~~U.S.C. 80a-1 to 80a-64.~~

6 (b) Issuers subject to the reporting requirements of section  
7 13 or section 15(d) of title I of the securities exchange act of  
8 1934, 15 U.S.C. 78m and 78o.

9 (4) All of the following provisions apply to the availabil-  
10 ity of a small ~~corporate~~ COMPANY offering registration:

11 (a) A small ~~corporate~~ COMPANY offering registration shall  
12 not be utilized by the following issuers and programs unless the  
13 administrator grants written permission based upon a showing that  
14 adequate disclosure can be made to investors using the small  
15 ~~corporate~~ COMPANY offering registration format:

16 (i) Holding companies, OR companies that have a principal  
17 purpose of owning stock in, or supervising the management of,  
18 other companies.

19 (ii) Portfolio companies, such as real estate investment  
20 trusts.

21 (iii) Issuers with complex capital structures.

22 (iv) Commodity pools.

23 (v) Equipment leasing programs.

24 (vi) Real estate programs.

25 (b) A small ~~corporate~~ COMPANY offering registration under  
26 this section is available only to the issuer of the securities  
27 and not to any affiliate of that issuer or to any other person

1 for resale of the issuer's securities. In addition, each of the  
2 following requirements shall be met:

3 (i) The issuer is a domestic corporation, ~~or~~ a foreign  
4 corporation, OR A MANAGER MANAGED LIMITED LIABILITY COMPANY orga-  
5 nized under the laws of any state, territory, or possession of  
6 the United States OR PROVINCE OR TERRITORY OF CANADA. The admin-  
7 istrator may allow other entities to file a small ~~corporate~~  
8 COMPANY offering registration.

9 (ii) The offering is not a blind pool or other offering for  
10 which the specific business to be engaged in or property to be  
11 acquired by the issuer cannot be specified.

12 (iii) The offering price for ~~common stock~~ SECURITIES; the  
13 exercise price if the securities offered are options, warrants,  
14 or rights for common stock OR MEMBERSHIP INTERESTS; ~~and~~ OR the  
15 conversion price if the securities are convertible into common  
16 stock OR UNITS OF MEMBERSHIP INTEREST is at least ~~\$5.00~~ \$1.00  
17 per share ~~, unless the administrator authorizes a lower price~~  
18 ~~per share~~ OR UNIT OF MEMBERSHIP INTEREST. THE ISSUER SHALL  
19 ENTER INTO AN AGREEMENT WITH THE ADMINISTRATOR THAT THE ISSUER  
20 WILL NOT SPLIT ANY CLASS OF SECURITY OR DECLARE A DIVIDEND FOR 2  
21 YEARS AFTER THE EFFECTIVE DATE OF THE REGISTRATION IF SUCH ACTION  
22 HAS THE EFFECT OF LOWERING THE PRICE BELOW \$1.00 PER SHARE.

23 (iv) The aggregate offering price of the securities offered,  
24 within or outside this state, is not more than \$1,000,000.00,  
25 ~~under the federal exemption set forth in~~ OR A GREATER AMOUNT  
26 ESTABLISHED UNDER 17 C.F.R. 230.504, or \$5,000,000.00 if a  
27 federal exemption is granted to this state pursuant to

1 section 3(b) of the securities act of 1933, ~~title I of chapter~~  
2 ~~38, 48 Stat. 75,~~ 15 U.S.C. 77c, OR AN AMOUNT AUTHORIZED UNDER 17  
3 C.F.R. 230.251, IF THE ISSUER IS UTILIZING A REGISTRATION FORM  
4 APPROVED BY THE ADMINISTRATOR.

5 (c) A small ~~corporate~~ COMPANY offering registration under  
6 this section is only available for debt offerings if the issuer  
7 can demonstrate a reasonable ability to service its debt.

8 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, FINAN-  
9 CIAL STATEMENTS SHALL BE PREPARED IN ACCORDANCE WITH GENERALLY  
10 ACCEPTED ACCOUNTING PRINCIPLES OR THE CANADIAN EQUIVALENT. IF  
11 THE ISSUER HAS NOT CONDUCTED SIGNIFICANT OPERATIONS, STATEMENTS  
12 OF RECEIPTS AND DISBURSEMENTS SHALL BE INCLUDED IN LIEU OF STATE-  
13 MENTS OF INCOME. INTERIM FINANCIAL STATEMENTS MAY BE UNAUDITED.  
14 ANNUAL FINANCIAL STATEMENTS SHALL BE AUDITED BY INDEPENDENT CER-  
15 TIFIED PUBLIC ACCOUNTANTS OR CHARTERED ACCOUNTANTS, AS APPROPRI-  
16 ATE, EXCEPT THAT ANNUAL FINANCIAL STATEMENTS IN LIEU OF BEING  
17 AUDITED MAY BE REVIEWED BY INDEPENDENT CERTIFIED PUBLIC ACCOUN-  
18 TANTS OR CHARTERED ACCOUNTANTS, IN ACCORDANCE WITH THE ACCOUNTING  
19 AND REVIEW SERVICES STANDARDS PROMULGATED BY THE AMERICAN INSTI-  
20 TUTE OF CERTIFIED PUBLIC ACCOUNTANTS OR THE CANADIAN EQUIVALENT,  
21 CONSISTENTLY APPLIED, RATHER THAN AUDITED, IF ALL OF THE FOLLOW-  
22 ING CONDITIONS ARE SATISFIED:

23 (A) THE ISSUER HAS NOT PREVIOUSLY SOLD SECURITIES THROUGH AN  
24 OFFERING INVOLVING GENERAL ADVERTISING OR THE SOLICITATION OF  
25 PROSPECTIVE INVESTORS.

26 (B) THE ISSUER HAS NOT BEEN PREVIOUSLY REQUIRED UNDER  
27 FEDERAL, STATE, PROVINCIAL, OR TERRITORIAL SECURITIES LAWS TO

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1 PROVIDE AUDITED FINANCIAL STATEMENTS IN CONNECTION WITH ANY SALE  
2 OF ITS SECURITIES.

3 (C) THE AGGREGATE AMOUNT OF ALL PREVIOUS SALES OF SECURITIES  
4 BY THE ISSUER WITHIN THE LAST 24 MONTHS DOES NOT EXCEED  
5 \$1,000,000.00.

6 (D) THE AMOUNT OF THE SMALL COMPANY OFFERING FOR WHICH A  
7 SMALL COMPANY REGISTRATION IS SOUGHT DOES NOT EXCEED  
8 \$1,000,000.00.

9 (6) ~~—(5)—~~ A small ~~—corporate—~~ COMPANY offering registration  
10 under this section is not available if any of the following pro-  
11 visions apply to the issuer, to any of the issuer's officers,  
12 directors, MANAGERS, 10% ~~—stockholders—~~ SECURITY HOLDERS, promot-  
13 ers, or selling agent of the securities to be offered, or to any  
14 officer, director, or partner of the selling agent of the securi-  
15 ties to be offered:

16 (a) The person has filed a registration statement that is  
17 the subject of a currently effective registration stop order  
18 entered pursuant to any federal or state securities law within 5  
19 years before the small ~~—corporate—~~ COMPANY offering registration  
20 application is filed.

21 (b) The person has been convicted of any felony or misde-  
22 meanor in connection with the offer, purchase, or sale of any  
23 security or any felony involving fraud or deceit, including any  
24 of the following, within 5 years before the small ~~—corporate—~~  
25 COMPANY offering registration application is filed:

26 (i) Forgery.

1 (ii) Embezzlement.

2 (iii) Obtaining money under false pretenses.

3 (iv) Larceny.

4 (v) Conspiracy to defraud.

5 (c) The person is currently subject to either of the  
6 following:

7 (i) A state administrative enforcement order or judgment  
8 entered against that person by a state securities administrator  
9 or the securities and exchange commission within 5 years before  
10 the small ~~corporate~~ COMPANY offering registration application  
11 is filed.

12 (ii) A federal or state administrative enforcement order or  
13 judgment in which fraud or deceit, including making untrue state-  
14 ments of material facts or failing to state material facts, was  
15 found and the order or judgment was entered within 5 years before  
16 the small ~~corporate~~ COMPANY offering registration application  
17 is filed.

18 (d) The person is subject to a federal or state administra-  
19 tive enforcement order or judgment that prohibits, denies, or  
20 revokes the use of any exemption for registration in connection  
21 with the offer, purchase, or sale of securities.

22 (e) The person is currently subject to a court order, judg-  
23 ment, or decree entered within 5 years before the small  
24 ~~corporate~~ COMPANY offering registration application is filed  
25 that does either of the following:

26 (i) Temporarily, preliminarily, or permanently restrains or  
27 enjoins that person from engaging in or continuing any conduct or

1 practice in connection with the purchase or sale of any  
2 security.

3       (ii) Involves the making of a false filing with any state or  
4 with the securities and exchange commission.

5       (f) A person who is disqualified under this subsection shall  
6 not act in any capacity other than that for which the person is  
7 licensed or registered. A disqualification under this subsection  
8 is automatically waived if the administrator or other state or  
9 federal agency that created the basis for disqualification deter-  
10 mines, upon a showing of good cause, that it is not necessary  
11 under the circumstances to deny the exemption.

12       (g) Subdivisions (a), (b), (c), and (e) do not apply if the  
13 person disqualified under those subdivisions is licensed or reg-  
14 istered to conduct securities related business in the state in  
15 which the administrative order or judgment was entered against  
16 that person or if the broker-dealer who employs the person is  
17 licensed or registered in this state and the form BD filed in  
18 this state discloses the order, conviction, judgment, or decree  
19 relating to that person.

20       (7) ~~-(6)-~~ An applicant who files a small ~~corporate~~ COMPANY  
21 offering registration application in this state shall not split  
22 ~~common stock~~ ITS SECURITIES or declare a stock OR MEMBERSHIP  
23 dividend for any security issued under this section for 2 years  
24 after the registration is effective without the prior written  
25 approval of the administrator.

26       (8) ~~-(7)-~~ In addition to a properly completed application  
27 form, an applicant for a small ~~corporate~~ COMPANY offering

1 registration under this section shall file all of the following  
2 exhibits with the administrator:

3 (a) The form of the selling agency agreement.

4 (b) The issuer's articles of incorporation or other charter  
5 documents and all amendments.

6 (c) The issuer's bylaws OR OPERATING AGREEMENT, as amended.

7 (d) Copies of any resolutions by directors OR MANAGERS set-  
8 ting forth terms and provisions of ~~capital stock~~ SECURITIES to  
9 be issued.

10 (e) Any indenture, form of note, or other contractual provi-  
11 sion containing terms of notes or other debt or of options, war-  
12 rants, or rights to be offered.

13 (f) A specimen of the security to be offered, including any  
14 legend restricting resale.

15 (g) Consent to service of process accompanied by an appro-  
16 priate ~~corporate~~ resolution.

17 (h) Copies of all material directed or furnished to invest-  
18 ors in the offering.

19 (i) The form of escrow agreement for escrow of proceeds. An  
20 escrow agreement shall comply with all of the following:

21 (i) The administrator may require that the issuer impound  
22 the proceeds from the sale of a registered security in this state  
23 until the issuer receives a specified amount from the sale of  
24 that security in this state or elsewhere that is sufficient to  
25 accomplish the stated purposes of the offering or until the  
26 issuer's stipulated requirements are met.

1       (ii) The administrator may require that the issuer return  
2 any impounded proceeds, together with any accrued interest, to  
3 investors if the issuer fails to raise the specified amount while  
4 the registration is effective or within 1 year or if the issuer's  
5 stipulated requirements are not met.

6       (iii) A bank or trust company may act as THE depositary or  
7 escrow agent for impounded proceeds. Checks, drafts, and money  
8 orders shall be made payable to the depositary. If a  
9 broker-dealer is acting as selling agent for the issuer, the  
10 broker-dealer shall promptly remit payments made directly to  
11 ~~that~~ THE broker-dealer to the depositary or escrow agent.

12       (iv) A request to release impounded funds shall be in  
13 writing. The request shall confirm compliance with the registra-  
14 tion and shall be accompanied by a statement from the depositary  
15 or escrow agent setting forth the total amount on deposit.

16       (j) Consent to inclusion in the disclosure document of an  
17 accountant's report.

18       (k) Consent to inclusion in the disclosure document of a tax  
19 advisor's opinion or a description of tax consequences.

20       (l) Consent to inclusion in the disclosure document of an  
21 evaluation by a licensed attorney of any pending or anticipated  
22 litigation or administrative action.

23       (m) The form of any subscription agreement for the purchase  
24 of securities in the offering.

25       (n) An opinion of a licensed attorney that the securities to  
26 be sold in the offering are duly authorized and binding on the  
27 issuer in accordance with the terms of the securities.



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1 (o) A list of the residence street addresses of officers,  
2 directors, MANAGERS, and principal ~~stockholders~~ SECURITY  
3 HOLDERS.

4 (9) ~~(8)~~ Information provided to the administrator under  
5 subsection ~~(7)~~ (8) is exempt from disclosure under the freedom  
6 of information act, ~~Act No. 442 of the Public Acts of 1976,~~  
7 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws~~  
8 1976 PA 442, MCL 15.231 TO 15.246.

9 (10) ~~(9)~~ An applicant for a small ~~corporate~~ COMPANY  
10 offering registration under this section shall pay a filing fee  
11 of 1/10 of 1% of the maximum aggregate offering price at which  
12 the registered securities are to be offered in this state, but in  
13 no case less than \$100.00 or more than \$1,250.00, to the adminis-  
14 trator with the application form. If the applicant withdraws the  
15 application before the small ~~corporate~~ COMPANY offering regis-  
16 tration is effective or before a preeffective stop order is  
17 issued, the administrator shall retain the entire filing fee if  
18 review of the application has commenced, or shall retain a  
19 \$100.00 fee and refund the balance of the filing fee to the  
20 applicant if review of the application has not commenced.

21 (11) ~~(10)~~ A small ~~corporate~~ COMPANY offering registra-  
22 tion statement filed under this section is effective for 1 year  
23 from its effective date, except during the time a stop order is  
24 in effect under this section. A small ~~corporate~~ COMPANY offer-  
25 ing registration statement may be extended by the administrator  
26 by rule or order. All outstanding securities of the same class  
27 as a registered security are considered to be registered for the

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1 purpose of any nonissuer transaction so long as the small  
2 ~~corporate~~ COMPANY offering registration statement is  
3 effective. A small ~~corporate~~ COMPANY offering registration  
4 statement may not be withdrawn for 1 year from its effective date  
5 if any securities of the same class are outstanding. A small  
6 ~~corporate~~ COMPANY offering registration statement may be with-  
7 drawn otherwise only in the discretion of the administrator.

8 (12) ~~(11)~~ For the period that a small ~~corporate~~ COMPANY  
9 offering registration statement is effective, the administrator  
10 may by rule or order require the person who filed the small  
11 ~~corporate~~ COMPANY offering registration statement to file  
12 reports, not more often than quarterly, to keep reasonably cur-  
13 rent the information contained in the small ~~corporate~~ COMPANY  
14 offering registration statement and to disclose the progress of  
15 the offering.

16 (13) ~~(12)~~ A small ~~corporate~~ COMPANY offering registra-  
17 tion statement relating to a security may be amended after its  
18 effective date to increase the securities specified as proposed  
19 to be offered. As to securities not yet sold, an amendment  
20 becomes effective upon the administrator's order. In the case of  
21 securities that are sold in an amount in excess of the amount or  
22 number of securities specified in an effective small ~~corporate~~  
23 COMPANY offering registration statement — as proposed to be  
24 offered, the person or persons who filed the small ~~corporate~~  
25 COMPANY offering registration statement may, in accordance with  
26 rules the administrator shall promulgate as necessary or  
27 appropriate in the public interest and for the protection of

1 investors, elect to have the small ~~corporate~~ COMPANY offering  
2 registration of those securities considered effective as of the  
3 time of their sale, upon payment to the administrator within 6  
4 months after the sale of a registration fee equal to the differ-  
5 ence between the registration fee previously paid and the amount  
6 of the fee that would have otherwise been applicable to those  
7 additional securities if they had been included in the small  
8 ~~corporate~~ COMPANY offering registration statement, if any, plus  
9 a late registration fee of \$250.00. Upon the election and pay-  
10 ment, the small ~~corporate~~ COMPANY offering registration state-  
11 ment shall be considered to have been in effect with respect to  
12 those ~~shares~~ SECURITIES. Every person filing an amendment  
13 under this section shall pay a filing fee, calculated in the  
14 manner specified in subsection ~~(9)~~ (10), with respect to the  
15 additional securities.

16 (14) ~~(13)~~ Fees, expense reimbursements, and fines received  
17 under this section shall be deposited in the state treasury to  
18 the credit of the administrator, to be used pursuant to legisla-  
19 tive appropriation by the ~~corporation and securities bureau~~  
20 ADMINISTRATOR in carrying out those duties required by law.  
21 After the payment of the amounts appropriated by the legislature  
22 for the necessary expenses incurred in the administration of this  
23 act, the money remaining shall be credited to the general fund of  
24 this state.

25 (15) ~~(14)~~ Fees and fines received under this section shall  
26 not be expended for partisan political activity.

1       (16) ~~—(15)—~~ All of the following apply to orders under this  
2 subsection:

3       (a) The administrator may issue a stop order denying effec-  
4 tiveness to, or suspending or revoking the effectiveness of, any  
5 small ~~—corporate—~~ COMPANY offering registration statement if it  
6 finds that the order is in the public interest and any of the  
7 following:

8       (i) The small ~~—corporate—~~ COMPANY offering registration  
9 statement as of its effective date or as of any earlier date in  
10 the case of an order denying effectiveness, or any amendment  
11 under subsection ~~—(12)—~~ (13) as of its effective date, or any  
12 report under subsection ~~—(11)—~~ (12) is incomplete in any material  
13 respect or contains any statement that was, in the light of the  
14 circumstances under which it was made, false or misleading with  
15 respect to any material fact.

16       (ii) Any provision of this section or any rule, order, or  
17 condition lawfully imposed under this section has been violated  
18 in connection with the offering by any of the following:

19       (A) The person filing the small ~~—corporate—~~ COMPANY offering  
20 registration statement.

21       (B) The issuer, any ~~—partner,~~ officer, ~~—or—~~ director, OR  
22 MANAGER of the issuer, any person occupying a similar status or  
23 performing similar functions, or any person directly or indi-  
24 rectly controlling or controlled by the issuer, but only if the  
25 person filing the small ~~—corporate—~~ COMPANY offering registration  
26 statement is directly or indirectly controlled by or acting for  
27 the issuer.

1 (C) Any underwriter.

2 (iii) The security registered or sought to be registered is  
3 the subject of an administrative stop order or similar order or a  
4 permanent or temporary injunction of any court entered under any  
5 other federal or state act applicable to the offering. However,  
6 the administrator shall not institute a proceeding against an  
7 effective small ~~corporate~~ COMPANY offering registration state-  
8 ment under this subdivision more than 1 year from the date of the  
9 order or injunction relied on, and may not enter an order under  
10 this subdivision on the basis of an order or injunction entered  
11 under any other state act unless that order or injunction was  
12 based on facts that would currently constitute a ground for a  
13 stop order under this section.

14 (iv) The issuer's enterprise or method of business includes  
15 or would include activities that are illegal where performed.

16 (v) The offering has worked or has tended to work a fraud,  
17 deception, or imposition or would operate to work a fraud, decep-  
18 tion, or imposition.

19 (b) The administrator may by order summarily postpone or  
20 suspend the effectiveness of the small ~~corporate~~ COMPANY offer-  
21 ing registration statement pending final determination of any  
22 proceeding under this section. Upon the entry of the order, the  
23 administrator shall promptly notify each person specified in  
24 subdivision (c) that the order has been entered, the reasons that  
25 the order has been entered, and that within 15 days after the  
26 receipt of a written request the matter will be scheduled for  
27 hearing. If no hearing is requested and none is ordered by the

1 administrator, the order shall remain in effect until it is  
2 modified or vacated by the administrator. If a hearing is  
3 requested or ordered, the administrator, after notice and oppor-  
4 tunity for hearing to each person specified in subdivision (c),  
5 may modify, vacate, or extend the order until final  
6 determination.

7 (c) A stop order shall not be entered under this section  
8 except under the first sentence of subdivision (b) without all of  
9 the following:

10 (i) Appropriate prior notice to the applicant or registrant,  
11 the issuer, and the person on whose behalf the securities are to  
12 be or have been offered.

13 (ii) Opportunity for hearing.

14 (iii) Written findings of fact and conclusions of law.

15 (d) The administrator may vacate or modify a stop order if  
16 it finds that the conditions that prompted entry of the stop  
17 order have changed or that it is otherwise in the public interest  
18 to vacate or modify the stop order.

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

22 (b) Every person filing a registration statement shall pay a  
23 filing fee of 1/10 of 1% of the maximum aggregate offering price  
24 at which the registered securities are to be offered in this  
25 state, but the fee shall in no case be less than \$100.00 or more  
26 than \$1,250.00. When an application for registration is  
27 withdrawn before the effective date or a preeffective stop order

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1 is issued, the administrator shall retain a fee of \$100.00 if the  
2 initial review has not been commenced, and the full filing fee  
3 after review has been commenced.

4 (c) Every registration statement shall specify ALL OF THE  
5 FOLLOWING:

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

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

10 (3) Any withdrawal or any adverse order, judgment, or decree  
11 entered in connection with the offering by the regulatory author-  
12 ities in each state or by any court or the securities and  
13 exchange commission.

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

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

21 (f) The administrator may by rule or order require as a con-  
22 dition of registration by qualification or coordination both of  
23 the following:

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

1       (2) That the proceeds from the sale of the registered  
2 security in this state be impounded until the issuer receives a  
3 specified amount from the sale of the security either in this  
4 state or elsewhere. The administrator may by rule or order  
5 determine the conditions of any escrow or impounding required  
6 under this subsection, and, after prior notice and opportunity  
7 for hearing, may order the cancellation in whole or in part of  
8 any security deposited in escrow if necessary for the protection  
9 of security holders. The administrator may not reject a deposi-  
10 tory solely because of location in another state.

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

15       (h) Every registration statement is effective for 1 year  
16 from its effective date, except during the time a stop order is  
17 in effect under section 306. A registration statement may be  
18 extended by the administrator by rule or order. All outstanding  
19 securities of the same class as a registered security are consid-  
20 ered to be registered for the purpose of any nonissuer transac-  
21 tion so long as the registration statement is effective or the  
22 issuer has a class of securities that have been subject to the  
23 reporting requirements of section 13 or 15(d) of title I of the  
24 securities exchange act of 1934, 15 U.S.C. 78m and 78o, for not  
25 less than 9 months before the transaction and all reports  
26 required by that act have been filed for that period. A  
27 registration statement may not be withdrawn for 1 year from its



1 effective date if any securities of the same class are  
2 outstanding. A registration statement may be withdrawn otherwise  
3 only in the discretion of the administrator.

4 (i) For the period that the registration statement is effec-  
5 tive, the administrator may by rule or order require the person  
6 who filed the registration statement to file reports, not more  
7 often than quarterly, to keep reasonably current the information  
8 contained in the registration statement and to disclose the  
9 progress of the offering.

10 (j) A registration statement relating to a security may be  
11 amended after its effective date to increase the securities spec-  
12 ified as proposed to be offered. As to securities not yet sold,  
13 an amendment becomes effective upon the administrator's order.  
14 In the case of securities that are sold in an amount in excess of  
15 the amount or number of securities specified in an effective reg-  
16 istration statement, as proposed to be offered, the person or  
17 persons who filed the registration statement may, in accordance  
18 with rules the administrator shall promulgate as necessary or  
19 appropriate in the public interest and for the protection of  
20 investors, elect to have the registration of those securities  
21 considered effective as of the time of their sale, upon payment  
22 to the administrator within 6 months after the sale of a regis-  
23 tration fee equal to the difference between the registration fee  
24 previously paid and the amount of the fee that would have other-  
25 wise been applicable to those additional securities if they had  
26 been included in the registration statement, if any, plus a late  
27 registration fee of \$250.00. Upon the election and payment, the

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1 registration statement shall be considered to have been in effect  
2 with respect to those shares. Every person filing an amendment  
3 under this subsection shall pay a filing fee, calculated in the  
4 manner specified in subsection (b), with respect to the addi-  
5 tional securities.

6 (k) Fees, expense reimbursements, and fines received under  
7 this act shall be deposited in the state treasury to the credit  
8 of the administrator, to be used pursuant to legislative appro-  
9 priation by the ~~corporation and securities bureau~~ ADMINISTRATOR  
10 in carrying out those duties required by law. After the payment  
11 of the amounts appropriated by the legislature for the necessary  
12 expenses incurred in the administration of this act, the money  
13 remaining shall be credited to the general fund of this state.

14 (l) Fees and fines received under this act shall not be  
15 expended for partisan political activity.

16 (m) This section does not apply to securities registered  
17 under section 304a.

18 SEC. 308. (A) ANY SECURITY ISSUED BY AN INVESTMENT COMPANY,  
19 OTHER THAN A UNIT INVESTMENT TRUST, THAT IS REGISTERED OR THAT  
20 HAS FILED A REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY  
21 ACT OF 1940 MAY BE OFFERED FOR SALE AND SOLD INTO, FROM, OR  
22 WITHIN THIS STATE UPON THE ANNUAL RECEIPT BY THE ADMINISTRATOR OF  
23 ALL OF THE FOLLOWING:

24 (1) A NOTICE AS PRESCRIBED BY THE ADMINISTRATOR. A COPY OF  
25 THE FEDERAL REGISTRATION STATEMENT FILED WITH THE SECURITIES AND  
26 EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 MAY BE  
27 PROVIDED TO THE ADMINISTRATOR IN LIEU OF THE NOTICE.

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- 1           (2) PAYMENT OF A FEE OF \$500.00.
- 2           (3) A CONSENT TO SERVICE OF PROCESS.
- 3           (B) ANY SECURITY ISSUED BY A UNIT INVESTMENT TRUST THAT IS
- 4 REGISTERED OR THAT HAS FILED A REGISTRATION STATEMENT UNDER THE
- 5 INVESTMENT COMPANY ACT OF 1940 AS AN INVESTMENT COMPANY MAY BE
- 6 OFFERED FOR SALE AND SOLD INTO, FROM, OR WITHIN THIS STATE FOR AN
- 7 INDEFINITE PERIOD COMMENCING UPON THE LATER OF THE TRUST'S EFFEC-
- 8 TIVENESS WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE
- 9 ADMINISTRATOR'S RECEIPT OF A NOTICE AS PRESCRIBED BY THE ADMINIS-
- 10 TRATOR AND A 1-TIME NOTICE FILING FEE OF \$500.00.
- 11           (C) EACH OF THE FOLLOWING APPLIES TO A NOTICE FILING UNDER
- 12 SUBSECTION (A):
- 13           (1) A NOTICE FILING IS EFFECTIVE FOR A PERIOD OF 1 YEAR,
- 14 COMMENCING UPON THE LATER OF THE EFFECTIVENESS OF THE OFFERING
- 15 WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE
- 16 ADMINISTRATOR'S RECEIPT OF THE NOTICE FILING.
- 17           (2) A NOTICE FILING MAY BE RENEWED FOR AN ADDITIONAL 1-YEAR
- 18 PERIOD BY FILING A CURRENT FORM NF AND THE FEE REQUIRED BY
- 19 SUBSECTION (H) BEFORE THE EXPIRATION OF THE 1-YEAR EFFECTIVE
- 20 PERIOD. THE RENEWAL IS EFFECTIVE UPON THE EXPIRATION OF THE
- 21 PRIOR NOTICE PERIOD.
- 22           (3) A NOTICE FILING MAY BE TERMINATED BY FILING WITH THE
- 23 ADMINISTRATOR A NOTICE OF TERMINATION AS PRESCRIBED BY THE
- 24 ADMINISTRATOR. THE TERMINATION IS EFFECTIVE UPON THE
- 25 ADMINISTRATOR'S RECEIPT OF THE NOTICE OF TERMINATION.
- 26           (D) WITH RESPECT TO ANY SECURITY THAT IS A FEDERALLY COVERED
- 27 SECURITY UNDER THE SECURITIES ACT OF 1933, THE ISSUER SHALL FILE

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1 A NOTICE ON SECURITIES AND EXCHANGE COMMISSION FORM D OR A FORM  
2 APPROVED BY THE ADMINISTRATOR; WITH A CONSENT TO SERVICE OF PRO-  
3 CESS SIGNED BY THE ISSUER, NO LATER THAN 15 DAYS AFTER THE FIRST  
4 SALE OF A FEDERALLY COVERED SECURITY IN THIS STATE, TOGETHER WITH  
5 A NONREFUNDABLE FILING FEE OF \$100.00.

6 (E) THE ADMINISTRATOR, BY RULE OR ORDER, MAY REQUIRE THE  
7 FILING OF ANY DOCUMENT FILED WITH THE SECURITIES AND EXCHANGE  
8 COMMISSION UNDER THE SECURITIES ACT OF 1933, WITH RESPECT TO A  
9 FEDERALLY COVERED SECURITY UNDER THE SECURITIES ACT OF 1933,  
10 TOGETHER WITH A NONREFUNDABLE FILING FEE OF \$100.00.

11 (F) THE ADMINISTRATOR MAY ISSUE A STOP ORDER SUSPENDING THE  
12 OFFER AND SALE OF A FEDERALLY COVERED SECURITY, EXCEPT A FEDER-  
13 ALLY COVERED SECURITY UNDER SECTION 18(b)(1) OF THE SECURITIES  
14 ACT OF 1933, 15 U.S.C. 77r, IF IT FINDS THAT THE ORDER IS IN THE  
15 PUBLIC INTEREST AND THERE IS A FAILURE TO COMPLY WITH THIS  
16 SECTION.

17 (G) THE ADMINISTRATOR, BY RULE OR ORDER, MAY WAIVE ANY OR  
18 ALL OF THE PROVISIONS OF THIS SECTION.

19 (H) ALL OF THE FOLLOWING APPLY TO THE RENEWALS OF A NOTICE  
20 FILING UNDER SUBSECTION (C):

21 (1) SUBJECT TO ADJUSTMENT UNDER SUBDIVISION (3), THE FEE FOR  
22 THE RENEWAL SHALL BE 1 OF THE FOLLOWING:

23 (A) IF THE ISSUER PROJECTS NONEXEMPT SALES OF THE SECURITY  
24 IN THIS STATE DURING THE 1-YEAR RENEWAL PERIOD OF \$250,000.00 OR  
25 LESS, \$100.00.

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1 (B) IF THE ISSUER PROJECTS NONEXEMPT SALES OF THE SECURITY  
2 IN THIS STATE DURING THE 1-YEAR RENEWAL PERIOD OF MORE THAN  
3 \$250,000.00 BUT NOT MORE THAN \$700,000.00, \$400.00.

4 (C) IF THE ISSUER PROJECTS NONEXEMPT SALES OF THE SECURITY  
5 IN THIS STATE DURING THE 1-YEAR RENEWAL PERIOD OF MORE THAN  
6 \$700,000.00 BUT NOT MORE THAN \$1,000,000.00, \$800.00.

7 (D) IF THE ISSUER PROJECTS NONEXEMPT SALES OF THE SECURITY  
8 IN THIS STATE DURING THE 1-YEAR RENEWAL PERIOD OF MORE THAN  
9 \$1,000,000.00, \$1,400.00.

10 (2) FOR PURPOSES OF SUBDIVISION (1), AN ISSUER'S PROJECTION  
11 OF NONEXEMPT SALES OF A SECURITY MUST BE REASONABLE AND BASED ON  
12 ANY FACTS KNOWN TO THE ISSUER AT THE TIME OF RENEWAL THAT MAY  
13 AFFECT SALES OF THE SECURITY, INCLUDING, BUT NOT LIMITED TO, NON-  
14 EXEMPT SALES OF THE SECURITY IN THIS STATE DURING THE CURRENT  
15 1-YEAR NOTICE FILING PERIOD.

16 (3) IF AN ISSUER'S NONEXEMPT SALES OF A SECURITY IN THIS  
17 STATE DURING A 1-YEAR NOTICE FILING PERIOD EXCEED THE PROJECTIONS  
18 FOR THAT PERIOD THAT THE ISSUER HAD SUBMITTED TO THE ADMINISTRA-  
19 TOR FOR DETERMINATION OF THE ISSUER'S RENEWAL FEE FOR THAT 1-YEAR  
20 NOTICE FILING PERIOD, THE ISSUER IS NOT REQUIRED TO AMEND ITS  
21 PROJECTIONS OR PAY AN ADDITIONAL FEE FOR THAT NOTICE FILING  
22 PERIOD. HOWEVER, THE FEE FOR RENEWAL OF THE NOTICE FILING SHALL  
23 BE THE GREATER OF THE FOLLOWING:

24 (A) THE RENEWAL FEE DETERMINED UNDER SUBDIVISION (1).

25 (B) A RENEWAL FEE DETERMINED UNDER SUBDIVISION (1), USING  
26 ACTUAL SALES DURING THE CURRENT NOTICE FILING PERIOD AS THE  
27 PROJECTED SALES FOR THE RENEWAL NOTICE FILING PERIOD.

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1       (4) IF AN ISSUER'S NONEXEMPT SALES OF A SECURITY IN THIS  
2 STATE DURING A 1-YEAR NOTICE FILING PERIOD ARE LESS THAN THE PRO-  
3 JECTIONS FOR THAT PERIOD THAT THE ISSUER HAD SUBMITTED TO THE  
4 ADMINISTRATOR FOR DETERMINATION OF THE ISSUER'S RENEWAL FEE FOR  
5 THE 1-YEAR NOTICE FILING PERIOD, THE ISSUER IS NOT ENTITLED TO A  
6 REFUND OF ANY PART OF THE RENEWAL FEE FOR THAT PERIOD OR ADJUST-  
7 MENT OF THE RENEWAL FEE FOR ANY RENEWAL PERIOD.

8       (5) UPON WRITTEN REQUEST OF THE ADMINISTRATOR, AN ISSUER  
9 SHALL PROVIDE SALES REPORTS SHOWING THE ISSUER'S NONEXEMPT SALES  
10 OF A SECURITY IN THIS STATE FOR THE CURRENT AND 2 PREVIOUS 1-YEAR  
11 NOTICE FILING PERIODS, BUT THE ISSUER IS NOT OTHERWISE REQUIRED  
12 TO PROVIDE A SALES REPORT TO THE ADMINISTRATOR IN CONNECTION WITH  
13 A RENEWAL OF A NOTICE FILING.

14       (6) IF THE ADMINISTRATOR DETERMINES THAT FOR 2 CONSECUTIVE  
15 1-YEAR NOTICE FILING PERIODS AN ISSUER'S NONEXEMPT SALES OF A  
16 SECURITY IN THIS STATE EXCEEDED THE ISSUER'S SALES PROJECTIONS  
17 FOR THAT PERIOD, THE ADMINISTRATOR MAY ASSESS THE ISSUER A PEN-  
18 ALTY IN THE AMOUNT OF THE RENEWAL FEES THE ISSUER WOULD HAVE PAID  
19 UNDER SUBDIVISION (1) IF ITS PROJECTIONS HAD BEEN ACCURATE. THIS  
20 PENALTY IS IN ADDITION TO AN INCREASED FEE FOR RENEWAL UNDER SUB-  
21 DIVISION (3), IF ANY.

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

24       (a) "Administrator" means the ~~corporation and securities~~  
25 ~~bureau of the department of commerce~~ OFFICE OF FINANCIAL AND  
26 INSURANCE SERVICES OF THE DEPARTMENT OF CONSUMER AND INDUSTRY  
27 SERVICES.

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1 (b) "Affiliate" means a person that directly or indirectly  
2 through 1 or more intermediaries controls, is controlled by, or  
3 is under common control with a specified person.

4 (C) ~~-(b)-~~ "Agent" means any individual other than a  
5 broker-dealer who represents a broker-dealer or issuer in effect-  
6 ing or attempting to effect purchases or sales of securities. ~~or~~  
7 ~~commodity contracts.~~ "Agent" does not include an individual who  
8 represents an issuer in (1) effecting transactions in a security  
9 exempted by section 402(a)(1), (2), (3), (4), (5), (9), or (10),  
10 (2) effecting transactions exempted by section 402(b), (3)  
11 EFFECTING TRANSACTIONS IN A COVERED SECURITY AS DEFINED IN SEC-  
12 TION 18(b)(3) OR 18(b)(4)(D) OF THE SECURITIES ACT OF 1933, 15  
13 U.S.C. 77r, or ~~-(3)-~~ (4) effecting transactions with existing  
14 employees, partners, officers, or directors of the issuer or any  
15 of its subsidiaries ~~and~~ if, in connection with all of these ~~-3-~~  
16 4 cases, no commission is paid or given directly or indirectly  
17 for soliciting any person in this state. "Agent" does not  
18 include an officer or general partner of an issuer whose securi-  
19 ties are registered under the provisions of this act, who repre-  
20 sents the issuer in effecting transactions in ~~such~~ THE regis-  
21 tered securities, if no commission is paid or given directly or  
22 indirectly for soliciting any person in this state. "Agent" does  
23 not include a person acting solely as a finder and registered  
24 pursuant to this act or acting as a finder under a transaction  
25 exempt pursuant to section 402(b)(19). "AGENT" DOES NOT INCLUDE  
26 A PERSON WHOSE TRANSACTIONS IN THIS STATE ARE LIMITED TO ONLY  
27 THOSE TRANSACTIONS SET FORTH IN SECTION 15(h)(2) OF THE

1 SECURITIES EXCHANGE ACT OF 1934, 15 U.S.C. 78o. A partner,  
2 officer, or director of a broker-dealer or issuer, or a person  
3 occupying a similar status or performing similar functions, is an  
4 agent only if he or she otherwise comes within this definition.  
5 The administrator may by rule or order exclude other persons from  
6 the definition of the word "agent".

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



1 administrator may by rule or order exclude other persons from the  
2 definition of the word "broker-dealer".

3       (E) "COMMISSION" MEANS ANY PAYMENT IN CASH, SECURITIES, OR  
4 GOODS FOR OFFERING OR SELLING, PROMISE, OR COMMITMENT TO PROVIDE  
5 PAYMENT IN THE FUTURE FOR OFFERING OR SELLING, OR ANY OTHER SIMI-  
6 LAR PAYMENT. COMMISSION DOES NOT INCLUDE A REAL ESTATE COMMIS-  
7 SION COMMENSURATE WITH FEES PAID IN THE AREA FOR SIMILAR SERV-  
8 ICES, PAID TO LICENSED REAL ESTATE BROKERS SOLELY FOR REAL ESTATE  
9 SERVICES WHICH HAVE BEEN RENDERED, OR PAYMENT BY A PERSON TO A  
10 LAWYER OR ACCOUNTANT IN CONNECTION WITH ADVICE OR RECOMMENDATIONS  
11 MADE BY A LAWYER OR ACCOUNTANT TO THE CLIENT WITH WHOM THE LAWYER  
12 OR ACCOUNTANT HAS AN ESTABLISHED PROFESSIONAL RELATIONSHIP, IF  
13 DISCLOSURE OF THE PAYMENT AND THE INTEREST OF THE LAWYER OR  
14 ACCOUNTANT IN THE TRANSACTION OR IN THE ISSUER OR ANY AFFILIATE  
15 OF THE ISSUER, IS MADE IN WRITING TO THE CLIENT BEFORE THE SALE.  
16 OFFICERS, DIRECTORS, AND PARTNERS OF AN ISSUER OR PURCHASER, OR  
17 PERSONS OCCUPYING A SIMILAR STATUS SHALL NOT BE CONSIDERED A  
18 FINDER IF THEIR CONTACT WAS PURELY INCIDENTAL AND THEIR COMPENSA-  
19 TION WAS NOT DIRECTLY OR INDIRECTLY TIED TO OR CONDITIONED UPON  
20 INVOLVEMENT IN SECURITIES SOLICITATION OR PURCHASE.

21       (F) "DIRECT OR INDIRECT COMPENSATION OR REMUNERATION" MEANS  
22 ANY PAYMENT, RECEIPT OR USE OF PROCEEDS OF AN OFFERING FOR THE  
23 BENEFIT OF THE PROMOTER, GENERAL PARTNERS, OFFICERS OR DIRECTORS,  
24 OR PERSONS OCCUPYING SIMILAR POSITIONS OR THEIR AFFILIATES, ANY  
25 RECEIPT, PAYMENT, OR USE OF SECURITIES OR GOODS BY THOSE PERSONS  
26 AT LESS THAN THE AMOUNT PUBLIC INVESTORS PAID FOR THE SECURITIES  
27 OR GOODS, OR ANY MARKUP CHARGED ON SALE OF PROPERTY TO THE ENTITY

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1 RAISING CAPITAL, ANY ADVANTAGEOUS CONTRACTUAL RELATIONSHIPS, ANY  
2 REAL ESTATE COMMISSION, OR OTHER SIMILAR PAYMENTS OR ARRANGEMENTS  
3 TO THOSE PERSONS.

4 (G) "FEDERALLY COVERED ADVISER" MEANS A PERSON THAT IS REG-  
5 ISTERED UNDER SECTION 203 OF THE INVESTMENT ADVISERS ACT OF  
6 1940. THE TERM DOES NOT INCLUDE A PERSON EXCLUDED FROM THE DEFINI-  
7 TION OF INVESTMENT ADVISER UNDER SUBDIVISION (1)(1), (2), (3),  
8 (4), (5), (6), (7), (8), (9), OR (11).

9 (H) "FEDERALLY COVERED SECURITY" MEANS ANY SECURITY THAT IS  
10 A "COVERED SECURITY" UNDER THE SECURITIES ACT OF 1933 OR RULES OR  
11 REGULATIONS PROMULGATED UNDER THAT ACT.

12 (I) "FINDER" MEANS A PERSON WHO, FOR CONSIDERATION, PARTICI-  
13 PATES IN THE OFFER TO SELL, SALE, OR PURCHASE OF SECURITIES OR  
14 COMMODITIES BY LOCATING, INTRODUCING, OR REFERRING POTENTIAL PUR-  
15 CHASERS OR SELLERS. FINDER DOES NOT INCLUDE A PERSON WHOSE  
16 ACTIONS ARE SOLELY INCIDENTAL TO A TRANSACTION EXEMPT PURSUANT TO  
17 SECTION 402(B)(19). THE ADMINISTRATOR MAY BY RULE OR ORDER  
18 EXCLUDE OTHER PERSONS FROM THIS DEFINITION.

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

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

23 (L) ~~(f)~~ "Investment adviser" means any person who, for  
24 consideration, engages in the business of advising others, either  
25 directly or through publications or writings, as to the value of  
26 securities, ~~or commodity contracts,~~ or as to the advisability  
27 of investing in, purchasing, or selling securities, ~~or commodity~~

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1 ~~contracts,~~ who, for consideration and as a part of a regular  
2 business, issues or promulgates analyses or reports concerning  
3 securities, ~~or commodity contracts,~~ or who acts as a finder in  
4 conjunction with the offer, sale, or purchase of a security. ~~or~~  
5 ~~commodity.~~ "Investment adviser" does not include ANY OF THE  
6 FOLLOWING:

7 (1) ~~a~~ A bank, savings institution, or trust company. ~~+~~

8 (2) ~~a~~ A lawyer, accountant, engineer, geologist, geophysicist,  
9 or teacher whose performance of these services is solely  
10 incidental to the practice of his or her profession. ~~+~~

11 (3) ~~a~~ A broker-dealer or a registered agent acting on  
12 behalf of a broker-dealer whose performance of these services is  
13 solely incidental to the conduct of his or her business as a  
14 broker-dealer ~~+~~ AND WHO RECEIVES NO SPECIAL COMPENSATION FOR  
15 THE SERVICES.

16 (4) ~~a~~ A publisher, ~~of any bona fide newspaper, news maga-~~  
17 ~~zine, or business or financial publication of general, regular,~~  
18 ~~and paid circulation;~~ EMPLOYEE, OR COLUMNIST OF A NEWSPAPER,  
19 NEWS MAGAZINE, OR BUSINESS OR FINANCIAL PUBLICATION, OR AN OWNER,  
20 OPERATOR, PRODUCER, OR EMPLOYEE OF A CABLE, RADIO, OR TELEVISION  
21 NETWORK, STATION, OR PRODUCTION FACILITY IF, IN EITHER CASE, THE  
22 FINANCIAL OR BUSINESS NEWS PUBLISHED OR DISSEMINATED IS MADE  
23 AVAILABLE TO THE GENERAL PUBLIC AND THE CONTENT DOES NOT CONSIST  
24 OF RENDERING ADVICE ON THE BASIS OF THE SPECIFIC INVESTMENT SITU-  
25 ATION OF A CLIENT.

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

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1       (A) ~~his~~ HIS or her only clients in this state are other  
2 investment advisers, FEDERALLY COVERED ADVISERS, broker-dealers,  
3 banks, savings institutions, trust companies, insurance com-  
4 panies, investment companies as defined in the investment company  
5 act of 1940, pension or profit-sharing trusts the assets of which  
6 are managed by a bank or trust company or other institutional  
7 manager, or other financial institutions or institutional buyers,  
8 whether acting for 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~~  
11 ~~in any manner to~~ HAVE more than 5 clients IN THIS STATE other  
12 than those specified in ~~clause (A), whether or not he or she or~~  
13 ~~any of the persons to whom the communications are directed is~~  
14 ~~then present in this state;~~ SUBPARAGRAPH (A).

15       (6) A PERSON EXCLUDED FROM THE DEFINITION OF INVESTMENT  
16 ADVISER UNDER SECTION 202(a)(11) OF THE INVESTMENT ADVISERS ACT  
17 OF 1940, 15 U.S.C. 80b-2.

18       (7) ~~any~~ ANY other persons not within the intent of this  
19 ~~paragraph~~ SUBDIVISION as the administrator may by rule or order  
20 designate. ~~+~~

21       (8) ~~(7)-a~~ A trustee whose custody of assets is pursuant to  
22 judicial appointment, OR appointment under a trust indenture ~~,~~  
23 or agreement, and who does not hold himself or herself out to the  
24 general public as giving advice to others with respect to securi-  
25 ties and who maintains close contact with the personal financial  
26 affairs of his or her clients as a part of his or her fiduciary

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1 responsibilities, or a person who gives advice only to such a  
2 trustee. ~~or,~~

3 (9) ~~(8) a~~ A county treasurer acting pursuant to his or her  
4 authority under the local government investment pool act, 1985  
5 PA 121, MCL 129.141 TO 129.150.

6 (10) A PERSON WHO IS A FEDERALLY COVERED ADVISER.

7 (11) A PERSON WHO IS EMPLOYED BY OR ASSOCIATED WITH AN  
8 INVESTMENT ADVISER.

9 (M) "INVESTMENT ADVISER REPRESENTATIVE" MEANS A PARTNER,  
10 OFFICER, OR DIRECTOR, OR A PERSON OCCUPYING A SIMILAR STATUS OR  
11 PERFORMING SIMILAR FUNCTIONS, OR OTHER INDIVIDUAL EXCEPT A CLERI-  
12 CAL OR MINISTERIAL EMPLOYEE OR OTHER EMPLOYEE OR ASSOCIATE DESIG-  
13 NATED BY THE ADMINISTRATOR BY RULE OR ORDER AS WITHIN THE INTENT  
14 OF THIS SUBSECTION, WHO IS EMPLOYED BY OR ASSOCIATED WITH EITHER  
15 OF THE FOLLOWING:

16 (1) AN INVESTMENT ADVISER THAT IS REGISTERED OR REQUIRED TO  
17 BE REGISTERED UNDER THIS ACT AND WHO DOES ANY OF THE FOLLOWING:

18 (i) MAKES ANY RECOMMENDATIONS OR OTHERWISE RENDERS ADVICE  
19 REGARDING SECURITIES.

20 (ii) MANAGES ACCOUNTS OR PORTFOLIOS OF CLIENTS.

21 (iii) DETERMINES WHICH RECOMMENDATION OR ADVICE REGARDING  
22 SECURITIES SHOULD BE GIVEN.

23 (iv) SOLICITS, OFFERS, OR NEGOTIATES FOR THE SALE OF OR  
24 SELLS INVESTMENT ADVISORY SERVICES.

25 (v) SUPERVISES EMPLOYEES WHO PERFORM ANY OF THE ACTIVITIES  
26 DESCRIBED IN SUBPARAGRAPH (i), (ii), (iii), OR (iv).

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1 (2) A FEDERALLY COVERED ADVISER THAT IS SUBJECT TO  
2 SECTION 203A OF TITLE II OF THE INVESTMENT ADVISERS ACT OF 1940,  
3 15 U.S.C. 80b-3a, AND IS DESIGNATED BY THE ADMINISTRATOR BY RULE  
4 OR ORDER.

5 (N) "INVESTMENT ADVISERS ACT OF 1940" MEANS THE INVESTMENT  
6 ADVISERS ACT OF 1940, TITLE II OF CHAPTER 686, 54 STAT. 847, 15  
7 U.S.C. 80b-1 TO 80b-21.

8 (O) "INVESTMENT COMPANY ACT OF 1940" MEANS THE INVESTMENT  
9 COMPANY ACT OF 1940, TITLE I OF CHAPTER 686, 54 STAT. 789, 15  
10 U.S.C. 80a-1 TO 80a-3 AND 80a-4 TO 80a-64.

11 (P) ~~-(g)-~~ "Issuer" means any person who issues or proposes  
12 to issue any security, ~~or commodity contract,~~ except that:

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

22 (2) For certificates of interest or participation in oil,  
23 gas, or mining titles or leases, or in payments out of production  
24 under titles or leases, the term "issuer" means the owner of the  
25 oil, gas, or mining titles or leases or payments out of produc-  
26 tion or any fractional part thereof who creates and sells  
27 certificates of interest or participation therein.

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

7       (Q) ~~-(h)-~~ "Nonissuer" means not directly or indirectly for  
8 the benefit of the issuer. A sale of securities shall be consid-  
9 ered to be indirectly for the benefit of the issuer if all of the  
10 following conditions are met:

11       (1) The sale is directly or indirectly made for the benefit  
12 of a director ~~—~~, or executive officer of the issuer, or a person  
13 occupying a similar status or performing similar functions, or a  
14 beneficial owner of 10% or more of any class of equity securities  
15 of the issuer.

16       (2) The sale, together with all sales made in this state by  
17 or for the benefit of the issuer during the 6-month period imme-  
18 diately before the date of the sale, otherwise than pursuant to a  
19 registration statement or exemption order under this act, exceeds  
20 1% of the outstanding securities of the class of securities being  
21 sold.

22       (3) The securities are not of a class that has been desig-  
23 nated by the administrator as eligible for trading in this  
24 state.

25       (R) "NOTICE FILING" MEANS THE DOCUMENTS FILED WITH THE  
26 ADMINISTRATOR UNDER SECTION 202A OR 308, OR BOTH, AS APPLICABLE.

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1       (S) ~~(i)~~ "Person" means an individual, a corporation, a  
2 partnership, an association, a joint-stock company, a trust where  
3 the interests of the beneficiaries are evidenced by a security,  
4 an unincorporated organization, a government, or a political sub-  
5 division of a government.

6       (T) "PROMOTER" MEANS A PERSON WHO, ACTING ALONE OR IN CON-  
7 JUNCTION WITH 1 OR MORE PERSONS, DIRECTLY OR INDIRECTLY TAKES THE  
8 INITIATIVE IN FOUNDING AND ORGANIZING THE BUSINESS OR ENTERPRISE  
9 OF AN ISSUER; OR A PERSON WHO, IN CONNECTION WITH THE FOUNDING OR  
10 ORGANIZING OF THE BUSINESS OR ENTERPRISE OF AN ISSUER, DIRECTLY  
11 OR INDIRECTLY RECEIVES IN CONSIDERATION OF SERVICES OR PROPERTY,  
12 10% OR MORE OF THE PROCEEDS FROM THE SALE OF ANY CLASS OF SECURI-  
13 TIES OR 10% OR MORE OF THE EQUITY INTEREST IN THE ISSUER AFTER  
14 THE OFFERING IS COMPLETE. HOWEVER, A PERSON WHO RECEIVES SUCH AN  
15 AMOUNT OF SECURITIES OR PROCEEDS EITHER SOLELY AS UNDERWRITING  
16 COMMISSIONS PURSUANT TO AN OFFERING OF SECURITIES REGISTERED  
17 UNDER THIS ACT OR SOLELY IN CONSIDERATION OF PROPERTY OR LEGAL OR  
18 ACCOUNTING SERVICES SHALL NOT BE CONSIDERED A PROMOTER WITHIN THE  
19 MEANING OF THIS SUBSECTION IF THE PERSON DOES NOT OTHERWISE TAKE  
20 PART IN FOUNDING AND ORGANIZING THE ENTERPRISE.

21       (U) "PUBLIC UTILITY HOLDING COMPANY ACT OF 1935" MEANS THE  
22 PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, TITLE I OF  
23 CHAPTER 687, 49 STAT. 838.

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

5       (3) Any security ~~or commodity contract~~ given or delivered  
6 with, or as a bonus on account of, any purchase of securities ~~—~~  
7 ~~or commodity contracts,~~ or any other thing is considered to con-  
8 stitute part of the subject of the purchase and to have been  
9 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 sale or offer of a warrant or right to purchase or  
13 subscribe to another security ~~or commodity contract~~ of the same  
14 or another issuer, as well as every sale or offer of a security  
15 ~~or commodity contract~~ which gives the holder a present or  
16 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~~  
19 ~~contract.~~

20       (6) The terms defined in this ~~subsection~~ SUBDIVISION do  
21 not include:

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

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1 (B) Any act incident to a judicially approved reorganization  
2 in which a security is issued in exchange for 1 or more outstand-  
3 ing securities, claims, or property interests, or partly in  
4 ~~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 (W) "SECURITIES ACT OF 1933" MEANS THE SECURITIES ACT OF  
13 1933, TITLE I OF CHAPTER 38, 48 STAT. 74, 15 U.S.C. 77a TO 77r  
14 AND 77s TO 77aa.

15 (X) "SECURITIES EXCHANGE ACT OF 1934" MEANS THE SECURITIES  
16 EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881.

17 (Y) "SECURITIES INVESTOR PROTECTION ACT OF 1970" MEANS THE  
18 SECURITIES INVESTOR PROTECTION ACT OF 1970, PUBLIC LAW 91-598, 84  
19 STAT. 1636.

20 (Z) ~~-(t)-~~ "Security" means any note; stock; treasury stock;  
21 bond; debenture; evidence of indebtedness; certificate of inter-  
22 est or participation in any profit-sharing agreement;  
23 collateral-trust certificate; preorganization certificate or sub-  
24 scription; transferable share; investment contract; voting-trust  
25 certificate; certificate of deposit for a security; certificate  
26 of interest or participation in an oil, gas, or mining title or  
27 lease or in payments out of production under such a title or

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

24 (AA) "SMALL BUSINESS INVESTMENT ACT OF 1958" MEANS THE SMALL  
25 BUSINESS INVESTMENT ACT OF 1958, PUBLIC LAW 85-699, 72 STAT. 689.

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

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

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

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

26       ~~-(q) "Promoter" means a person who, acting alone or in~~  
27 ~~conjunction with 1 or more persons, directly or indirectly takes~~

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

~~14 (r) "Commission" means any payment in cash, securities, or  
15 goods for offering or selling, promise, or commitment to provide  
16 payment in the future for offering or selling, or any other simi-  
17 lar payment. Commission does not include a real estate commis-  
18 sion commensurate with fees paid in the area for similar serv-  
19 ices, paid to licensed real estate brokers solely for real estate  
20 services which have been rendered, or payment by a person to a  
21 lawyer or accountant in connection with advice or recommendations  
22 made by a lawyer or accountant to the client with whom the lawyer  
23 or accountant has an established professional relationship, if  
24 disclosure of the payment and the interest of the lawyer or  
25 accountant in the transaction or in the issuer or any affiliate  
26 of the issuer, is made in writing to the client before the sale.  
27 Officers, directors, and partners of an issuer or purchaser, or~~

~~1 persons occupying a similar status shall not be considered a  
2 finder if their contact was purely incidental and their compensa-  
3 tion was not directly or indirectly tied to or conditioned upon  
4 involvement in securities or commodities solicitation or  
5 purchase.~~

~~6 (s) "Direct or indirect compensation or remuneration" means  
7 any payment, receipt or use of proceeds of an offering for the  
8 benefit of the promoter, general partners, officers or directors,  
9 or persons occupying similar positions or their affiliates, any  
10 receipt, payment, or use of securities or goods by those persons  
11 at less than the amount public investors paid for the securities  
12 or goods, or any markup charged on sale of property to the entity  
13 raising capital, any advantageous contractual relationships, any  
14 real estate commission, or other similar payments or arrangements  
15 to those persons.~~

~~16 (t) "Affiliate" means a person that directly or indirectly  
17 through 1 or more intermediaries controls, is controlled by, or  
18 is under common control with a specified person.~~

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

~~26 Sec. 402. (a) The following securities are exempted from  
27 sections 301 and 403:~~

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1       (1) Any security, including a revenue obligation, issued or  
2 guaranteed by the United States, any state, any political subdi-  
3 vision of a state, or any agency or corporate or other instrumen-  
4 tality of 1 or more of the foregoing, or any certificate of  
5 deposit for any of the foregoing, or any guarantee or other obli-  
6 gation made in connection therewith.

7       (2) Any security issued or guaranteed by Canada, any  
8 Canadian province, any political subdivision of any ~~such~~  
9 CANADIAN province, any agency or corporate or other instrumental-  
10 ity of 1 or more of the foregoing, or any other foreign govern-  
11 ment with which the United States currently maintains diplomatic  
12 relations, if the security is recognized as a valid obligation by  
13 the issuer or guarantor.

14       (3) Any security issued by and representing an interest in  
15 or a debt of, or guaranteed by, any bank organized under the laws  
16 of the United States, or any bank, savings institution, or trust  
17 company organized and supervised under the laws of any state.

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

23       (5) Any security issued or guaranteed by any federal credit  
24 union, any credit union organized and supervised under the laws  
25 of this state or any other state or territory of the United  
26 States, or any industrial loan association, or similar

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1 association organized and supervised under the laws of this  
2 state.

3 (6) Any security issued or guaranteed by any railroad, other  
4 common carrier, public utility, or public utility holding company  
5 ~~which~~ THAT is ~~:- (A) A~~ A registered holding company under the  
6 public utility holding company act of 1935 or a subsidiary of  
7 such a company within the meaning of that act, ~~;- or (B)~~  
8 ~~Regulated~~ OR REGULATED in respect of the issuance or guarantee  
9 of the security by a governmental authority of the United States,  
10 ~~any~~ A state, Canada, or ~~any~~ A Canadian province. ~~;- also~~  
11 ALSO, any equipment trust certificate or equipment note or bond  
12 based on chattel mortgages, leases, or agreements for conditional  
13 sales of cars, motive power, or other rolling stock mortgages,  
14 leased or sold to or furnished for the use of or upon ~~such~~  
15 railroads, other common carriers, public utilities, or holding  
16 companies supervised ~~as above~~ BY A GOVERNMENTAL AUTHORITY OF  
17 THE UNITED STATES, A STATE, CANADA, OR A CANADIAN PROVINCE, or  
18 equipment, notes, or bonds where the ownership or title of ~~such~~  
19 THE equipment is pledged or retained in accordance with the pro-  
20 visions of the laws of the United States, ~~any~~ A state, Canada,  
21 or ~~any~~ A Canadian province, to secure the payment of ~~such~~ THE  
22 equipment trust certificates, bonds, or notes.

23 (7) Any [security listed or approved for listing upon notice  
24 of issuance on the New York or American stock exchanges; any  
25 other security of the same issuer which is of senior or substan-  
26 tially equal rank; any] security called for by subscription  
27 rights or warrants so listed or approved; or any warrant or right



1 to purchase or subscribe to any of the foregoing. The  
2 administrator may by rule exempt securities listed on other  
3 exchanges or may establish criteria for designating other classi-  
4 fications of exempt securities.

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

14 (A) ~~(i)~~ Ten days before offer or sale of the security file  
15 with the administrator an offering circular in a form the admin-  
16 istrator may by rule or order require together with a filing fee  
17 of \$50.00, and the administrator does not disallow the  
18 exemption.

19 (B) ~~(ii)~~ Not pay a commission or consulting fee to any  
20 person except a registered broker-dealer in connection with the  
21 offer or sale of the security.

22 (C) ~~(iii)~~ Sell only through registered securities  
23 broker-dealers or through persons exempted from the definition of  
24 the term "agent" by the administrator. In connection with all of  
25 the foregoing, the administrator may by rule or order withdraw or  
26 further condition this exemption, or waive the conditions  
27 contained in subparagraphs ~~(i)~~ (A) and ~~(ii)~~ (B).

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1       (9) Any prime quality negotiable commercial paper sold in an  
2 aggregate amount of not less than \$25,000.00 to any 1 purchaser  
3 which arises out of a current transaction or the proceeds of  
4 which have been or are to be used for current transactions, and  
5 which evidences an obligation to pay cash at a fixed date within  
6 9 months of the date of issuance, exclusive of days of grace, or  
7 any nonautomatic renewal of ~~such~~ THE commercial paper which is  
8 likewise limited, or any guarantee of ~~such~~ THE commercial paper  
9 or of any such renewal if the commercial paper is sold through a  
10 registered broker-dealer or an institution whose securities are  
11 exempted under subsection (a)(3).

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

15       ~~(11) Any security issued by an issuer registered as an~~  
16 ~~open-end management investment company or unit investment trust~~  
17 ~~under section 8 of the investment company act of 1940,~~  
18 ~~15 U.S.C. 80a-8, if all of the following apply:~~

19       ~~(A) If either 1 of the following applies:~~

20       ~~(1) The issuer has acted, or is affiliated with an invest-~~  
21 ~~ment adviser that has acted, as an investment adviser to 1 or~~  
22 ~~more registered investment companies or unit investment trusts~~  
23 ~~for at least 3 years next preceding an offer or sale of a secur-~~  
24 ~~ity claimed to be exempt under this subsection; and the issuer is~~  
25 ~~advised by an investment adviser that:~~

1       ~~(i) Is a depository institution exempt from registration~~  
2 ~~under the investment advisers act of 1940, 15 U.S.C. 80b-1 to~~  
3 ~~80b-21.~~

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

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

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

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

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

23       ~~(C) In the event any offer or sale is to be made more than~~  
24 ~~12 months after the date the notice under subparagraph (B) was~~  
25 ~~filed with the bureau under this subsection, it shall be neces-~~  
26 ~~sary to refile a notice of intention to sell and to pay the~~  
27 ~~filing fee set forth in subparagraph (B).~~

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1       ~~(D) For the purpose of this subsection, an investment~~  
2 ~~adviser is affiliated with another investment adviser if it con-~~  
3 ~~trols, is controlled by, or is under common control with the~~  
4 ~~other investment adviser.~~

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

8       (11) ~~-(12)-~~ A security listed or approved for listing upon  
9 notice of issuance on the national association of securities  
10 dealers automated quotation national market system and any other  
11 security of the same issuer that is of senior or substantially  
12 equal rank, a security called for by subscription rights or war-  
13 rants so listed or approved, or a warrant or right to purchase or  
14 subscribe to any of the foregoing. The administrator may, after  
15 providing notice of hearing to all interested parties, opportu-  
16 nity for hearing, written findings of fact and conclusions of  
17 law, and a right to judicial appeal, do any of the following:

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

20       (B) Deny this exemption by rule or order to a category of  
21 securities when necessary in the public interest and for the pro-  
22 tection of investors.

23       (C) Decertify the system by order if the administrator  
24 determines that the system's requirements are so changed from  
25 those listed in securities act release no. 33-6810, 53 ~~Federal~~  
26 ~~Register~~ F.R. p. 52550 (Dec. 28, 1988), or insufficiently

1 applied that the public interest and protection of investors  
2 contemplated by the requirements is no longer afforded.

3 (b) The following transactions are exempted from sections  
4 301 and 403:

5 (1) ~~Any~~ AN isolated nonissuer transaction, and with  
6 respect to a certificate of interest or participation in an oil,  
7 gas or mining title or a lease or payment out of production under  
8 a title or lease, any isolated transaction not involving an offer  
9 or sale by a promoter, whether effected through a broker-dealer  
10 or not.

11 (2) ~~Any~~ A nonissuer distribution of an outstanding secur-  
12 ity whose issuer and any predecessors have been in continuous  
13 operation for at least 5 years if ~~:- (A) A~~ A recognized securi-  
14 ties manual contains the names of the issuer's officers and  
15 directors, a balance sheet of the issuer as of a date within 18  
16 months, and a profit and loss statement for either the fiscal  
17 year preceding that date or the most recent year of operations,  
18 or ~~(B) The~~ THE security has a fixed maturity or a fixed inter-  
19 est or dividend provision and there has been no default during  
20 the current fiscal year or within the 3 preceding fiscal years in  
21 the payment of principal, interest, or dividends on the  
22 security. ~~(C)~~ For purposes of this subdivision, an issuer or  
23 predecessor is in continuous operation only if it has gross oper-  
24 ating revenue in each of the 5 years immediately preceding its  
25 claim of exemption and has had gross operating revenue of at  
26 least \$500,000.00 in not less than 3 of those 5 years.

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1       (3) ~~Any~~ A nonissuer transaction effected by or through a  
2 registered broker-dealer pursuant to an unsolicited order or  
3 offer to buy; but the administrator may by rule require that the  
4 customer acknowledge upon a specified form that the sale was  
5 unsolicited, and that a signed copy of each such form be pre-  
6 served by the broker-dealer for a specified period.

7       (4) ~~Any~~ A transaction between the issuer or other person  
8 on whose behalf the offering is made and an underwriter, or A  
9 TRANSACTION among underwriters.

10       (5) ~~Any~~ A transaction not part of a series of transactions  
11 in related or adjacent properties to individual investors, or  
12 ~~any~~ A transaction involving an offer or sale to a financial  
13 institution as ~~defined~~ DESCRIBED in subdivision (8), in a bond  
14 or other evidence of indebtedness secured by a real or chattel  
15 mortgage or deed of trust, or by an agreement for the sale of  
16 real estate or chattels, if the entire mortgage, deed of trust,  
17 or agreement, together with all the bonds or other evidences of  
18 indebtedness secured thereby, is offered and sold as a unit.

19       (6) ~~Any~~ A transaction by an executor, a personal represen-  
20 tative, administrator, sheriff, marshal, receiver, trustee in  
21 bankruptcy, guardian, or conservator.

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

25       (8) ~~Any~~ AN offer or sale to a bank, savings institution,  
26 trust company, insurance company, investment company as defined  
27 in the investment company act of 1940, the federal national

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1 mortgage association, the federal home loan mortgage corporation,  
2 or the government national mortgage association, pension or  
3 profit sharing trust the assets of which are managed by an insti-  
4 tutional manager, the treasurer of this state, other financial  
5 institution, broker-dealer, whether the purchaser is acting for  
6 itself or in some fiduciary capacity, or a lender approved by the  
7 federal housing administration and who has satisfied any addi-  
8 tional requirements established by the administrator by rule or  
9 order.

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

12 (A) The issuer and any person acting on its behalf shall  
13 exercise reasonable care to assure that purchasers in this state  
14 of the securities in the offering do not resell the securities  
15 without compliance with state and federal securities laws. For  
16 sales described in subparagraph (D)(2), (3), and (5) that reason-  
17 able care shall include, where appropriate, but not necessarily  
18 be limited to, all of the following:

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

23 (2) Placing a legend on the certificate or other document  
24 evidencing the securities stating that the securities have not  
25 been registered under the act and setting forth or referring to  
26 the restrictions on transferability and sale of the securities.

27 ~~—~~

1 (3) Issuing stop transfer instructions to the issuer's  
2 transfer agent, if any, with respect to the securities or, if the  
3 issuer transfers its own securities, making a notation in the  
4 appropriate records of the issuer. ~~→~~

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

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

11 (C) A commission is not paid or given directly or indirectly  
12 for soliciting any prospective purchaser in this state, except to  
13 a broker-dealer registered pursuant to this act who is not affil-  
14 iated with the issuer or its affiliates. Those payments shall be  
15 reflected on the books and records of the broker-dealer, and  
16 shall be fully disclosed in writing to each prospective  
17 purchaser. The broker-dealer or issuer shall file with the  
18 administrator on ~~such~~ forms as the administrator prescribes, a  
19 confidential report of offering within 30 days after initiation  
20 of the offering in this state and every 90 days thereafter until  
21 the final report of completion of the offering.

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

24 (1) ~~Sales~~ THE SALE IS to any of the following classes of  
25 persons:

26 (i) Promoters or other persons actively engaged or  
27 reasonably expected to be actively engaged in the management of



1 the issuer, or in a professional capacity as attorneys or  
2 accountants to the issuer, or directly related by blood or mar-  
3 riage to the promoter or person actively engaged or reasonably  
4 expected to be actively engaged in the management of the issuer,  
5 if such persons are purchasing with investment intent and the  
6 issuer relies upon this subparagraph for sales to not more than  
7 10 persons in this state within a 12-month period. ~~—~~

8       (ii) Not more than 15 persons whose principal business is  
9 the line of business to which the offering relates, and who are  
10 qualified by previous experience to evaluate the risks of the  
11 investment. The provisions of subparagraph (A) shall not apply  
12 to sales covered by subparagraph (d)(1) (i) and (ii).

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

17       (i) Disclosing in reasonable detail the intended application  
18 of the proceeds to be received from the offering. ~~—~~

19       (ii) Disclosing in reasonable detail the current financial  
20 condition of the issuer and in the case of a limited partnership  
21 or oil and gas venture, the current financial condition of the  
22 general partner or oil and gas issuer; except that in the case of  
23 a limited partnership interest or interest in oil or gas, the  
24 document may merely state that the general partner or oil and gas  
25 issuer has a net worth, determined in accordance with generally  
26 accepted accounting principles, in excess of a stated sum, and  
27 that its net worth exceeds the obligations undertaken by the

1 general partner or oil and gas issuer, and that the assets or  
2 operations of the general partner or oil and gas issuer will gen-  
3 erate sufficient cash to meet these obligations as they come due.  
4 ~~+~~

5 (iii) Disclosing in all reasonable detail direct or indirect  
6 compensation or remuneration to be received by a promoter or  
7 affiliates of the promoter and fully identifying the persons who  
8 shall be recipients of that compensation. ~~+~~

9 (iv) Disclosing the form, date, and jurisdiction under which  
10 formed, and nature of business of the issuer. ~~+~~

11 (v) Disclosing the kind and amount of securities to be  
12 offered and the offering price or method by which the offering  
13 price is computed. ~~+~~

14 (vi) Stating, except in the case of a corporate issuer, that  
15 each investor or his OR HER designated representative may inspect  
16 the books and records of the issuer or the venture at any reason-  
17 able time for proper purposes. ~~+~~

18 (vii) Stating, except in the case of a corporate issuer,  
19 that the issuer shall promptly call an informational meeting of  
20 all investors upon request by 25% in interest or more of the  
21 investors in any class of securities who are unaffiliated with a  
22 promoter or affiliate of the promoter. ~~+~~

23 (viii) Stating, except in the case of a corporate issuer,  
24 that the issuer shall agree to maintain at its offices a list of  
25 names and addresses of all investors in the entity available to  
26 any investor or the designated representative of any investor.  
27 ~~+~~

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

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

10       (i) The offeror files with the administrator an exemption  
11 application, an offering circular, and a \$100.00 filing fee. ~~+~~

12       (ii) The administrator by order finds the offering consis-  
13 tent with ~~the provisions of~~ section 306 and declares this  
14 exemption effective. ~~+~~

15       (iii) The offering is made upon ~~such~~ conditions and with  
16 ~~such~~ information or provisions in the offering circular as the  
17 administrator may require. ~~+~~

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

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

25       (5) Sales made to a person who the seller has reasonable  
26 grounds to believe and does believe ~~meets~~ IS 1 of the  
27 following: ~~conditions:~~

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

7       (ii) An individual who after the purchase has an investment  
8 of \$50,000.00 or more in the securities of the issuer, including  
9 installment payments to be made within 1 year after purchase by  
10 the investor; has either personal income before taxes in excess  
11 of \$100,000.00 for his or her last fiscal year or latest 12-month  
12 period and is capable of bearing the economic risk, or net worth  
13 in excess of \$1,000,000.00; and has ~~—such—~~ THE knowledge and  
14 experience in financial and business matters that he or she is  
15 capable of evaluating the merits and risks of the prospective  
16 investment or has obtained the advice of an attorney, certified  
17 public accountant, ~~—or—~~ investment adviser registered under the  
18 investment advisers act of 1940, ~~—title II of chapter 686, 54~~  
19 ~~Stat. 789, 15 U.S.C. 80b-1 to 80b-21,~~ or an investment adviser  
20 registered under this act, with respect to the merits and risks  
21 of the prospective investment.

22       (E) ~~—(F)—~~ For purposes of this ~~—subdivision—~~ SUBPARAGRAPH:

23       (1) Each offer or sale made to a pension or profit sharing  
24 trust shall be ~~—deemed—~~ CONSIDERED to have been made to each ben-  
25 eficiary as an individual offeree unless all of the following  
26 apply:

- 1       (i) The trust has an independent trustee. ~~—~~
- 2       (ii) The issuer makes inquiry and reasonably believes that
- 3 the trust invests not more than 10% of its assets in the securi-
- 4 ties sold by the issuer. ~~— and —~~
- 5       (iii) Within the 2-year period before the initial offer of
- 6 the securities, the issuer was not directly or indirectly con-
- 7 nected with the formation or subsequent operation of the trust or
- 8 solicitation of its investors and the issuer makes inquiry and
- 9 reasonably believes that the trust was not formed to purchase the
- 10 securities of the issuer.
- 11       (2) Each offer or sale made to a partnership or association
- 12 shall be deemed to have been made to each partner or member as an
- 13 individual unless ~~all~~ BOTH of the following occur:
- 14       (i) The issuer makes inquiry and reasonably believes that
- 15 the partnership or association invests not more than 10% of its
- 16 assets in the securities offered or sold by the issuer.
- 17       (ii) Within the 2-year period before the initial offer of
- 18 the securities, the issuer was not directly or indirectly con-
- 19 nected with the formation or subsequent operation of the partner-
- 20 ship or association or solicitation of its investors and the
- 21 issuer makes inquiry and reasonably believes that the partnership
- 22 or association was not formed to purchase the securities of the
- 23 issuer.
- 24       (3) Each offer or sale made to a corporation or business
- 25 trust shall be ~~deemed~~ CONSIDERED to have been made to each
- 26 security holder of the corporation or business trust as an
- 27 individual unless within the 2-year period before the initial

1 offer of the securities the issuer was not directly or indirectly  
2 connected with the formation or subsequent operation of the cor-  
3 poration or trust or solicitation of its investors and the issuer  
4 makes inquiry and reasonably believes that the corporation or  
5 trust, or in the case of a wholly owned subsidiary, its parent,  
6 was not formed to purchase the securities of the issuer and 1 of  
7 the following applies:

8 (i) ~~a~~ A class of securities of the corporation or trust is  
9 registered pursuant to the securities exchange act of 1934. ~~,~~

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

15 (iii) ~~the~~ THE issuer makes inquiry and reasonably believes  
16 that the corporation or trust invests not more than 10% of its  
17 assets in the securities offered or sold by the issuer.

18 (4) An offer or sale to an investment company registered  
19 under the investment company act of 1940 ~~shall constitute~~  
20 CONSTITUTES an offer or sale to an individual.

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

23 (6) Each client of an investment adviser OR FEDERALLY COV-  
24 ERED ADVISER, each customer of a broker-dealer, or a person with  
25 a similar relationship shall be considered an offeree or pur-  
26 chaser for purposes of this subdivision regardless of the amount  
27 of discretion given to the investment adviser OR FEDERALLY

1 COVERED ADVISER, broker-dealer, or other person to act on behalf  
2 of the client, customer, or trust.

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

9 (10) Any offer or sale of a preorganization certificate or  
10 subscription in a corporation, and the issuance of securities  
11 pursuant thereto, if all of the following apply:

12 (A) No commission is paid or given directly or indirectly  
13 for soliciting any prospective subscriber. ~~+~~ THE ADMINISTRATOR  
14 MAY BY RULE OR ORDER WAIVE THIS CONDITION AND REQUIRE REPORTS OF  
15 SALES UNDER THIS EXEMPTION.

16 (B) There are not more than 10 purchasers. ~~+~~

17 (C) Advertising is not published or circulated unless it has  
18 been reviewed and no objection thereto is made by the administra-  
19 tor in writing. ~~+~~

20 (D) The seller reasonably believes that all the buyers in  
21 this state, other than those designated in ~~this~~ subsection  
22 (b)(8), are purchasing for investment. ~~+~~

23 ~~-(E) The administrator may by rule or order waive the condi-~~  
24 ~~tions in subparagraph (A) and require reports of sales under this~~  
25 ~~exemption.~~

26 (11) ~~Any~~ A transaction pursuant to an offer to existing  
27 security holders of the issuer, including persons who at the time

1 of the transaction are holders of convertible securities,  
2 nontransferable warrants, or transferable warrants exercisable  
3 within not more than 90 days of their issuance, if either of the  
4 following occurs:

5 (A) A commission, other than a standby commission, is not  
6 paid or given directly or indirectly for soliciting any security  
7 holder in this state and the offer is made either to holders of  
8 the convertible securities or warrants and relates to the under-  
9 lying security, or the securities are purchased by not more than  
10 25 security holders in this state within a 12-month period.

11 (B) Twenty business days before any offer, the issuer files  
12 with the administrator the offering circular or other materials  
13 proposed to be sent to security holders and other persons  
14 describing the terms of the offer together with a filing fee of  
15 \$100.00 and the administrator does not by order disallow the  
16 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~~ A STOP order is  
21 not 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 ~~(1)~~ to the  
27 federal small business administration, or ~~(2)~~ by a small



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1 business concern to a small business investment company or to a  
2 development company for equity capital provided or loans made, or  
3 ~~—(3)—~~ by a small business investment company to a small business  
4 concern as a condition to providing the latter with equity capi-  
5 tal or loans.

6       (15) ~~Any~~ AN offer or sale of any security by a nonprofit  
7 development corporation, formed and existing under the laws of  
8 this state, if the primary purpose of the corporation is to pro-  
9 mote and assist the growth and development of business enter-  
10 prises 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~~ A 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. A person requesting a desig-  
18 nation order shall pay a filing fee of \$100.00.

19       (18) The sale of capital stock issued by a professional  
20 service corporation formed under the professional service corpo-  
21 ration act, ~~Act No. 192 of the Public Acts of 1962, as amended,~~  
22 ~~being sections 450.221 to 450.235 of the Michigan Compiled Laws~~  
23 1962 PA 192, MCL 450.221 TO 450.235.

24       (19) ~~Any~~ A transaction incident to a class vote by share-  
25 holders pursuant to the certificate of incorporation or the  
26 applicable corporation statute, on a merger, consolidation,  
27 reclassification of securities, or sale of corporate assets in

1 consideration of the issuance of securities of another  
2 corporation.

3       (20) ~~Any~~ A transaction that the administrator by order  
4 exempts from the registration provisions of this act after a  
5 determination that registration is not necessary in the public  
6 interest and for the protection of investors. An order may be  
7 granted either before or after consummation of the transaction  
8 upon the petition of any interested party in the transaction.

9       (21) ~~Any~~ A transaction made pursuant to a uniform limited  
10 offering exemption filing WITH THE ADMINISTRATOR. A person  
11 claiming under this subdivision shall pay a filing fee of \$100.00  
12 at the time of filing the initial notice form.

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

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

19       Sec. 403. The administrator may by rule or order require  
20 the filing and acceptance before use of any prospectus, pamphlet,  
21 circular, form letter, advertisement, or other sales literature  
22 or advertising communication addressed or intended for distribu-  
23 tion to prospective investors, including clients or prospective  
24 clients of an investment adviser OR FEDERALLY COVERED ADVISER,  
25 unless the security, ~~commodity contract,~~ or transaction is  
26 exempted by section 402(a)(1) to (7) OR IS A FEDERALLY COVERED  
27 SECURITY. THE ADMINISTRATOR SHALL NOT, BY RULE OR ORDER UNDER

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1 THIS SECTION, REQUIRE A FEDERALLY COVERED ADVISER TO FILE WITH  
2 THE ADMINISTRATOR ANY DOCUMENT THAT IS NOT REQUIRED TO BE FILED  
3 WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE INVESTMENT  
4 ADVISERS ACT OF 1940.

5       Sec. 405. (a) Neither the fact that an application for reg-  
6 istration under sections 201 to 204, A NOTICE FILING UNDER  
7 SECTION 202A OR 308, or a registration statement under sections  
8 301 to 306 has been filed, nor the fact that a person or security  
9 is effectively registered OR A NOTICE FILING HAS BEEN MADE, con-  
10 stitutes a finding by the administrator that any document filed  
11 under this act is true, complete, and not misleading. Neither  
12 any such fact nor the fact that an exemption or exception is  
13 available for a security or a transaction, or that an order has  
14 been issued by the administrator, means that the administrator  
15 has passed in any way upon the merits or qualifications of, or  
16 recommended or given approval to, any person, security, or  
17 transaction.

18       (b) A person shall not make, or cause to be made, to a pro-  
19 spective purchaser, customer, or client a representation incon-  
20 sistent with subsection (a).

21       Sec. 406. (a) This act shall be administered by the  
22 ~~corporation and securities bureau of the department of commerce~~  
23 ADMINISTRATOR which ~~shall be~~ IS a criminal justice agency as  
24 defined in 28 C.F.R. 20.3(c).

25       (b) The administrator or any of its officers or employees  
26 shall not disclose to the public or use for personal benefit any  
27 information which is filed with or obtained by the administrator

1 and which is not made public pursuant to this act. This act does  
2 not authorize the administrator or any of its officers or employ-  
3 ees to disclose any ~~such~~ information except among themselves or  
4 when necessary or appropriate in a proceeding or investigation  
5 under this act, or to federal, state, local, or foreign govern-  
6 mental agencies for their own official use. No provision of this  
7 act either creates or derogates from any privilege which exists  
8 at common law or otherwise when documentary or other evidence is  
9 sought under a subpoena directed to the administrator or any of  
10 its officers or employees.

11 (c) The administrator may conduct joint investigations or  
12 inspections with ~~the~~ federal, state, or local agencies, or  
13 self-regulatory bodies as defined in the securities exchange act  
14 of 1934.

15 Sec. 409. (a) Any person who willfully violates ~~sections~~  
16 SECTION 101, 102, 103, 201, 203(h), ~~301,~~ 301(1) OR (2), 402,  
17 405(b), or 406(b), or who engages in conduct prohibited by sec-  
18 tion 204(a)(1)(J) to (S) and (V) to (Z), or who willfully vio-  
19 lates section 404 knowing the statement made to be false or mis-  
20 leading in any material respect, shall upon conviction be fined  
21 not more than \$25,000.00 for each violation, or imprisoned not  
22 more than 10 years, or both.

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

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

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

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

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

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

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

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

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

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1       (e) A person may not bring an action under subsection (a)(1)  
2 more than 2 years after the contract of sale. A person may not  
3 bring an action under subsection (a)(2) more than 2 years after  
4 ~~such~~ THE person, in the exercise of reasonable care, knew or  
5 should have known of the untruth or omission, but in no event  
6 more than 4 years after the contract of sale. A person may not  
7 bring an action under this section if the buyer received a writ-  
8 ten RESCISSION offer, before the action and at a time when he or  
9 she owned the security, ~~or commodity contract,~~ to refund the  
10 consideration paid together with interest at 6% per year from the  
11 date of payment, less the amount of any income received on the  
12 security, and he or she failed to accept the offer within 30 days  
13 of its receipt, or if the buyer received ~~such an~~ THE offer  
14 before the action and at a time when he or she did not own the  
15 security, ~~or commodity contract,~~ unless he or she rejected the  
16 offer in writing within 30 days of its receipt. The documents  
17 making full written disclosure about the financial and business  
18 condition of the issuer and the financial and business risks  
19 associated with the retention of the securities ~~or commodities~~  
20 shall be provided to the offeree concurrently with the written  
21 rescission offer. Such an offer shall not be made until 45 days  
22 after the date of sale of the securities and acceptance or rejec-  
23 tion of the offer shall not be binding until 48 hours after  
24 receipt by the offeree. The rescission offer shall recite the  
25 provisions of this section. A rescission offer under this  
26 ~~section~~ SUBSECTION shall not be valid unless the offeror

1 substantiates that it has the ability to fund the offering and  
2 this information is set forth in the disclosure documents.

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

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

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

17 Sec. 412. (a) The administrator may from time to time make,  
18 amend, and rescind rules, forms, and orders as are necessary to  
19 carry out the provisions of this act, including rules and forms  
20 governing registration statements, NOTICE FILINGS UNDER  
21 SECTION 202A OR 308, applications, and reports ~~—~~ and defining  
22 any terms, whether or not used in this act, insofar as the defi-  
23 nitions are not inconsistent with this act. For the purpose of  
24 rules and forms, the administrator may classify securities, ~~or~~  
25 ~~commodity contracts~~, persons, and matters within its jurisdic-  
26 tion ~~—~~ and prescribe different requirements for different  
27 classes.



1       (b) A rule, form, or order may not be made, amended, or  
2 rescinded unless the administrator finds that the action is nec-  
3 essary or appropriate in the public interest or for the protec-  
4 tion of investors and consistent with the purposes fairly  
5 intended by the policy and provisions of this act. In prescrib-  
6 ing rules and forms, the administrator may cooperate with the  
7 securities administrators of the other states and the securities  
8 and exchange commission with a view to effectuating the policy of  
9 this statute to achieve maximum uniformity in the form and con-  
10 tent of registration statements, applications, and reports wher-  
11 ever practicable.

12       (c) The administrator may by rule or order prescribe ~~-(1)-~~  
13 the form and content of financial statements required under this  
14 act, ~~-(2)-~~ the circumstances under which consolidated financial  
15 statements shall be filed, and ~~-(3)-~~ whether any required finan-  
16 cial statements shall be certified by independent or certified  
17 public accountants. Financial statements shall be prepared in  
18 accordance with generally accepted accounting practices.

19       (d) Rules and forms of the administrator shall be  
20 published.

21       (e) A provision of this act imposing any liability applies  
22 to any act done or omitted in good faith in conformity with any  
23 rule, form, or order of the administrator, notwithstanding that  
24 the rule, form, or order may not later be amended or rescinded or  
25 be determined by judicial or other authority to be invalid for  
26 any reason.

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1 (f) Every hearing in an administrative proceeding shall be  
2 public unless the administrator in its discretion grants a  
3 request joined in by all the respondents that the hearing be con-  
4 ducted privately.

5 (g) The administrator shall promulgate rules with respect to  
6 ~~commodity issuers,~~ broker-dealers ~~,~~ and agents as necessary  
7 or appropriate in the public interest or for the protection of  
8 investors. The rules may require, among other things, the  
9 promulgation and issuance of a disclosure statement by the  
10 broker-dealer, ~~or issuer of a commodity contract,~~ the segrega-  
11 tion of customer's funds and assets, maintenance of reserves for  
12 obligations, contingent or otherwise, to customers, the mainte-  
13 nance of a fidelity bond, hedging or covering obligations to cus-  
14 tomers, the signing and filing of a consent to service of pro-  
15 cess, and prior approval of advertising, limitation of the con-  
16 tent of ~~such~~ advertising, and margin requirements.

17 (h) The rules promulgated and hearings held under this act  
18 shall be in accordance with ~~Act No. 306 of the Public Acts of~~  
19 ~~1969, as amended, being sections 24.201 to 24.315 of the Michigan~~  
20 ~~Compiled Laws~~ THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969  
21 PA 306, MCL 24.201 TO 24.328.

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

25 (b) The administrator shall keep a register of all applica-  
26 tions for registration, NOTICE FILINGS UNDER SECTIONS 202A AND  
27 308, and registration statements that are or have ever been

1 effective under this act and all denial, suspension, or  
2 revocation orders that have been entered under this act. The  
3 register shall be open for public inspection.

4 (c) The information contained in or filed with any registra-  
5 tion statement, NOTICE FILING, application, or report may be  
6 retained and stored by the administrator in the document's origi-  
7 nal form or by reproduction pursuant to the records media act,  
8 1992 PA 116, MCL 24.401 TO 24.403. Reproductions of any regis-  
9 tration statement, application, or report may be made available  
10 to the public under ~~such~~ rules ~~as~~ PRESCRIBED BY the  
11 administrator, ~~prescribes,~~ except that the administrator may  
12 withhold from public inspection information, the disclosure of  
13 which is not necessary in the public interest and for the protec-  
14 tion of investors.

15 (d) Upon request and for a reasonable charge as ~~it~~ HE OR  
16 SHE prescribes, the administrator shall furnish to any person a  
17 reproduction pursuant to the records media act, 1992 PA 116,  
18 MCL 24.401 TO 24.403, certified under ~~its~~ HIS OR HER seal of  
19 office if requested, of ~~any~~ AN entry in the register or any  
20 document that is a matter of public record. The charges made  
21 shall constitute reimbursement to the administrator for the cost  
22 of reproduction. In ~~any~~ A proceeding or prosecution under this  
23 act, a CERTIFIED reproduction in a medium pursuant to the records  
24 media act, 1992 PA 116, MCL 24.401 TO 24.403, or a CERTIFIED  
25 reproduction consisting of a printout or other output readable by  
26 sight from ~~such~~ a medium ~~, so certified,~~ PURSUANT TO THE  
27 RECORDS MEDIA ACT, 1992 PA 116, MCL 24.401 TO 24.403, is prima

1 facie evidence of the contents of the entry or document  
2 certified.

3       (e) The administrator may certify the nonexistence of a  
4 filing for ~~any documents~~ A DOCUMENT that this act permits to be  
5 filed with the administrator, upon certification that the  
6 ~~documents are~~ DOCUMENT IS of a type that, if filed, ~~would be~~  
7 ARE filed with the administrator and that a personal search of  
8 the records has been made by the person ~~so certifying~~ MAKING  
9 THE CERTIFICATION. A certificate of nonexistence is prima facie  
10 evidence that ~~such a~~ THE document has not been filed with the  
11 administrator.

12       (f) The administrator in ~~its~~ HIS OR HER discretion may  
13 honor ~~requests~~ A REQUEST from AN interested ~~persons~~ PERSON  
14 for AN interpretative ~~opinions~~ OPINION OR NO ACTION POSITION  
15 and may promulgate rules ~~setting forth procedures~~ THAT SET  
16 FORTH THE PROCEDURE for requesting ~~those opinions~~ AN OPINION OR  
17 NO ACTION POSITION.

18       Sec. 414. (a) Sections 101, 201(a), 301, 405, and 410 apply  
19 to persons who sell or offer to sell when ~~(1)~~ an offer to sell  
20 is made in this state, or ~~(2)~~ an offer to buy is made and  
21 accepted in this state.

22       (b) Sections 101, 201(a), and 405 apply to persons who buy  
23 or offer to buy when ~~(1)~~ an offer to buy is made in this state,  
24 or ~~(2)~~ an offer to sell is made and accepted in this state.

25       (c) For the purpose of this section, an offer to sell or to  
26 buy is made in this state, whether or not either party is then  
27 present in this state, when the offer ~~(1)~~ originates from this

1 state, or ~~-(2)-~~ is directed by the offeror to this state and  
2 received at the place to which it is directed ~~---~~ or at any post  
3 office in this state in the case of a mailed offer.

4 (d) For the purpose of this section, an offer to buy or to  
5 sell is accepted in this state when acceptance ~~-(1)-~~ is communi-  
6 cated to the offeror in this state and ~~-(2)-~~ has not previously  
7 been communicated to the offeror, orally or in writing, outside  
8 this state; and acceptance is communicated to the offeror in this  
9 state, whether or not either party is then present in this state,  
10 when the offeree directs it to the offeror in this state reason-  
11 ably believing the offeror to be in this state and it is received  
12 at the place to which it is directed, or at any post office in  
13 this state in the case of a mailed acceptance.

14 (e) An offer to sell or to buy is not made in this state  
15 when ~~-(1)-~~ the publisher circulates or there is circulated on his  
16 OR HER behalf in this state any bona fide newspaper or other pub-  
17 lication of general, regular, and paid circulation which is not  
18 published in this state, or which is published in this state but  
19 has had more than 2/3 of its circulation outside this state  
20 during the past 12 months, or ~~-(2)-~~ a radio or television program  
21 originating outside this state is received in this state.

22 (f) Sections 102 and 201(c), as well as section 405 so far  
23 as investment ~~advisors~~ ADVISERS are concerned, apply when any  
24 act instrumental in effecting prohibited conduct is done in this  
25 state, whether or not either party is then present in this  
26 state.

**HB5763, As Passed House, November 30, 2000**

House Bill No. 5763

102

1 (g) Every applicant for registration under this act, EVERY  
2 PERSON SUBMITTING A NOTICE FILING UNDER SECTION 202A OR 308, and  
3 every issuer which proposes to offer a security ~~or commodity~~  
4 ~~contract~~ in this state through any person acting on an agency  
5 basis in the common-law sense shall file with the administrator,  
6 in ~~such~~ A form as ~~it~~ THE ADMINISTRATOR by rule prescribes, an  
7 irrevocable consent appointing the administrator or its successor  
8 in office to be his OR HER attorney to receive service of any  
9 lawful process in any noncriminal suit, action, or proceeding  
10 against him OR HER or his OR HER successor executor or adminis-  
11 trator which arises under this act or any rule or order hereunder  
12 after the consent has been filed, with the same force and valid-  
13 ity as if served personally on the person filing the consent. A  
14 person who has filed ~~such~~ a consent in connection with a previ-  
15 ous registration OR NOTICE FILING need not file another. Service  
16 may be made by leaving a copy of the process in the office of the  
17 administrator, but it is not effective unless ~~(1)~~ the plain-  
18 tiff, who may be the administrator in a suit, action, or proceed-  
19 ing instituted by it, ~~forthwith~~ PROMPTLY sends notice of the  
20 service and a copy of the process by registered mail to the  
21 defendant or respondent at his OR HER last address on file with  
22 the administrator, and ~~(2)~~ the plaintiff's affidavit of compli-  
23 ance with this subsection is filed in the case on or before the  
24 return day of the process, if any, or within ~~such~~ A further  
25 time ~~as~~ THAT the court allows.

26 (h) When ~~any~~ A person, including ~~any~~ A nonresident of  
27 this state, engages in conduct prohibited or made actionable by

1 this act or any rule or order hereunder, and he OR SHE has not  
2 filed a consent to service of process under subsection (g) and  
3 personal jurisdiction over him OR HER cannot otherwise be  
4 obtained in this state, that conduct shall be considered equiva-  
5 lent to his OR HER appointment of the administrator or its suc-  
6 cessor in office to be his OR HER attorney to receive service of  
7 any lawful process in any noncriminal suit, action, or proceeding  
8 against him OR HER or his OR HER successor executor or adminis-  
9 trator which grows out of that conduct and which is brought under  
10 this act or any rule or order hereunder, with the same force and  
11 validity as if served on him OR HER personally. Service may be  
12 made by leaving a copy of the process in the office of the admin-  
13 istrator, and it is not effective unless ~~-(1)-~~ the plaintiff, who  
14 may be the administrator in a suit, action, or proceeding insti-  
15 tuted by it, ~~forthwith~~ PROMPTLY sends notice of the service and  
16 a copy of the process by registered mail to the defendant or  
17 respondent at his OR HER last known address or takes other steps  
18 which are reasonably calculated to give actual notice, and ~~-(2)-~~  
19 the plaintiff's affidavit of compliance with this subsection is  
20 filed in the case on or before the return day of the process, if  
21 any, or within ~~such~~ A further time ~~as~~ THAT the court allows.  
22 (i) When process is served under this section, the court, or  
23 the administrator in a proceeding before it, shall order ~~such~~ A  
24 continuance as may be necessary to afford the defendant or  
25 respondent reasonable opportunity to defend.  
26 Sec. 417. Except as saved in this section:

1 (a) Act No. 220 of the Public Acts of 1923, as amended,  
2 being sections 451.101 to 451.133 of the Compiled Laws of 1948,  
3 is repealed.

4 (b) Prior law exclusively governs all suits, actions,  
5 prosecutions, or proceedings which are pending or may be initi-  
6 ated on the basis of facts or circumstances occurring before the  
7 effective date of this act, except that no civil suit or action  
8 may be maintained to enforce any liability under prior law unless  
9 brought within ~~any~~ A period of limitation which applied when  
10 the cause of action accrued and in any event within 2 years after  
11 the effective date of this act.

12 (c) All effective registrations under prior law, all admin-  
13 istrative orders relating to ~~such~~ EFFECTIVE registrations UNDER  
14 PRIOR LAW, ~~and~~ all conditions imposed upon ~~such~~ EFFECTIVE  
15 registrations UNDER PRIOR LAW, AND ALL NOTICE FILINGS MADE WITH  
16 THE ADMINISTRATOR SINCE ENACTMENT OF THE NATIONAL SECURITIES  
17 MARKETS IMPROVEMENTS ACT OF 1996, PUBLIC LAW 104-290, 110  
18 STAT. 3416, remain in effect so long as they would have remained  
19 in effect if this act had not been passed. They are considered  
20 to have been filed, entered, or imposed under this act, but are  
21 governed by prior law.

22 (d) Prior law applies in respect of any offer or sale made  
23 within 1 year after the effective date of this act pursuant to an  
24 offering begun in good faith before its effective date on the  
25 basis of an exemption available under prior law.

26 (e) Judicial review of all administrative orders as to which  
27 review proceedings have not been instituted by the effective date



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105

1 of this act are governed by section 411, except that no review  
2 proceeding may be instituted unless the petition is filed within  
3 any period of limitation which applied to a review proceeding  
4 when the order was entered and in any event within 60 days after  
5 the effective date of this act.