

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5008**

A bill to enact the uniform securities act (2002) relating to the issuance, offer, sale, or purchase of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to make uniform the law with reference to securities; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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ARTICLE 1

GENERAL PROVISIONS

Sec. 101. This act shall be known and may be cited as the "uniform securities act (2002)".

1 Sec. 102. As used in this act, unless the context otherwise
2 requires:

3 (a) "Administrator" means the office of financial and
4 insurance regulation of the department of energy, labor, and
5 economic growth.

6 (b) "Agent" means an individual other than a broker-dealer who
7 represents a broker-dealer in effecting or attempting to effect
8 purchases or sales of securities or represents an issuer in
9 effecting or attempting to effect purchases or sales of the
10 issuer's securities. The term does not include a partner, officer,
11 or director of a broker-dealer or issuer, or an individual having a
12 similar status or performing similar functions, unless the
13 individual otherwise comes within the term. The term does not
14 include an individual excluded by rule or order under this act. The
15 term does not include a person acting solely as a finder and
16 registered as a broker-dealer under this act or acting as a finder
17 in a transaction exempt under section 202(1)(r).

18 (c) "Bank" means any of the following:

19 (i) A banking institution organized under the laws of the
20 United States.

21 (ii) A member bank of the federal reserve system.

22 (iii) Any other banking institution that meets all of the
23 following:

24 (A) It is doing business under the laws of a state or of the
25 United States.

26 (B) A substantial portion of its business consists of
27 receiving deposits or exercising fiduciary powers similar to those

1 permitted to be exercised by national banks under the authority of
2 the comptroller of the currency pursuant to 12 USC 92a.

3 (C) It is supervised and examined by a state or federal agency
4 having supervision over banks.

5 (D) It is not operated for the purpose of evading this act.

6 (iv) A receiver, conservator, or other liquidating agent of any
7 institution or firm included in subparagraph (i), (ii), or (iii).

8 (d) "Broker-dealer" means a person engaged in the business of
9 effecting transactions in securities for the account of others or
10 for the person's own account. The term does not include any of the
11 following:

12 (i) An agent.

13 (ii) An issuer.

14 (iii) A bank or savings institution if its activities as a
15 broker-dealer are limited to those specified in section 3(a)(4) and
16 3(a)(5) of the securities exchange act of 1934, 15 USC 78c, or a
17 bank that satisfies the conditions described in section 3(a)(4)(E)
18 of the securities exchange act of 1934, 15 USC 78c.

19 (iv) An international banking institution.

20 (v) A person excluded by rule or order under this act.

21 (e) "Depository institution" means a bank; or a savings
22 institution, trust company, credit union, or similar institution
23 that is organized or chartered under the laws of a state or of the
24 United States, authorized to receive deposits, and supervised and
25 examined by an official or agency of a state or the United States
26 if its deposits or share accounts are insured to the maximum amount
27 authorized by federal statute by the federal deposit insurance

1 corporation, the national credit union share insurance fund, or a
2 successor authorized by federal law; or a bank that does not
3 receive deposits because of a limitation in its charter, articles
4 of incorporation, or articles of association. The term does not
5 include any of the following:

6 (i) An insurance company or other organization primarily
7 engaged in the business of insurance.

8 (ii) A Morris Plan bank.

9 (iii) An industrial loan company that is not an insured
10 depository institution, as that term is defined in section 3(c)(2)
11 of the federal deposit insurance act, 12 USC 1813(c)(2).

12 (f) "Federal covered investment adviser" means a person
13 registered under the investment advisers act of 1940.

14 (g) "Federal covered security" means a security that is, or
15 upon completion of a transaction will be, a covered security under
16 section 18(b) of the securities act of 1933, 15 USC 77r, or rules
17 or regulations adopted under that provision.

18 (h) "Filing" means the receipt under this act of a record by
19 the administrator or a designee of the administrator.

20 (i) "Finder" means a person who, for consideration,
21 participates in the offer to sell, sale, or purchase of securities
22 by locating, introducing, or referring potential purchasers or
23 sellers. Finder does not include a person whose actions are solely
24 incidental to a transaction exempt pursuant to section 202(1)(r).
25 The administrator may by rule or order exclude other persons from
26 this definition.

27 (j) "Fraud," "deceit," and "defraud" include, but are not

1 limited to, common law deceit.

2 (k) "Guaranteed" means guaranteed as to payment of all
3 principal and all interest.

4 Sec. 102a. As used in this act, unless the context otherwise
5 requires:

6 (a) "Institutional investor" means any of the following,
7 whether acting for itself or for others in a fiduciary capacity:

8 (i) A depository institution or international banking
9 institution.

10 (ii) An insurance company.

11 (iii) A separate account of an insurance company.

12 (iv) An investment company as defined in the investment company
13 act of 1940.

14 (v) A broker-dealer registered under the securities exchange
15 act of 1934.

16 (vi) An employee pension, profit-sharing, or benefit plan if
17 the plan has total assets in excess of \$10,000,000.00 or its
18 investment decisions are made by a named fiduciary, as defined in
19 the employee retirement income security act of 1974, that is a
20 broker-dealer registered under the securities exchange act of 1934,
21 an investment adviser registered or exempt from registration under
22 the investment advisers act of 1940, an investment adviser
23 registered under this act, a depository institution, or an
24 insurance company.

25 (vii) A plan established and maintained by a state, a political
26 subdivision of a state, or an agency or instrumentality of a state
27 or a political subdivision of a state for the benefit of its

1 employees, if the plan has total assets in excess of \$10,000,000.00
2 or its investment decisions are made by a duly designated public
3 official or by a named fiduciary, as defined in the employee
4 retirement income security act of 1974, that is a broker-dealer
5 registered under the securities exchange act of 1934, an investment
6 adviser registered or exempt from registration under the investment
7 advisers act of 1940, an investment adviser registered under this
8 act, a depository institution, or an insurance company.

9 (viii) A trust, if it has total assets in excess of
10 \$10,000,000.00, its trustee is a depository institution, and its
11 participants are exclusively plans of the types identified in
12 subparagraph (vi) or (vii), regardless of size of their assets,
13 except a trust that includes as participants self-directed
14 individual retirement accounts or similar self-directed plans.

15 (ix) An organization described in section 501(c)(3) of the
16 internal revenue code, 26 USC 501, a corporation, Massachusetts or
17 similar business trust, limited liability company, or partnership,
18 not formed for the specific purpose of acquiring the securities
19 offered, with total assets in excess of \$10,000,000.00.

20 (x) A small business investment company licensed by the small
21 business administration under section 301(c) of the small business
22 investment act of 1958, 15 USC 681, with total assets in excess of
23 \$10,000,000.00.

24 (xi) A private business development company as defined in
25 section 202(a)(22) of the investment advisers act of 1940, 15 USC
26 80b-2, with total assets in excess of \$10,000,000.00.

27 (xii) A federal covered investment adviser acting for its own

1 account.

2 (xiii) A "qualified institutional buyer" as defined in rule
3 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the
4 securities act of 1933, 17 CFR 230.144A.

5 (xiv) A "major U.S. institutional investor" as defined in rule
6 15a-6(b)(4)(i) adopted under the securities exchange act of 1934, 17
7 CFR 240.15a-6(b)(4)(i).

8 (xv) Any other person, other than an individual, of
9 institutional character with total assets in excess of
10 \$10,000,000.00 not organized for the specific purpose of evading
11 this act.

12 (xvi) Any other person specified by rule or order under this
13 act.

14 (b) "Insurance company" means a company organized as an
15 insurance company whose primary business is writing insurance or
16 reinsuring risks underwritten by insurance companies and which is
17 subject to supervision by the insurance commissioner or a similar
18 official or agency of a state.

19 (c) "Insured" means insured as to payment of all principal and
20 all interest.

21 (d) "International banking institution" means an international
22 financial institution of which the United States is a member and
23 whose securities are exempt from registration under the securities
24 act of 1933.

25 (e) "Investment adviser" means a person that, for
26 compensation, engages in the business of advising others, either
27 directly or through publications or writings, as to the value of

1 securities or the advisability of investing in, purchasing, or
2 selling securities or that, for compensation and as a part of a
3 regular business, issues or promulgates analyses or reports
4 concerning securities. The term includes a financial planner or
5 other person that, as an integral component of other financially
6 related services, provides investment advice to others for
7 compensation as part of a business or that holds itself out as
8 providing investment advice to others for compensation. The term
9 does not include any of the following:

10 (i) An investment adviser representative.

11 (ii) A lawyer, accountant, engineer, or teacher whose
12 performance of investment advice is solely incidental to the
13 practice of the person's profession.

14 (iii) A broker-dealer or its agents whose performance of
15 investment advice is solely incidental to the conduct of business
16 as a broker-dealer and that does not receive special compensation
17 for the investment advice.

18 (iv) A publisher of a bona fide newspaper, news magazine, or
19 business or financial publication of general and regular
20 circulation.

21 (v) A federal covered investment adviser.

22 (vi) A depository institution.

23 (vii) Any other person that is excluded by the investment
24 advisers act of 1940 from the definition of investment adviser.

25 (viii) Any other person excluded by rule or order under this
26 act.

27 (ix) A finder registered as a broker-dealer under this act.

1 (f) "Investment adviser representative" means an individual
2 employed by or associated with an investment adviser or federal
3 covered investment adviser and who makes any recommendations or
4 otherwise gives investment advice regarding securities, manages
5 accounts or portfolios of clients, determines which recommendation
6 or advice regarding securities should be given, provides investment
7 advice or holds himself or herself out as providing investment
8 advice, receives compensation to solicit, offer, or negotiate for
9 the sale of or for selling investment advice, or supervises
10 employees who perform any of the foregoing. The term does not
11 include an individual who meets any of the following:

12 (i) Performs only clerical or ministerial acts.

13 (ii) Is an agent whose performance of investment advice is
14 solely incidental to the individual acting as an agent and does not
15 receive special compensation for investment advisory services.

16 (iii) Is employed by or associated with a federal covered
17 investment adviser, unless the individual meets any of the
18 following:

19 (A) Has a "place of business" in this state as that term is
20 defined by rule adopted under section 203A of the investment
21 advisers act of 1940, 15 USC 80b-3a, and is an "investment adviser
22 representative" as that term is defined by rule adopted under
23 section 203A of the investment advisers act of 1940, 15 USC 80b-3a.

24 (B) Has a "place of business" in this state as that term is
25 defined by rule adopted under section 203A of the investment
26 advisers act of 1940, 15 USC 80b-3a, and is not a "supervised
27 person" as that term is defined in section 202(a)(25) of the

1 investment advisers act of 1940, 15 USC 80b-2.

2 (iv) Is excluded by rule or order under this act.

3 (g) "Issuer" means a person that issues or proposes to issue a
4 security, subject to the following:

5 (i) The issuer of a voting trust certificate, collateral trust
6 certificate, certificate of deposit for a security, or share in an
7 investment company without a board of directors or individuals
8 performing similar functions, is the person performing the acts and
9 assuming the duties of depositor or manager pursuant to the trust
10 or other agreement or instrument under which the security is
11 issued.

12 (ii) The issuer of an equipment trust certificate or similar
13 security serving the same purpose is the person by which the
14 property is or will be used, or to which the property or equipment
15 is or will be leased or conditionally sold, or that is otherwise
16 contractually responsible for assuring payment of the certificate.

17 (iii) The issuer of a fractional undivided interest in an oil,
18 gas, or other mineral lease or in payments out of production under
19 a lease, right, or royalty is the owner of an interest in the lease
20 or in payments out of production under a lease, right, or royalty,
21 whether whole or fractional, that creates fractional interests for
22 the purpose of sale.

23 Sec. 102b. As used in this act, unless the context otherwise
24 requires:

25 (a) "Nonissuer transaction" or "nonissuer distribution" means
26 a transaction or distribution not directly or indirectly for the
27 benefit of the issuer.

1 (b) "Offer to purchase" includes an attempt or offer to
2 obtain, or solicitation of an offer to sell, a security or interest
3 in a security for value. The term does not include a tender offer
4 that is subject to section 14(d) of title I of the securities
5 exchange act of 1934, 15 USC 78n.

6 (c) "Person" means an individual, corporation, business trust,
7 estate, trust, partnership, limited liability company, limited
8 liability partnership, association, joint venture, or government; a
9 governmental subdivision, agency, or instrumentality; a public
10 corporation; or any other legal or commercial entity.

11 (d) "Place of business" of a broker-dealer, an investment
12 adviser, or a federal covered investment adviser means any of the
13 following:

14 (i) An office at which the broker-dealer, investment adviser,
15 or federal covered investment adviser regularly provides brokerage
16 or investment advice, or solicits, meets with, or otherwise
17 communicates with customers or clients.

18 (ii) Any other location that is held out to the general public
19 as a location at which the broker-dealer, investment adviser, or
20 federal covered investment adviser provides brokerage or investment
21 advice, or solicits, meets with, or otherwise communicates with
22 customers or clients.

23 (e) "Predecessor act" means former 1964 PA 265.

24 (f) "Price amendment" means the amendment to a registration
25 statement filed under the securities act of 1933 or, if an
26 amendment is not filed, the prospectus or prospectus supplement
27 filed under the securities act of 1933 that includes a statement of

1 the offering price, underwriting and selling discounts or
2 commissions, amount of proceeds, conversion rates, call prices, and
3 other matters dependent upon the offering price.

4 (g) "Principal place of business" of a broker-dealer or an
5 investment adviser means the executive office of the broker-dealer
6 or investment adviser from which the officers, partners, or
7 managers of the broker-dealer or investment adviser direct,
8 control, and coordinate the activities of the broker-dealer or
9 investment adviser.

10 (h) "Record," except in the phrases "of record," "official
11 record," and "public record," means information that is inscribed
12 on a tangible medium or that is stored in an electronic or other
13 medium and is retrievable in perceivable form.

14 Sec. 102c. As used in this act, unless the context otherwise
15 requires:

16 (a) "Sale" includes every contract of sale, contract to sell,
17 or disposition of, a security or interest in a security for value,
18 and "offer to sell" includes every attempt or offer to dispose of,
19 or solicitation of an offer to purchase, a security or interest in
20 a security for value. Both terms include any of the following:

21 (i) A security given or delivered with, or as a bonus on
22 account of, any purchase of securities or any other thing
23 constituting part of the subject of the purchase and having been
24 offered and sold for value.

25 (ii) A gift of assessable stock involving an offer and sale.

26 (iii) A sale or offer of a warrant or right to purchase or
27 subscribe to another security of the same or another issuer, and a

1 sale or offer of a security that gives the holder a present or
2 future right or privilege to convert the security into another
3 security of the same or another issuer, including an offer of the
4 other security.

5 (b) "Securities and exchange commission" means the United
6 States securities and exchange commission.

7 (c) "Security" means a note; stock; treasury stock; security
8 future; bond; debenture; evidence of indebtedness; certificate of
9 interest or participation in a profit-sharing agreement; collateral
10 trust certificate; preorganization certificate or subscription;
11 transferable share; investment contract; voting trust certificate;
12 certificate of deposit for a security; fractional undivided
13 interest in oil, gas, or other mineral rights; put, call, straddle,
14 option, or privilege on a security, certificate of deposit, or
15 group or index of securities, including an interest in or based on
16 the value of that put, call, straddle, option, or privilege on that
17 security, certificate of deposit, or group or index of securities;
18 put, call, straddle, option, or privilege entered into on a
19 national securities exchange relating to foreign currency; an
20 investment in a viatical or life settlement agreement; or, in
21 general, an interest or instrument commonly known as a "security";
22 or a certificate of interest or participation in, temporary or
23 interim certificate for, receipt for, guarantee of, or warrant or
24 right to subscribe to or purchase, any of the foregoing. All of the
25 following apply to the term security:

26 (i) The term includes a contractual or quasi-contractual
27 arrangement that meets all of the following:

1 (A) A person furnishes capital, other than services, to an
2 issuer under the arrangement.

3 (B) A portion of the capital furnished under sub-subparagraph
4 (A) is subjected to the risks of the issuer's enterprise.

5 (C) The furnishing of capital under sub-subparagraph (A) is
6 induced by representations made by an issuer, promoter, or the
7 issuer's or promoter's affiliates which give rise to a reasonable
8 understanding that a valuable tangible benefit will accrue to the
9 person furnishing the capital as a result of the operation of the
10 enterprise.

11 (D) The person furnishing the capital under sub-subparagraph
12 (A) does not intend to be actively involved in the management of
13 the enterprise in a meaningful way.

14 (E) At the time the capital is furnished, a promoter or its
15 affiliates anticipate that financial gain may be realized as a
16 result of the furnishing.

17 (ii) The term includes both a certificated and an
18 uncertificated security.

19 (iii) The term does not include an insurance or endowment policy
20 or annuity contract under which an insurance company promises to
21 pay a fixed or variable sum of money either in a lump sum or
22 periodically for life or other specified period.

23 (iv) The term does not include an interest in a contributory or
24 noncontributory pension or welfare plan subject to the employee
25 retirement income security act of 1974.

26 (v) The term includes an investment in a common enterprise
27 with the expectation of profits to be derived primarily from the

1 efforts of a person other than the investor. As used in this
2 subparagraph, a "common enterprise" means an enterprise in which
3 the fortunes of the investor are interwoven with those of either
4 the person offering the investment, a third party, or other
5 investors.

6 (vi) The term may include, as an investment contract, an
7 interest in a limited partnership, a limited liability company, or
8 a limited liability partnership.

9 (d) "Self-regulatory organization" means a national securities
10 exchange registered under the securities exchange act of 1934, a
11 national securities association of broker-dealers registered under
12 the securities exchange act of 1934, a clearing agency registered
13 under the securities exchange act of 1934, or the municipal
14 securities rule-making board established under the securities
15 exchange act of 1934.

16 (e) "Sign" means, with present intent to authenticate or adopt
17 a record, either of the following:

18 (i) To execute or adopt a tangible symbol.

19 (ii) To attach or logically associate with the record an
20 electronic symbol, sound, or process.

21 (f) "State" means a state of the United States, the District
22 of Columbia, the Commonwealth of Puerto Rico, the United States
23 Virgin Islands, or any territory or insular possession subject to
24 the jurisdiction of the United States.

25 Sec. 103. (1) Subject to subsection (2), as used in this act:

26 (a) "Commodity exchange act" means the commodity exchange act,
27 7 USC 1 to 27f.

1 (b) "Electronic signatures in global and national commerce
2 act" means the electronic signatures in global and national
3 commerce act, 15 USC 7001 to 7031.

4 (c) "Employee retirement income security act of 1974" means
5 the employee retirement income security act of 1974, Public Law 93-
6 406.

7 (d) "Internal revenue code" means the internal revenue code of
8 1986, 26 USC 1 to 9833.

9 (e) "Investment advisers act of 1940" means the investment
10 advisers act of 1940, 15 USC 80b-1 to 80b-21.

11 (f) "Investment company act of 1940" means the investment
12 company act of 1940, 15 USC 80a-1 to 80a-64.

13 (g) "National housing act" means the national housing act, 12
14 USC 1701 to 1750g.

15 (h) "Public utility holding company act of 1935" means the
16 public utility holding company act of 1935, 15 USC 79 to 79z-6.

17 (i) "Securities act of 1933" means the securities act of 1933,
18 15 USC 77a to 77aa.

19 (j) "Securities exchange act of 1934" means the securities
20 exchange act of 1934, 15 USC 78a to 78nn.

21 (k) "Securities investor protection act of 1970" means the
22 securities investor protection act of 1970, 15 USC 78aaa to 78lll.

23 (l) "Securities litigation uniform standards act of 1998" means
24 the securities litigation uniform standards act of 1998, Public Law
25 105-353, 112 Stat. 3227.

26 (m) "Small business investment act of 1958" means the small
27 business investment act of 1958, Public Law 85-699.

1 (2) A reference in this act to a federal statute defined in
2 subsection (1) includes that statute and the rules and regulations
3 adopted under that statute. The administrator may, by rule or
4 order, adopt an amendment or successor to a federal statute defined
5 in subsection (1) or rules and regulations adopted under a federal
6 statute defined in subsection (1), a federal statute that is
7 similar to a federal statute defined in subsection (1), or a rule
8 or regulation that is similar to a rule or regulation adopted under
9 a federal statute defined in subsection (1).

10 Sec. 104. Any reference in this act to an agency or department
11 of the United States is also a reference to any successor agency,
12 department, or entity of that agency or department.

13 Sec. 105. This act modifies, limits, and supersedes the
14 electronic signatures in global and national commerce act, but does
15 not modify, limit, or supersede section 101(c) of that act, 15 USC
16 7001, or authorize electronic delivery of any of the notices
17 described in section 103(b) of that act, 15 USC 7003. This act
18 authorizes the filing of records and signatures, when specified by
19 provisions of this act or by a rule or order under this act, in a
20 manner consistent with section 104(a) of that act, 15 USC 7004.

21 ARTICLE 2

22 EXEMPTIONS FROM REGISTRATION OF SECURITIES

23 Sec. 201. The following securities are exempt from the
24 requirements of sections 301 to 306 and 504:

25 (a) A security, including a revenue obligation or a separate
26 security as defined in rule 131 adopted under the securities act of
27 1933, 17 CFR 230.131, issued, insured, or guaranteed by the United

1 States; by a state; by a political subdivision of a state; by a
2 public authority, agency, or instrumentality of 1 or more states;
3 by a political subdivision of 1 or more states; or by a person
4 controlled or supervised by and acting as an instrumentality of the
5 United States under authority granted by the Congress; or a
6 certificate of deposit for any of the foregoing.

7 (b) A security issued, insured, or guaranteed by a foreign
8 government with which the United States maintains diplomatic
9 relations, or any of its political subdivisions, if the security is
10 recognized as a valid obligation by the issuer, insurer, or
11 guarantor.

12 (c) A security issued by and representing, or that will
13 represent an interest in or a direct obligation of, or be
14 guaranteed by, any of the following:

15 (i) An international banking institution.

16 (ii) A banking institution organized under the laws of the
17 United States; a member bank of the federal reserve system; or a
18 depository institution a substantial portion of the business of
19 which consists or will consist of either receiving deposits or
20 share accounts that are insured to the maximum amount authorized by
21 statute by the federal deposit insurance corporation, the national
22 credit union share insurance fund, or a successor authorized by
23 federal law or exercising fiduciary powers that are similar to
24 those permitted for national banks under the authority of the
25 comptroller of currency pursuant to 12 USC 92a.

26 (iii) Any other depository institution, unless by rule or order
27 the administrator proceeds under section 204.

1 (d) A security issued by and representing an interest in, or a
2 debt of, or insured or guaranteed by, an insurance company
3 authorized to do business in this state.

4 (e) A security issued or guaranteed by a railroad, other
5 common carrier, public utility, or public utility holding company
6 that is any of the following:

7 (i) Regulated in respect to its rates and charges by the United
8 States or a state.

9 (ii) Regulated in respect to the issuance or guarantee of the
10 security by the United States, a state, Canada, or a Canadian
11 province or territory.

12 (iii) A public utility holding company registered under the
13 public utility holding company act of 1935 or a subsidiary of a
14 registered holding company within the meaning of that act.

15 (f) A federal covered security specified in section 18(b)(1)
16 of the securities act of 1933, 15 USC 77r, or a security listed or
17 approved for listing on another securities market specified by rule
18 under this act; a put or a call option contract; warrant; a
19 subscription right on or with respect to those securities; or an
20 option or similar derivative security on a security or an index of
21 securities or foreign currencies issued by a clearing agency
22 registered under the securities exchange act of 1934 and listed or
23 designated for trading on a national securities exchange, a
24 facility of a national securities exchange, or a facility of a
25 national securities association registered under the securities
26 exchange act of 1934 or an offer or sale, of the underlying
27 security in connection with the offer, sale, or exercise of an

1 option or other security that was exempt when the option or other
2 security was written or issued; or an option or a derivative
3 security designated by the securities and exchange commission under
4 section 9(b) of the securities exchange act of 1934, 15 USC 78i.

5 (g) A security issued by a person organized and operated
6 exclusively for religious, educational, benevolent, fraternal,
7 charitable, social, athletic, or reformatory purposes, or as a
8 chamber of commerce, and not for pecuniary profit, no part of the
9 net earnings of which inures to the benefit of a private
10 stockholder or other person, or a security of a company that is
11 excluded from the definition of an investment company under section
12 3(c)(10)(B) of the investment company act of 1940, 15 USC 80a-3.
13 With respect to the offer or sale of a note, bond, debenture, or
14 other evidence of indebtedness by a person described in this
15 subdivision, the administrator by rule or order may limit the
16 availability of this exemption by classifying securities, persons,
17 and transactions, imposing different requirements for different
18 classes, specifying with respect to subparagraph (ii) the scope of
19 the exemption and the grounds for denial or suspension, and
20 requiring an issuer to meet 1 or more of the following:

21 (i) To file a notice specifying the material terms of the
22 proposed offer or sale and copies of any proposed sales and
23 advertising literature to be used and provide that the exemption
24 becomes effective if the administrator does not disallow the
25 exemption within the period established by the rule.

26 (ii) To file a request for exemption authorization for which a
27 rule under this act may specify the scope of the exemption; the

1 requirement of an offering statement; the filing of sales and
2 advertising literature; the filing of consent to service of process
3 complying with section 611; and grounds for denial or suspension of
4 the exemption.

5 (iii) To register under section 304.

6 (h) A member's or owner's interest in, or a retention
7 certificate or like security given in lieu of a cash patronage
8 dividend issued by, a cooperative organized and operated as a
9 nonprofit membership cooperative under the cooperative laws of a
10 state, but not a member's or owner's interest, retention
11 certificate, or like security sold to persons other than bona fide
12 members of the cooperative.

13 (i) An equipment trust certificate in respect to equipment
14 leased or conditionally sold to a person, if any security issued by
15 the person would be exempt under this section or would be a federal
16 covered security under section 18(b)(1) of the securities act of
17 1933, 15 USC 77r.

18 Sec. 202. (1) The following transactions are exempt from the
19 requirements of sections 301 to 306 and 504:

20 (a) An isolated nonissuer transaction, whether effected by or
21 through a broker-dealer or not.

22 (b) A nonissuer transaction by or through a broker-dealer
23 registered or exempt from registration under this act, and a resale
24 transaction by a sponsor of a unit investment trust registered
25 under the investment company act of 1940, in a security of a class
26 that has been outstanding in the hands of the public for at least
27 90 days, if all of the following are met at the date of the

1 transaction:

2 (i) The issuer of the security is engaged in business, the
3 issuer is not in the organizational stage or in bankruptcy or
4 receivership, and the issuer is not a blank check, blind pool, or
5 shell company that has no specific business plan or purpose or has
6 indicated that its primary business plan is to engage in a merger
7 or combination of the business with, or an acquisition of, an
8 unidentified person.

9 (ii) The security is sold at a price reasonably related to its
10 current market price.

11 (iii) The security does not constitute the whole or part of an
12 unsold allotment to, or a subscription or participation by, the
13 broker-dealer as an underwriter of the security or a
14 redistribution.

15 (iv) A nationally recognized securities manual or its
16 electronic equivalent designated by rule or order under this act or
17 a record filed with the securities and exchange commission that is
18 publicly available contains all of the following:

19 (A) A description of the business and operations of the
20 issuer.

21 (B) The names of the issuer's executive officers and the names
22 of the issuer's directors, if any.

23 (C) An audited balance sheet of the issuer as of a date within
24 18 months before the date of the transaction or, in the case of a
25 reorganization or merger, and when the parties to the
26 reorganization or merger each had an audited balance sheet, a pro
27 forma balance sheet for the combined entity.

1 (D) An audited income statement for each of the issuer's 2
2 immediately previous fiscal years or for the period of existence of
3 the issuer, whichever is shorter, or, in the case of a
4 reorganization or merger when each party to the reorganization or
5 merger had audited income statements, a pro forma income statement.

6 (v) Any of the following requirements are met:

7 (A) The issuer of the security has a class of equity
8 securities listed on a national securities exchange registered
9 under section 6 of the securities exchange act of 1934, 15 USC 78f,
10 or designated for trading on the national association of securities
11 dealers automated quotation system.

12 (B) The issuer of the security is a unit investment trust
13 registered under the investment company act of 1940.

14 (C) The issuer of the security, including its predecessors,
15 has been engaged in continuous business for at least 3 years.

16 (D) The issuer of the security has total assets of at least
17 \$2,000,000.00 based on an audited balance sheet as of a date within
18 18 months before the date of the transaction or, in the case of a
19 reorganization or merger when the parties to the reorganization or
20 merger each had an audited balance sheet as of a date within 18
21 months before the date of the transaction, a pro forma balance
22 sheet for the combined entity.

23 (c) A nonissuer transaction by or through a broker-dealer
24 registered or exempt from registration under this act in a security
25 of a foreign issuer that is a margin security defined in
26 regulations or rules adopted by the board of governors of the
27 federal reserve system.

1 (d) A nonissuer transaction by or through a broker-dealer
2 registered or exempt from registration under this act in an
3 outstanding security if the guarantor of the security files reports
4 with the securities and exchange commission under the reporting
5 requirements of section 13 or 15(d) of the securities exchange act
6 of 1934, 15 USC 78m or 78o.

7 (e) A nonissuer transaction by or through a broker-dealer
8 registered or exempt from registration under this act in a security
9 that meets 1 or more of the following:

10 (i) Is rated at the time of the transaction by a nationally
11 recognized statistical rating organization in 1 of its 4 highest
12 rating categories.

13 (ii) Has a fixed maturity or a fixed interest or dividend, if
14 both of the following are met:

15 (A) A default has not occurred during the current fiscal year
16 or within the 3 previous fiscal years or during the existence of
17 the issuer and any predecessor if less than 3 fiscal years, in the
18 payment of principal, interest, or dividends on the security.

19 (B) The issuer is engaged in business, is not in the
20 organizational stage or in bankruptcy or receivership, and is not
21 and has not been within the previous 12 months a blank check, blind
22 pool, or shell company that has no specific business plan or
23 purpose or has indicated that its primary business plan is to
24 engage in a merger or combination of the business with, or an
25 acquisition of, an unidentified person.

26 (f) A nonissuer transaction by or through a broker-dealer
27 registered or exempt from registration under this act effecting an

1 unsolicited order or offer to purchase.

2 (g) A nonissuer transaction executed by a bona fide pledgee
3 without any purpose of evading this act.

4 (h) A nonissuer transaction by a federal covered investment
5 adviser with investments under management in excess of
6 \$100,000,000.00 acting in the exercise of discretionary authority
7 in a signed record for the account of others.

8 (i) A transaction in a security, whether or not the security
9 or transaction is otherwise exempt, in exchange for 1 or more bona
10 fide outstanding securities, claims, or property interests, or
11 partly in exchange and partly for cash, if the terms and conditions
12 of the issuance and exchange or the delivery and exchange and the
13 fairness of the terms and conditions have been approved by the
14 administrator at a hearing.

15 (j) A transaction between the issuer or other person on whose
16 behalf the offering is made and an underwriter, or among
17 underwriters.

18 (k) A transaction in a note, bond, debenture, or other
19 evidence of indebtedness secured by a mortgage or other security
20 agreement if all of the following are met:

21 (i) The note, bond, debenture, or other evidence of
22 indebtedness is offered and sold with the mortgage or other
23 security agreement as a unit.

24 (ii) A general solicitation or general advertisement of the
25 transaction is not made.

26 (iii) A commission or other remuneration is not paid or given,
27 directly or indirectly, to a person not registered under this act

1 as a broker-dealer or as an agent.

2 (l) A transaction by an executor, administrator of an estate,
3 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or
4 conservator.

5 (m) A sale or offer to sell to any of the following:

6 (i) An institutional investor.

7 (ii) A federal covered investment adviser.

8 (iii) Any other person exempted by rule or order under this act.

9 (n) A sale or an offer to sell securities by or on behalf of
10 an issuer, if the transaction is part of a single issue in which
11 all of the following are met:

12 (i) There are not more than 25 purchasers in this state during
13 any 12 consecutive months, other than those designated in
14 subdivision (m).

15 (ii) There is no general solicitation or general advertising
16 used in connection with the offer to sell or sale of the
17 securities.

18 (iii) A commission or other remuneration is not paid or given,
19 directly or indirectly, to a person other than a broker-dealer
20 registered under this act or an agent registered under this act for
21 soliciting a prospective purchaser in this state.

22 (iv) The issuer reasonably believes that all the purchasers in
23 this state other than those designated in subdivision (m) are
24 purchasing for investment.

25 (o) A transaction under an offer to existing security holders
26 of the issuer, including persons that at the date of the
27 transaction are holders of convertible securities, options, or

1 warrants, if a commission or other remuneration, other than a
2 standby commission, is not paid or given, directly or indirectly,
3 for soliciting a security holder in this state.

4 (p) An offer to sell, but not a sale, of a security not exempt
5 from registration under the securities act of 1933 if both of the
6 following are met:

7 (i) A registration or offering statement or similar record as
8 required under the securities act of 1933 has been filed, but is
9 not effective, or the offer is made in compliance with rule 165
10 adopted under the securities act of 1933, 17 CFR 230.165.

11 (ii) A stop order of which the offeror is aware has not been
12 issued against the offeror by the administrator or the securities
13 and exchange commission, and an audit, inspection, or proceeding
14 that is public and may culminate in a stop order is not known by
15 the offeror to be pending.

16 (q) An offer to sell, but not a sale, of a security exempt
17 from registration under the securities act of 1933 if all of the
18 following are met:

19 (i) A registration statement has been filed under this act, but
20 is not effective.

21 (ii) A solicitation of interest is provided in a record to
22 offerees in compliance with a rule adopted by the administrator
23 under this act.

24 (iii) A stop order of which the offeror is aware has not been
25 issued by the administrator under this act, and an audit,
26 inspection, or proceeding that may culminate in a stop order is not
27 known by the offeror to be pending.

1 (r) A transaction involving the distribution of the securities
2 of an issuer to the security holders of another person in
3 connection with a merger, consolidation, exchange of securities,
4 sale of assets, or other reorganization to which the issuer, or its
5 parent or subsidiary, and the other person, or its parent or
6 subsidiary, are parties.

7 (s) A rescission offer, sale, or purchase under section 510.

8 (t) An offer or sale of a security to a person not resident in
9 this state and not present in this state if the offer or sale does
10 not constitute a violation of the laws of the state or foreign
11 jurisdiction in which the offeree or purchaser is present and is
12 not part of an unlawful plan or scheme to evade this act.

13 (u) An offer or sale of a security pursuant to an employee's
14 stock purchase, savings, option, profit-sharing, pension, or
15 similar employees' benefit plan, including any securities, plan
16 interests, and guarantees issued under a compensatory benefit plan
17 or compensation contract, contained in a record, established by the
18 issuer, its parents, its majority-owned subsidiaries, or the
19 majority-owned subsidiaries of the issuer's parent for the
20 participation of their employees including any of the following:

21 (i) Offers or sales of those securities to directors; general
22 partners; trustees, if the issuer is a business trust; officers; or
23 consultants and advisors.

24 (ii) Family members who acquire those securities from those
25 persons through gifts or domestic relations orders.

26 (iii) Former employees, directors, general partners, trustees,
27 officers, consultants, and advisors if those individuals were

1 employed by or providing services to the issuer when the securities
2 were offered.

3 (iv) Insurance agents who are exclusive insurance agents of the
4 issuer, its subsidiaries or parents, or who derive more than 50% of
5 their annual income from those organizations.

6 (v) A transaction involving any of the following:

7 (i) A stock dividend or equivalent equity distribution, whether
8 the corporation or other business organization distributing the
9 dividend or equivalent equity distribution is the issuer or not, if
10 nothing of value is given by stockholders or other equity holders
11 for the dividend or equivalent equity distribution other than the
12 surrender of a right to a cash or property dividend if each
13 stockholder or other equity holder may elect to take the dividend
14 or equivalent equity distribution in cash, property, or stock.

15 (ii) An act incident to a judicially approved reorganization in
16 which a security is issued in exchange for 1 or more outstanding
17 securities, claims, or property interests, or partly in exchange
18 and partly for cash.

19 (iii) The solicitation of tenders of securities by an offeror in
20 a tender offer in compliance with rule 162 adopted under the
21 securities act of 1933, 17 CFR 230.162.

22 (w) Subject to subsection (2), a nonissuer transaction in an
23 outstanding security by or through a broker-dealer registered or
24 exempt from registration under this act, if both of the following
25 are met:

26 (i) The issuer is a reporting issuer in a foreign jurisdiction
27 designated in subsection (2)(a), or by rule or order of the

1 administrator, and has been subject to continuous reporting
2 requirements in the foreign jurisdiction for not less than 180 days
3 before the transaction.

4 (ii) The security is listed on the foreign jurisdiction's
5 securities exchange that has been designated in subsection (2)(a),
6 or by rule or order under this act, or is a security of the same
7 issuer that is of senior or substantially equal rank to the listed
8 security or is a warrant or right to purchase or subscribe to any
9 of the foregoing.

10 (2) For purposes of subsection (1)(w), both of the following
11 apply:

12 (a) Canada, together with its provinces and territories, is a
13 designated foreign jurisdiction and the Toronto stock exchange,
14 inc., is a designated securities exchange.

15 (b) After an administrative hearing in compliance with
16 applicable state law, the administrator, by rule or order under
17 this act, may revoke the designation of a securities exchange under
18 subsection (1)(w) or this subsection if the administrator finds
19 that revocation is necessary or appropriate in the public interest
20 and for the protection of investors.

21 Sec. 203. A rule or order under this act may exempt a
22 security, transaction, or offer, or a rule or order under this act
23 may exempt a class of securities, transactions, or offers, from any
24 or all of the requirements of sections 301 to 306 and 504, and a
25 rule or order under this act may waive any or all of the conditions
26 for an exemption or offers under sections 201 and 202.

27 Sec. 204. (1) Except with respect to a federal covered

1 security or a transaction involving a federal covered security, an
2 order of the administrator under this act may deny or suspend
3 application of, condition, limit, or revoke an exemption created
4 under section 201(c)(iii), (g), or (h) or 202 or an exemption or
5 waiver created under section 203 with respect to a specific
6 security, transaction, or offer. An order under this section may
7 only be issued pursuant to the procedures in section 306(4) or 604.

8 (2) A person does not violate section 301, 303 to 306, 504, or
9 510 by an offer to sell, an offer to purchase, a sale, or a
10 purchase effected after the entry of an order issued under this
11 section if the person did not know, and in the exercise of
12 reasonable care could not have known, of the order.

13 ARTICLE 3

14 REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED 15 SECURITIES

16 Sec. 301. A person shall not offer or sell a security in this
17 state unless 1 or more of the following are met:

18 (a) The security is a federal covered security.

19 (b) The security, transaction, or offer is exempted from
20 registration under sections 201 to 203.

21 (c) The security is registered under this act.

22 Sec. 302. (1) A rule or order under this act may require the
23 filing of 1 or more of the following records with respect to a
24 security issued by an investment company that is a federal covered
25 security as defined in section 18(b)(2) of the securities act of
26 1933, 15 USC 77r, that is not otherwise exempt under sections 201
27 to 203:

1 (a) Before the initial offer of a federal covered security in
2 this state, all records that are part of a federal registration
3 statement filed with the securities and exchange commission under
4 the securities act of 1933, a consent to service of process signed
5 by the issuer, and a fee of \$500.00.

6 (b) After the initial offer of the federal covered security in
7 this state, all records that are part of an amendment to a federal
8 registration statement filed with the securities and exchange
9 commission under the securities act of 1933.

10 (2) Any security issued by a unit investment trust that is
11 registered or that has filed a registration statement under the
12 investment company act of 1940 as an investment company may be
13 offered for sale and sold into, from, or within this state for an
14 indefinite period commencing upon the later of the trust's
15 effectiveness with the securities and exchange commission or the
16 administrator's receipt of a notice as prescribed by the
17 administrator and a 1-time notice filing fee of \$500.00.

18 (3) Each of the following applies to a notice filing under
19 subsection (1):

20 (a) A notice filing is effective for a period of 1 year,
21 commencing upon the later of the effectiveness of the offering with
22 the securities and exchange commission or the administrator's
23 receipt of the notice filing.

24 (b) A notice filing may be renewed for an additional 1-year
25 period by filing a current form NF and the fee required by
26 subsection (8) before the expiration of the 1-year effective
27 period. The renewal is effective upon the expiration of the prior

1 notice period.

2 (c) A notice filing may be terminated by filing with the
3 administrator a notice of termination as prescribed by the
4 administrator. The termination is effective upon the
5 administrator's receipt of the notice of termination.

6 (4) With respect to any security that is a federal covered
7 security under section 18(b)(4)(D) of the securities act of 1933,
8 15 USC 77r, the issuer shall file all of the following:

9 (a) A notice on securities and exchange commission form D or a
10 form approved by the administrator.

11 (b) A consent to service of process signed by the issuer, no
12 later than 15 days after the first sale of a federal covered
13 security in this state.

14 (c) A nonrefundable filing fee of \$100.00.

15 (5) The administrator, by rule or order, may require the
16 filing of any document filed with the securities and exchange
17 commission under the securities act of 1933 and a nonrefundable
18 filing fee of \$100.00 with respect to any federal covered security.

19 (6) The administrator may issue a stop order suspending the
20 offer and sale of a federal covered security, except a federal
21 covered security under section 18(b)(1) of the securities act of
22 1933, 15 USC 77r, if it finds that the order is in the public
23 interest and there is a failure to comply with this section.

24 (7) The administrator may waive any or all of the provisions
25 of this section by rule or order.

26 (8) All of the following apply to the renewals of a notice
27 filing under subsection (3):

1 (a) Subject to adjustment under subdivision (c), the fee for
2 the renewal is 1 of the following:

3 (i) If the issuer projects nonexempt sales of the security in
4 this state during the 1-year renewal period of \$250,000.00 or less,
5 \$100.00.

6 (ii) If the issuer projects nonexempt sales of the security in
7 this state during the 1-year renewal period of more than
8 \$250,000.00 but not more than \$700,000.00, \$400.00.

9 (iii) If the issuer projects nonexempt sales of the security in
10 this state during the 1-year renewal period of more than
11 \$700,000.00 but not more than \$1,000,000.00, \$800.00.

12 (iv) If the issuer projects nonexempt sales of the security in
13 this state during the 1-year renewal period of more than
14 \$1,000,000.00, \$1,400.00.

15 (b) For purposes of subdivision (a), an issuer's projection of
16 nonexempt sales of a security must be reasonable and based on any
17 facts known to the issuer at the time of renewal that may affect
18 sales of the security, including, but not limited to, nonexempt
19 sales of the security in this state during the current 1-year
20 notice filing period.

21 (c) If an issuer's nonexempt sales of a security in this state
22 during a 1-year notice filing period exceed the projections for
23 that period that the issuer had submitted to the administrator for
24 determination of the issuer's renewal fee for that 1-year notice
25 filing period, the issuer is not required to amend its projections
26 or pay an additional fee for that notice filing period. However,
27 the fee for renewal of the notice filing shall be the greater of

1 the following:

2 (i) The renewal fee determined under subdivision (a).

3 (ii) A renewal fee determined under subdivision (a), using
4 actual sales during the current notice filing period as the
5 projected sales for the renewal notice filing period.

6 (d) If an issuer's nonexempt sales of a security in this state
7 during a 1-year notice filing period are less than the projections
8 for that period that the issuer had submitted to the administrator
9 for determination of the issuer's renewal fee for the 1-year notice
10 filing period, the issuer is not entitled to a refund of any part
11 of the renewal fee for that period or adjustment of the renewal fee
12 for any renewal period.

13 (e) Upon written request of the administrator, an issuer shall
14 provide sales reports showing the issuer's nonexempt sales of a
15 security in this state for the current and 2 previous 1-year notice
16 filing periods, but the issuer is not otherwise required to provide
17 a sales report to the administrator in connection with a renewal of
18 a notice filing.

19 (f) If the administrator determines that for 2 consecutive 1-
20 year notice filing periods an issuer's nonexempt sales of a
21 security in this state exceeded the issuer's sales projections for
22 that period, the administrator may assess the issuer an
23 administrative fine in the amount of the renewal fees the issuer
24 would have paid under subdivision (a) if its projections had been
25 accurate. This administrative fine is in addition to an increased
26 fee for renewal under subdivision (c), if any.

27 (9) If the administrator finds that there is a failure to

1 comply with a notice or fee requirement of this section, the
2 administrator may issue a stop order suspending the offer and sale
3 of a federal covered security in this state, except a federal
4 covered security under section 18(b)(1) of the securities act of
5 1933, 15 USC 77r. If the deficiency is corrected, the stop order is
6 void as of the time of its issuance and no other charge or
7 administrative or civil fine may be imposed by the administrator.

8 Sec. 303. (1) A security for which a registration statement
9 has been filed under the securities act of 1933 in connection with
10 the same offering may be registered by coordination under this
11 section.

12 (2) A registration statement and accompanying records under
13 this section must contain or be accompanied by all of the following
14 records in addition to the information specified in section 305 and
15 a consent to service of process complying with section 611:

16 (a) A copy of the latest form of prospectus filed under the
17 securities act of 1933.

18 (b) A copy of the articles of incorporation and bylaws or
19 their substantial equivalents currently in effect, a copy of any
20 agreement with or among underwriters, a copy of any indenture or
21 other instrument governing the issuance of the security to be
22 registered, and a specimen, copy, or description of the security
23 that is required by rule or order under this act.

24 (c) Copies of any other information, or any other records,
25 filed by the issuer under the securities act of 1933 requested by
26 the administrator.

27 (d) An undertaking to forward each amendment to the federal

1 prospectus, other than an amendment that delays the effective date
2 of the registration statement, promptly after it is filed with the
3 securities and exchange commission.

4 (3) A registration statement under this section becomes
5 effective simultaneously with or subsequent to the federal
6 registration statement when all the following conditions are
7 satisfied:

8 (a) A stop order under subsection (4) or section 306 or issued
9 by the securities and exchange commission is not in effect and a
10 proceeding is not pending against the issuer under section 306.

11 (b) The registration statement has been on file for at least
12 20 days or a shorter period provided by rule or order under this
13 act.

14 (c) The registrant has not consented to a later effective
15 date.

16 (4) The registrant shall promptly notify the administrator in
17 a record of the date when the federal registration statement
18 becomes effective and the content of a price amendment, if any, and
19 shall promptly file a record containing the price amendment. If the
20 notice is not timely received, the administrator may issue a stop
21 order, without prior notice or hearing, retroactively denying
22 effectiveness to the registration statement or suspending its
23 effectiveness until compliance with this section. The administrator
24 shall promptly notify the registrant of an order by telegram,
25 telephone, or electronic means and promptly confirm this notice by
26 a record. If the registrant subsequently complies with the notice
27 requirements of this section, the stop order is void as of the date

1 of its issuance.

2 (5) If the federal registration statement becomes effective
3 before each of the conditions in this section is satisfied or is
4 waived by the administrator, the registration statement is
5 automatically effective under this act when all the conditions are
6 satisfied or waived. If the registrant notifies the administrator
7 of the date when the federal registration statement is expected to
8 become effective, the administrator shall promptly notify the
9 registrant by telegram, telephone, or electronic means and promptly
10 confirm this notice by a record, indicating whether all the
11 conditions are satisfied or waived and whether the administrator
12 intends the institution of a proceeding under section 306. The
13 notice by the administrator does not preclude the institution of a
14 proceeding under section 306.

15 Sec. 304. (1) A security may be registered by qualification
16 under this section.

17 (2) A registration statement under this section must contain
18 the information or records specified in section 305, a consent to
19 service of process complying with section 611, and, if provided by
20 rule under this act, all of the following information or records:

21 (a) With respect to the issuer and any significant subsidiary,
22 its name, address, and form of organization, the state or foreign
23 jurisdiction and date of its organization, the general character
24 and location of its business, a description of its physical
25 properties and equipment, and a statement of the general
26 competitive conditions in the industry or business in which it is
27 or will be engaged.

1 (b) With respect to each director and officer of the issuer,
2 and other person having a similar status or performing similar
3 functions, the person's name, address, and principal occupation for
4 the previous 5 years, the amount of securities of the issuer held
5 by the person as of the thirtieth day before the filing of the
6 registration statement, the amount of the securities covered by the
7 registration statement to which the person has indicated an
8 intention to subscribe, and a description of any material interest
9 of the person in any material transaction with the issuer or a
10 significant subsidiary effected within the previous 3 years or
11 proposed to be effected.

12 (c) With respect to persons covered by subdivision (b), the
13 aggregate sum of the remuneration paid to those persons during the
14 previous 12 months and estimated to be paid during the next 12
15 months, directly or indirectly, by the issuer, and all
16 predecessors, parents, subsidiaries, and affiliates of the issuer.

17 (d) With respect to a person owning of record or owning
18 beneficially, if known, 10% or more of the outstanding shares of
19 any class of equity security of the issuer, the information
20 specified in subdivision (b) other than the person's occupation.

21 (e) With respect to a promoter if the issuer was organized
22 within the previous 3 years, the information or records specified
23 in subdivision (b), any amount paid to the promoter within that
24 period or intended to be paid to the promoter, and the
25 consideration for the payment.

26 (f) With respect to a person on whose behalf any part of the
27 offering is to be made in a nonissuer distribution, the person's

1 name and address, the amount of securities of the issuer held by
2 the person as of the date of the filing of the registration
3 statement, a description of any material interest of the person in
4 any material transaction with the issuer or any significant
5 subsidiary effected within the previous 3 years or proposed to be
6 effected, and a statement of the reasons for making the offering.

7 (g) The capitalization and long-term debt, on both a current
8 and pro forma basis, of the issuer and any significant subsidiary,
9 including a description of each security outstanding or being
10 registered or otherwise offered, and a statement of the amount and
11 kind of consideration, whether in the form of cash, physical
12 assets, services, patents, goodwill, or anything else of value, for
13 which the issuer or any subsidiary has issued its securities within
14 the previous 2 years or is obligated to issue its securities.

15 (h) The kind and amount of securities to be offered, the
16 proposed offering price or the method by which it is to be
17 computed, any variation at which a proportion of the offering is to
18 be made to a person or class of persons other than the
19 underwriters, with a specification of the person or class, the
20 basis upon which the offering is to be made if otherwise than for
21 cash, the estimated aggregate underwriting and selling discounts or
22 commissions and finders' fees, including separately cash,
23 securities, contracts, or anything else of value to accrue to the
24 underwriters or finders in connection with the offering, or, if the
25 selling discounts or commissions are variable, the basis of
26 determining them and their maximum and minimum amounts, the
27 estimated amounts of other selling expenses, including legal,

1 engineering, and accounting charges, the name and address of each
2 underwriter and each recipient of a finder's fee, a copy of any
3 underwriting or selling group agreement under which the
4 distribution is to be made, or the proposed form of any such
5 agreement whose terms have not yet been determined, and a
6 description of the plan of distribution of any securities that are
7 to be offered otherwise than through an underwriter.

8 (i) The estimated monetary proceeds to be received by the
9 issuer from the offering, the purposes for which the proceeds are
10 to be used by the issuer, the estimated amount to be used for each
11 purpose, the order or priority in which the proceeds will be used
12 for the purposes stated, the amounts of any funds to be raised from
13 other sources to achieve the purposes stated, the sources of the
14 funds, and, if a part of the proceeds is to be used to acquire
15 property, including goodwill, otherwise than in the ordinary course
16 of business, the names and addresses of the vendors, the purchase
17 price, the names of any persons that have received commissions in
18 connection with the acquisition, and the amounts of the commissions
19 and other expenses in connection with the acquisition, including
20 the cost of borrowing money to finance the acquisition.

21 (j) A description of any stock options or other security
22 options outstanding, or to be created in connection with the
23 offering, and the amount of those options held or to be held by
24 each person required to be named in subdivision (b), (d), (e), (f),
25 or (h) and by any person that holds or will hold 10% or more in the
26 aggregate of those options.

27 (k) The dates of, parties to, and general effect concisely

1 stated of each managerial or other material contract made or to be
2 made otherwise than in the ordinary course of business to be
3 performed in whole or in part at or after the filing of the
4 registration statement or that was made within the previous 2
5 years, and a copy of the contract.

6 (l) A description of any pending litigation, action, or
7 proceeding to which the issuer is a party and that materially
8 affects its business or assets, including any litigation, action,
9 or proceeding known to be contemplated by governmental authorities.

10 (m) A copy of any prospectus, pamphlet, circular, form letter,
11 advertisement, or other sales literature intended as of the
12 effective date to be used in connection with the offering and any
13 solicitation of interest used in compliance with section 202(q) (ii).

14 (n) A specimen or copy of the security being registered,
15 unless the security is uncertificated, a copy of the issuer's
16 articles of incorporation and bylaws, or their substantial
17 equivalents, in effect, and a copy of any indenture or other
18 instrument covering the security to be registered.

19 (o) A signed or conformed copy of an opinion of counsel
20 concerning the legality of the security being registered, with an
21 English translation if it is in a language other than English,
22 which states whether the security when sold will be validly issued,
23 fully paid, and nonassessable and, if a debt security, a binding
24 obligation of the issuer.

25 (p) A signed or conformed copy of a consent of any accountant,
26 engineer, appraiser, or other person whose profession gives
27 authority for a statement made by the person, if the person is

1 named as having prepared or certified a report or valuation, other
2 than an official record, that is public, which is used in
3 connection with the registration statement.

4 (q) A balance sheet of the issuer as of a date within 4 months
5 before the filing of the registration statement, a statement of
6 income and a statement of cash flows for each of the 3 fiscal years
7 preceding the date of the balance sheet and for any period between
8 the close of the immediately previous fiscal year and the date of
9 the balance sheet, or for the period of the issuer's and any
10 predecessor's existence if less than 3 years, and, if any part of
11 the proceeds of the offering is to be applied to the purchase of a
12 business, the financial statements that would be required if that
13 business were the registrant.

14 (r) Any additional information or records required by rule or
15 order under this act.

16 (3) A registration statement under this section becomes
17 effective 30 days, or any shorter period provided by rule or order
18 under this act, after the date the registration statement or the
19 last amendment other than a price amendment is filed, if any of the
20 following apply:

21 (a) A stop order is not in effect and a proceeding is not
22 pending under section 306.

23 (b) The administrator has not issued an order under section
24 306 delaying effectiveness.

25 (c) The applicant or registrant has not requested that
26 effectiveness be delayed.

27 (4) The administrator may delay effectiveness once for not

1 more than 90 days if the administrator determines the registration
2 statement is not complete in all material respects and promptly
3 notifies the applicant or registrant of that determination. The
4 administrator may also delay effectiveness for a further period of
5 not more than 30 days if the administrator determines that the
6 delay is necessary or appropriate.

7 (5) A rule or order under this act may require as a condition
8 of registration under this section that a prospectus containing a
9 specified part of the information or record specified in subsection
10 (2) be sent or given to each person to which an offer is made,
11 before or concurrently with the earliest of any of the following:

12 (a) The first offer made in a record to the person otherwise
13 than by means of a public advertisement, by or for the account of
14 the issuer or another person on whose behalf the offering is being
15 made, or by an underwriter or broker-dealer that is offering part
16 of an unsold allotment or subscription taken by the person as a
17 participant in the distribution.

18 (b) The confirmation of a sale made by or for the account of
19 the person.

20 (c) Payment pursuant to the sale.

21 (d) Delivery of the security pursuant to the sale.

22 Sec. 305. (1) A registration statement may be filed by the
23 issuer, a person on whose behalf the offering is to be made, or a
24 broker-dealer registered under this act.

25 (2) A person filing a registration statement shall pay a
26 filing fee of 1/10 of 1% of the maximum aggregate offering price at
27 which the registered securities are to be offered in this state,

1 but the fee shall in no case be less than \$100.00 or more than
2 \$1,250.00. If an application for registration is withdrawn before
3 the effective date or a preeffective stop order is issued under
4 section 306, the administrator shall retain a fee of \$100.00 if the
5 initial review has not been commenced, and the full filing fee
6 after review has been commenced.

7 (3) A registration statement filed under section 303 or 304
8 must specify all of the following:

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

10 (b) The states in which a registration statement or similar
11 record in connection with the offering has been or is to be filed.

12 (c) Any adverse order, judgment, or decree issued in
13 connection with the offering by a state securities regulator, the
14 securities and exchange commission, or a court.

15 (4) A record filed under this act or the predecessor act,
16 within 5 years preceding the filing of a registration statement,
17 may be incorporated by reference in the registration statement to
18 the extent that the record is currently accurate.

19 (5) In the case of a nonissuer distribution, information or a
20 record shall not be required under subsection (9) or section 304,
21 unless it is known to the person filing the registration statement
22 or to the person on whose behalf the distribution is to be made, or
23 unless it can be furnished by those persons without unreasonable
24 effort or expense.

25 (6) A rule or order under this act may require as a condition
26 of registration that a security issued within the previous 5 years,
27 or to be issued to a promoter for a consideration substantially

1 less than the public offering price or to a person for a
2 consideration other than cash, be deposited in escrow and that the
3 proceeds from the sale of the registered security in this state be
4 impounded until the issuer receives a specified amount from the
5 sale of the security either in this state or elsewhere. The
6 conditions of any escrow or impoundment required under this
7 subsection may be established by rule or order under this act, but
8 the administrator shall not reject a depository institution solely
9 because of its location in another state.

10 (7) A rule or order under this act may require as a condition
11 of registration that a security registered under this act be sold
12 only on a specified form of subscription or sale contract and that
13 a signed or conformed copy of each contract be filed under this act
14 or preserved for a period specified by the rule or order, which may
15 not be longer than 5 years.

16 (8) Except while a stop order is in effect under section 306,
17 a registration statement is effective for 1 year after its
18 effective date, or for a longer period designated in an order under
19 this act during which the security is being offered or distributed
20 in a nonexempted transaction by or for the account of the issuer or
21 other person on whose behalf the offering is being made or by an
22 underwriter or broker-dealer that is still offering part of an
23 unsold allotment or subscription taken as a participant in the
24 distribution. For the purposes of a nonissuer transaction, all
25 outstanding securities of the same class identified in the
26 registration statement as a security registered under this act are
27 considered to be registered while the registration statement is

1 effective. If any securities of the same class are outstanding, a
2 registration statement may not be withdrawn until 1 year after its
3 effective date. A registration statement may be withdrawn only with
4 the approval of the administrator.

5 (9) While a registration statement is effective, a rule or
6 order under this act may require the person that filed the
7 registration statement to file reports, not more often than
8 quarterly, to keep the information or other record in the
9 registration statement reasonably current and to disclose the
10 progress of the offering.

11 (10) A registration statement may be amended after its
12 effective date. The posteffective amendment becomes effective when
13 the administrator so orders. If a posteffective amendment is made
14 to increase the number of securities specified to be offered or
15 sold, the person filing the amendment shall pay a registration fee
16 calculated in the manner specified in subsection (2). A
17 posteffective amendment relates back to the date of the offering of
18 the additional securities being registered if the amendment is
19 filed and the additional registration fee is paid within 1 year
20 after the date of the sale.

21 Sec. 306. (1) The administrator may issue a stop order denying
22 effectiveness to, or suspending or revoking the effectiveness of, a
23 registration statement if the administrator finds that the order is
24 in the public interest and that 1 or more of the following apply:

25 (a) The registration statement as of its effective date or
26 before the effective date in the case of an order denying
27 effectiveness, an amendment under section 305(10) as of its

1 effective date, or a report under section 305(9) is incomplete in a
2 material respect or contains a statement that, in the light of the
3 circumstances under which it was made, was false or misleading with
4 respect to a material fact.

5 (b) This act or a rule adopted or order issued under this act
6 or a condition imposed under this act has been willfully violated,
7 in connection with the offering, by the person filing the
8 registration statement; by the issuer, a partner, officer, or
9 director of the issuer or a person having a similar status or
10 performing a similar function; a promoter of the issuer or a person
11 directly or indirectly controlling or controlled by the issuer; but
12 only if the person filing the registration statement is directly or
13 indirectly controlled by or acting for the issuer; or by an
14 underwriter.

15 (c) The security registered or sought to be registered is the
16 subject of a permanent or temporary injunction of a court of
17 competent jurisdiction or an administrative stop order or similar
18 order issued under any federal, foreign, or state law other than
19 this act applicable to the offering, but the administrator shall
20 not institute a proceeding against an effective registration
21 statement under this paragraph more than 1 year after the date of
22 the order or injunction on which it is based, and the administrator
23 shall not issue an order under this subdivision on the basis of an
24 order or injunction issued under the securities act of another
25 state unless the order or injunction was based on conduct that
26 would constitute, as of the date of the order, a ground for a stop
27 order under this section.

1 (d) The issuer's enterprise or method of business includes or
2 would include activities that are unlawful where performed.

3 (e) With respect to a security sought to be registered under
4 section 303, there has been a failure to comply with the
5 undertaking required by section 303(2)(d).

6 (f) The applicant or registrant has not paid the proper filing
7 fee, but the administrator shall void the order if the deficiency
8 is corrected.

9 (g) One or more of the following apply to the offering:

10 (i) The offering will work or tend to work a fraud upon
11 purchasers or would so operate.

12 (ii) The offering has been or would be made with unreasonable
13 amounts of underwriters' and sellers' discounts, commissions, or
14 other compensation, promoters' profits or participations, or
15 unreasonable amounts or kinds of options.

16 (iii) The offering is being made on terms that are unfair,
17 unjust, or inequitable.

18 (2) To the extent practicable, the administrator by rule or
19 order under this act shall publish guidelines, rules, or orders
20 that provide notice of conduct that violates subsection (1)(g).

21 (3) The administrator shall not institute a stop order
22 proceeding against an effective registration statement on the basis
23 of conduct or a transaction known to the administrator when the
24 registration statement became effective unless the proceeding is
25 instituted within 30 days after the registration statement became
26 effective.

27 (4) The administrator may summarily revoke, deny, postpone, or

1 suspend the effectiveness of a registration statement pending final
2 determination of an administrative proceeding. Upon the issuance of
3 the order, the administrator shall promptly notify each person
4 specified in subsection (5) that the order has been issued, the
5 reasons for the revocation, denial, postponement, or suspension,
6 and that within 15 days after the receipt of a request in a record
7 from the person the matter will be scheduled for a hearing. If a
8 hearing is not requested and none is ordered by the administrator,
9 within 30 days after the date of service of the order, the order
10 becomes final. If a hearing is requested or ordered, the
11 administrator, after notice of and opportunity for hearing for each
12 person subject to the order, may modify or vacate the order or
13 extend the order until final determination.

14 (5) The administrator shall not issue a stop order under this
15 section until all of the following have occurred:

16 (a) Appropriate notice has been given to the applicant or
17 registrant, the issuer, and the person on whose behalf the
18 securities are to be or have been offered.

19 (b) An opportunity for hearing has been given to the applicant
20 or registrant, the issuer, and the person on whose behalf the
21 securities are to be or have been offered.

22 (c) Findings of fact and conclusions of law in a record in
23 accordance with the administrative procedures act of 1969, 1969 PA
24 306, MCL 24.201 to 24.328.

25 (6) The administrator may modify or vacate a stop order issued
26 under this section if the administrator finds that the conditions
27 that caused its issuance have changed or that it is necessary or

1 appropriate in the public interest or for the protection of
2 investors.

3 Sec. 307. The administrator may waive or modify, in whole or
4 in part, any or all of the requirements of sections 302, 303, and
5 304(2) or the requirement of any information or record in a
6 registration statement or in a periodic report filed pursuant to
7 section 305(9).

8 ARTICLE 4

9 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER
10 REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

11 Sec. 401. (1) A person shall not transact business in this
12 state as a broker-dealer unless the person is registered under this
13 act as a broker-dealer or is exempt from registration as a broker-
14 dealer under subsection (2) or (4).

15 (2) The following persons are exempt from the registration
16 requirement of subsection (1):

17 (a) A broker-dealer if the broker-dealer does not have a place
18 of business in this state and if the broker-dealer's only
19 transactions effected in this state are with any of the following:

20 (i) The issuer of the securities involved in the transactions.

21 (ii) A broker-dealer registered as a broker-dealer under this
22 act or not required to be registered as a broker-dealer under this
23 act.

24 (iii) An institutional investor.

25 (iv) A nonaffiliated federal covered investment adviser with
26 investments under management in excess of \$100,000,000.00 acting
27 for the account of others pursuant to discretionary authority in a

1 signed record.

2 (v) A bona fide preexisting customer whose principal place of
3 residence is not in this state and the broker-dealer is registered
4 as a broker-dealer under the securities exchange act of 1934 or not
5 required to be registered under the securities exchange act of 1934
6 and is registered under the securities act of the state in which
7 the customer maintains a principal place of residence.

8 (vi) A bona fide preexisting customer whose principal place of
9 residence is in this state but who was not present in this state
10 when the customer relationship was established, if both of the
11 following are met:

12 (A) The broker-dealer is registered under the securities
13 exchange act of 1934 or not required to be registered under the
14 securities exchange act of 1934 and is registered under the
15 securities laws of the state in which the customer relationship was
16 established and where the customer had maintained a principal place
17 of residence.

18 (B) Within 45 days after the customer's first transaction in
19 this state, the person files an application for registration as a
20 broker-dealer in this state and a further transaction is not
21 effected more than 75 days after the date on which the application
22 is filed, or, if earlier, the date on which the administrator
23 notifies the person that the administrator has denied the
24 application for registration or has stayed the pendency of the
25 application for good cause.

26 (vii) Not more than 3 customers in this state during the
27 previous 12 months, in addition to those specified in subparagraphs

1 (i) to (vi) and under subparagraph (viii), if the broker-dealer is
2 registered under the securities exchange act of 1934 or not
3 required to be registered under the securities exchange act of 1934
4 and is registered under the securities act of the state in which
5 the broker-dealer has its principal place of business.

6 (viii) Any other person exempted by rule or order under this
7 act.

8 (b) A person that deals solely in United States government
9 securities and is supervised as a dealer in government securities
10 by the board of governors of the federal reserve system, the
11 comptroller of the currency, the federal deposit insurance
12 corporation, or the office of thrift supervision.

13 (c) A person licensed or registered as a mortgage broker,
14 mortgage lender, or mortgage servicer under the mortgage brokers,
15 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to
16 445.1684, in the offer or sale of mortgage loans as defined in
17 section 1a of the mortgage brokers, lenders, and servicers
18 licensing act, 1987 PA 173, MCL 445.1651a.

19 (3) A broker-dealer, or an issuer engaged in offering,
20 offering to purchase, purchasing, or selling securities in this
21 state, shall not directly or indirectly employ or associate with an
22 individual to engage in an activity related to securities
23 transactions in this state if the registration of the individual is
24 suspended or revoked or the individual is barred from employment or
25 association with a broker-dealer, an issuer, an investment adviser,
26 or a federal covered investment adviser by an order of the
27 administrator under this act, the securities and exchange

1 commission, a securities regulator of another state, or a self-
2 regulatory organization. A broker-dealer or issuer does not violate
3 this subsection if the broker-dealer or issuer did not know and in
4 the exercise of reasonable care could not have known of the
5 suspension, revocation, or bar. If requested by a broker-dealer or
6 issuer and if good cause is shown, an order under this act may
7 modify or waive, in whole or in part, the application of the
8 prohibitions of this subsection.

9 (4) A rule or order under this act may permit any of the
10 following:

11 (a) A broker-dealer that is registered in Canada or other
12 foreign jurisdiction and that does not have a place of business in
13 this state to effect transactions in securities with or for, or
14 attempt to effect the purchase or sale of any securities by, any of
15 the following:

16 (i) An individual from Canada or other foreign jurisdiction who
17 is temporarily present in this state and with whom the broker-
18 dealer had a bona fide customer relationship before the individual
19 entered the United States.

20 (ii) An individual from Canada or other foreign jurisdiction
21 who is present in this state and whose transactions are in a self-
22 directed tax advantaged retirement plan of which the individual is
23 the holder or contributor in that foreign jurisdiction.

24 (iii) An individual who is present in this state, with whom the
25 broker-dealer customer relationship arose while the individual was
26 temporarily or permanently resident in Canada or the other foreign
27 jurisdiction.

1 (b) An agent who represents a broker-dealer that is exempt
2 under this subsection to effect transactions in securities or
3 attempt to effect the purchase or sale of any securities in this
4 state as permitted for a broker-dealer described in subsection
5 (4) (a) .

6 Sec. 402. (1) An individual shall not transact business in
7 this state as an agent unless the individual is registered under
8 this act as an agent or is exempt from registration as an agent
9 under subsection (2) .

10 (2) Each of the following individuals is exempt from the
11 registration requirement of subsection (1) :

12 (a) An individual who represents a broker-dealer in effecting
13 transactions in this state limited to those described in section
14 15(h) (2) of the securities exchange act of 1934, 15 USC 78o.

15 (b) An individual who represents a broker-dealer that is
16 exempt under section 401(2) or (4) .

17 (c) An individual who represents an issuer with respect to an
18 offer or sale of the issuer's own securities or those of the
19 issuer's parent or any of the issuer's subsidiaries, and who is not
20 compensated in connection with the individual's participation by
21 the payment of commissions or other remuneration based, directly or
22 indirectly, on transactions in those securities.

23 (d) An individual who represents an issuer and who effects
24 transactions in the issuer's securities exempted by section 202,
25 other than section 202(1) (k) or (n) .

26 (e) An individual who represents an issuer who effects
27 transactions solely in federal covered securities of the issuer,

1 but an individual who effects transactions in a federal covered
2 security under section 18(b)(3) or 18(b)(4)(D) of the securities
3 act of 1933, 15 USC 77r, is not exempt if the individual is
4 compensated in connection with the agent's participation by the
5 payment of commissions or other remuneration based, directly or
6 indirectly, on transactions in those securities.

7 (f) An individual who represents a broker-dealer registered in
8 this state under section 401(1) or exempt from registration under
9 section 401(2) in the offer and sale of securities for an account
10 of a nonaffiliated federal covered investment adviser with
11 investments under management in excess of \$100,000,000.00 acting
12 for the account of others pursuant to discretionary authority in a
13 signed record.

14 (g) An individual who represents an issuer in connection with
15 the purchase of the issuer's own securities.

16 (h) An individual who represents an issuer and who restricts
17 participation to performing clerical or ministerial acts.

18 (i) An employee of a person licensed or registered under the
19 mortgage brokers, lenders, and servicers licensing act, 1987 PA
20 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage
21 loans as defined in section 1a of the mortgage brokers, lenders,
22 and servicers licensing act, 1987 PA 173, MCL 445.1651a, when
23 acting as an employee of the licensed or registered person.

24 (j) Any other individual exempted by rule or order under this
25 act.

26 (3) The registration of an agent is effective only while the
27 agent is employed by or associated with a broker-dealer registered

1 under this act or an issuer that is offering, selling, or
2 purchasing its securities in this state.

3 (4) A broker-dealer, or an issuer engaged in offering,
4 selling, or purchasing securities in this state, shall not employ
5 or associate with an agent who transacts business in this state on
6 behalf of broker-dealers or issuers unless the agent is registered
7 under subsection (1) or exempt from registration under subsection
8 (2).

9 (5) An individual shall not act as an agent for more than 1
10 broker-dealer or more than 1 issuer at a time, unless the broker-
11 dealers or the issuers for which the agent acts are affiliated by
12 direct or indirect common control or are authorized by rule or
13 order under this act.

14 Sec. 403. (1) A person shall not transact business in this
15 state as an investment adviser unless the person is registered
16 under this act as an investment adviser or is exempt from
17 registration as an investment adviser under subsection (2).

18 (2) The following persons are exempt from the registration
19 requirement of subsection (1):

20 (a) A person that does not have a place of business in this
21 state and that is registered under the securities act of the state
22 in which the person has its principal place of business, if its
23 only clients in this state are any of the following:

24 (i) Federal covered investment advisers, investment advisers
25 registered under this act, or broker-dealers registered under this
26 act.

27 (ii) Institutional investors.

1 (iii) Bona fide preexisting clients whose principal places of
2 residence are not in this state, if the investment adviser is
3 registered under the securities act of the state in which the
4 clients maintain principal places of residence.

5 (iv) Any other client exempted by rule or order under this act.

6 (b) A person that does not have a place of business in this
7 state if the person has had, during the preceding 12 months and in
8 addition to those described in subdivision (a), not more than 5
9 clients who are natural persons and residents of this state.

10 (c) A person that does not hold itself out to the general
11 public as an investment adviser and that has had, during the
12 preceding 12 months and in addition to those described in
13 subdivision (a), not more than 5 clients who are natural persons,
14 who are residents of this state, and who are accredited investors
15 as defined in rule 501(a) under the securities act of 1933, 17 CFR
16 230.501.

17 (d) The person is an investment adviser who is not required to
18 be registered as an investment adviser under the investment
19 advisers act of 1940 if the investment adviser's only clients in
20 this state are other investment advisers, federal covered advisers,
21 broker-dealers, or institutional investors.

22 (e) Any other person exempted by rule or order under this act.

23 (3) An investment adviser shall not, directly or indirectly,
24 employ or associate with an individual to engage in an activity
25 related to investment advice in this state if the registration of
26 the individual is suspended or revoked, or the individual is barred
27 from employment or association with an investment adviser, federal

1 covered investment adviser, or broker-dealer by an order under this
2 act, the securities and exchange commission, a securities regulator
3 of another state, or a self-regulatory organization, unless the
4 investment adviser did not know, and in the exercise of reasonable
5 care could not have known, of the suspension, revocation, or bar.
6 If the investment adviser request and good cause is shown, the
7 administrator, by order, may waive, in whole or in part, the
8 application of the prohibitions of this subsection.

9 (4) An investment adviser shall not employ or associate with
10 an individual required to be registered under this act as an
11 investment adviser representative who transacts business in this
12 state on behalf of the investment adviser unless the individual is
13 registered under section 404(1) or is exempt from registration
14 under section 404(2).

15 Sec. 404. (1) An individual shall not transact business in
16 this state as an investment adviser representative unless the
17 individual is registered under this act as an investment adviser
18 representative or is exempt from registration as an investment
19 adviser representative under subsection (2).

20 (2) Each of the following individuals is exempt from the
21 registration requirement of subsection (1):

22 (a) An individual who is employed by or associated with an
23 investment adviser that is exempt from registration under section
24 403(2) or a federal covered investment adviser that is excluded
25 from the notice filing requirements of section 405.

26 (b) Any other individual exempted by rule or order under this
27 act.

1 (3) The registration of an investment adviser representative
2 is not effective while the investment adviser representative is not
3 employed by or associated with an investment adviser registered
4 under this act or a federal covered investment adviser that has
5 made or is required to make a notice filing under section 405.

6 (4) An individual may transact business as an investment
7 adviser representative for more than 1 investment adviser or
8 federal covered investment adviser unless a rule or order under
9 this act prohibits or limits an individual from acting as an
10 investment adviser representative for more than 1 investment
11 adviser or federal covered investment adviser.

12 (5) An individual acting as an investment adviser
13 representative shall not, directly or indirectly, conduct business
14 in this state on behalf of an investment adviser or a federal
15 covered investment adviser if the registration of the individual as
16 an investment adviser representative is suspended or revoked or the
17 individual is barred from employment or association with an
18 investment adviser or a federal covered investment adviser by an
19 order under this act, the securities and exchange commission, a
20 securities regulator of another state, or a self-regulatory
21 organization. If a federal covered investment adviser requests and
22 good cause is shown, the administrator, by order, may waive, in
23 whole or in part, the application of the requirements of this
24 subsection.

25 (6) An investment adviser registered under this act, a federal
26 covered investment adviser that has filed a notice under section
27 405, or a broker-dealer registered under this act is not required

1 to employ or associate with an individual as an investment adviser
2 representative if the only compensation paid to the individual for
3 a referral of investment advisory clients is paid to an investment
4 adviser registered under this act, a federal covered investment
5 adviser who has filed a notice under section 405, or a broker-
6 dealer registered under this act with which the individual is
7 employed or associated as an investment adviser representative.

8 Sec. 405. (1) Except with respect to a federal covered
9 investment adviser described in subsection (2), a federal covered
10 investment adviser shall not transact business in this state as a
11 federal covered investment adviser unless the federal covered
12 investment adviser complies with subsection (3).

13 (2) The following federal covered investment advisers are not
14 required to comply with subsection (3):

15 (a) A federal covered investment adviser without a place of
16 business in this state if its only clients in this state are any of
17 the following:

18 (i) Federal covered investment advisers, investment advisers
19 registered under this act, and broker-dealers registered under this
20 act.

21 (ii) Institutional investors.

22 (iii) Bona fide preexisting clients whose principal places of
23 residence are not in this state.

24 (iv) Other clients specified by rule or order under this act.

25 (b) A federal covered investment adviser that does not have a
26 place of business in this state if the federal covered investment
27 adviser has had, during the preceding 12 months, not more than 5

1 clients that are residents of this state in addition to those
2 specified under subdivision (a).

3 (c) Any other person excluded by rule or order under this act.

4 (3) A person acting as a federal covered investment adviser,
5 not excluded under subsection (2), shall file a notice, a consent
6 to service of process complying with section 611, and those records
7 that have been filed with the securities and exchange commission
8 under the investment advisers act of 1940 that are required by rule
9 or order under this act and pay the fees specified in section
10 410(5).

11 (4) A notice under subsection (3) is effective on filing.

12 Sec. 406. (1) A person shall register as a broker-dealer,
13 agent, investment adviser, or investment adviser representative by
14 filing an application and a consent to service of process complying
15 with section 611 and paying the fee specified in section 410 and
16 any reasonable fees charged by the designee of the administrator
17 for processing the filing. Each application must contain both of
18 the following:

19 (a) The information or record required for the filing of a
20 uniform application.

21 (b) If requested by the administrator, any other financial or
22 other information or record that the administrator determines is
23 appropriate.

24 (2) If the information or record contained in an application
25 that is filed under subsection (1) is or becomes inaccurate or
26 incomplete in any material respect, the registrant shall promptly
27 file a correcting amendment.

1 (3) If an order is not in effect and no proceeding is pending
2 under section 412, registration becomes effective at 12 noon on the
3 forty-fifth day after a completed application is filed unless the
4 registration is denied. A rule or order under this act may set an
5 earlier effective date or may defer the effective date until 12
6 noon on the forty-fifth day after the filing of any amendment
7 completing the application.

8 (4) A registration is effective until 12 midnight on December
9 31 of the year for which the application for registration is filed.
10 Unless an order is in effect under section 412, a registration may
11 be automatically renewed each year by filing the records required
12 by rule or order under this act and paying the fee specified in
13 section 410 and the costs charged by the designee of the
14 administrator for processing the filings.

15 (5) A rule or order under this act may impose other conditions
16 not inconsistent with the national securities markets improvement
17 act of 1996, Public Law 104-290, or an order under this act may
18 waive, in whole or in part, specific requirements in connection
19 with registration if the imposition or waiver is appropriate in the
20 public interest and for the protection of investors.

21 Sec. 407. (1) A broker-dealer or investment adviser may
22 succeed to the current registration of another broker-dealer or
23 investment adviser or a notice filing of a federal covered
24 investment adviser, and a federal covered investment adviser may
25 succeed to the current registration of an investment adviser or
26 notice filing of another federal covered investment adviser, by
27 filing as a successor an application for registration under section

1 401 or 403, or a notice under section 405, for the unexpired
2 portion of the current registration or notice filing.

3 (2) A broker-dealer or investment adviser that changes its
4 form of organization or state of incorporation or organization may
5 continue its registration by filing an amendment to its
6 registration if the change does not involve a material change in
7 its financial condition or management. The amendment is effective
8 when filed or on a date designated by the registrant in the filing.
9 The new organization is a successor to the original registrant for
10 the purposes of this act. If there is a material change in
11 financial condition or management, the broker-dealer or investment
12 adviser shall file a new application for registration. Any
13 predecessor registered under this act shall stop conducting its
14 securities business other than winding down transactions and shall
15 file for withdrawal of broker-dealer or investment adviser
16 registration within 45 days after filing its amendment to effect
17 succession.

18 (3) A broker-dealer or investment adviser that changes its
19 name may continue its registration by filing an amendment to its
20 registration. The amendment is effective when filed or on a date
21 designated by the registrant.

22 (4) A change of control of a broker-dealer or investment
23 adviser may be made in accordance with a rule or order under this
24 act.

25 Sec. 408. (1) If an agent registered under this act terminates
26 employment by or association with a broker-dealer or issuer, or if
27 an investment adviser representative registered under this act

1 terminates employment by or association with an investment adviser
2 or federal covered investment adviser, or if either registrant
3 terminates activities that require registration as an agent or
4 investment adviser representative, the broker-dealer, investment
5 adviser, or federal covered investment adviser shall promptly file
6 a notice of termination. If the registrant learns that the broker-
7 dealer, issuer, investment adviser, or federal covered investment
8 adviser has not filed the notice, the registrant may file the
9 notice.

10 (2) If an agent registered under this act terminates
11 employment by or association with a broker-dealer registered under
12 this act and begins employment by or association with another
13 broker-dealer registered under this act; or if an investment
14 adviser representative registered under this act terminates
15 employment by or association with an investment adviser registered
16 under this act or a federal covered investment adviser that has
17 filed a notice under section 405 and begins employment by or
18 association with another investment adviser registered under this
19 act or a federal covered investment adviser that has filed a notice
20 under section 405, then upon the filing by or on behalf of the
21 registrant, within 30 days after the termination, of an application
22 for registration that complies with the requirement of section
23 406(1) and payment of the filing fee required under section 410, 1
24 of the following applies to the registration of the agent or
25 investment adviser representative:

26 (a) If the agent's central registration depository record or
27 successor record or the investment adviser representative's

1 investment adviser registration depository record or successor
2 record does not contain a new or amended disciplinary disclosure
3 within the previous 12 months, the registration is immediately
4 effective as of the date of the completed filing.

5 (b) If the agent's central registration depository record or
6 the investment adviser representative's investment adviser
7 registration depository record contains a new or amended
8 disciplinary disclosure within the preceding 12 months, the
9 registration is temporarily effective as of the date of the
10 completed filing.

11 (3) If there are or were grounds for discipline under section
12 412, the administrator may withdraw a temporary registration within
13 30 days after the application is filed. If the administrator does
14 not withdraw the temporary registration within the 30-day period,
15 registration becomes automatically effective on the thirty-first
16 day after filing.

17 (4) The administrator may prevent the effectiveness of a
18 transfer of an agent or investment adviser representative under
19 subsection (2)(a) or (b) based on the public interest and the
20 protection of investors.

21 (5) If the administrator determines that a registrant or
22 applicant for registration is no longer in existence, has ceased to
23 act as a broker-dealer, agent, investment adviser, or investment
24 adviser representative, is the subject of an adjudication of
25 incapacity, is subject to the control of a committee, conservator,
26 or guardian, or cannot reasonably be located, a rule or order under
27 this act may require the registration be canceled or terminated or

1 the application denied. The administrator may reinstate a canceled
2 or terminated registration, with or without hearing, and may make
3 the registration retroactive.

4 Sec. 409. Withdrawal of registration by a broker-dealer,
5 agent, investment adviser, or investment adviser representative is
6 effective 60 days after an application to withdraw is filed or
7 within a shorter period as provided by rule or order under this
8 act, unless a revocation or suspension proceeding is pending when
9 the application is filed. If a proceeding is pending, withdrawal is
10 effective when and on conditions required by rule or order under
11 this act. The administrator may institute a revocation or
12 suspension proceeding under section 412 within 1 year after the
13 withdrawal became effective automatically and issue a revocation or
14 suspension order as of the last date on which registration was
15 effective if a proceeding is not pending.

16 Sec. 410. (1) Before October 1, 2012, a person shall pay a fee
17 of \$300.00 when initially filing an application for registration as
18 a broker-dealer and a fee of \$300.00 when filing a renewal of
19 registration as a broker-dealer. After September 30, 2012, a person
20 shall pay a fee of \$250.00 when initially filing an application for
21 registration as a broker-dealer and a fee of \$250.00 when filing a
22 renewal of registration as a broker-dealer. If the filing results
23 in a denial or withdrawal, the administrator shall retain all of
24 the filing fee.

25 (2) Before October 1, 2012, an individual shall pay a fee of
26 \$65.00 when filing an application for registration as an agent, a
27 fee of \$65.00 when filing a renewal of registration as an agent,

1 and a fee of \$65.00 when filing for a change of registration as an
2 agent. After September 30, 2012, an individual shall pay a fee of
3 \$30.00 when filing an application for registration as an agent, a
4 fee of \$30.00 when filing a renewal of registration as an agent,
5 and a fee of \$30.00 when filing for a change of registration as an
6 agent. If the filing results in a denial or withdrawal, the
7 administrator shall retain all of the filing fee.

8 (3) Before October 1, 2012, a person shall pay a fee of
9 \$200.00 when filing an application for registration as an
10 investment adviser and a fee of \$200.00 when filing a renewal of
11 registration as an investment adviser. After September 30, 2012, a
12 person shall pay a fee of \$150.00 when filing an application for
13 registration as an investment adviser and a fee of \$150.00 when
14 filing a renewal of registration as an investment adviser. If the
15 filing results in a denial or withdrawal, the administrator shall
16 retain all of the filing fee.

17 (4) Before October 1, 2012, an individual shall pay a fee of
18 \$65.00 when filing an application for registration as an investment
19 adviser representative, a fee of \$65.00 when filing a renewal of
20 registration as an investment adviser representative, and a fee of
21 \$65.00 when filing a change of registration as an investment
22 adviser representative. After September 30, 2012, an individual
23 shall pay a fee of \$30.00 when filing an application for
24 registration as an investment adviser representative, a fee of
25 \$30.00 when filing a renewal of registration as an investment
26 adviser representative, and a fee of \$30.00 when filing a change of
27 registration as an investment adviser representative. If the filing

1 results in a denial or withdrawal, the administrator shall retain
2 all of the filing fee.

3 (5) Before October 1, 2012, a federal covered investment
4 adviser required to file a notice under section 405 shall pay an
5 initial and annual notice fee of \$200.00. After September 30, 2012,
6 a federal covered investment adviser required to file a notice
7 under section 405 shall pay an initial and annual notice fee of
8 \$150.00.

9 (6) A person required to pay a filing or notice fee under this
10 section may transmit the fee through or to a designee as a rule or
11 order requires under this act.

12 (7) An investment adviser representative who is registered as
13 an agent under section 402 and who represents a person that is both
14 registered as a broker-dealer under section 401 and registered as
15 an investment adviser under section 403 or required as a federal
16 covered investment adviser to make a notice filing under section
17 405 is not required to pay an initial or annual registration fee
18 for registration as an investment adviser representative.

19 Sec. 411. (1) Subject to section 15(h) of the securities act
20 of 1934, 15 USC 78o, or section 222 of the investment advisers act
21 of 1940, 15 USC 80b-18a, a rule or order under this act may
22 establish minimum financial requirements for broker-dealers
23 registered or required to be registered under this act and
24 investment advisers registered or required to be registered under
25 this act.

26 (2) Subject to section 15(h) of the securities exchange act of
27 1934, 15 USC 78o, or section 222(b) of the investment advisers act

1 of 1940, 15 USC 80b-18a, a broker-dealer registered or required to
2 be registered under this act and an investment adviser registered
3 or required to be registered under this act shall file financial
4 reports required by rule or order under this act. If the
5 information contained in a record filed under this subsection is or
6 becomes inaccurate or incomplete in any material respect, the
7 registrant shall promptly file a correcting amendment.

8 (3) Subject to section 15(h) of the securities exchange act of
9 1934, 15 USC 78o, or section 222 of the investment advisers act of
10 1940, 15 USC 80b-18a, a broker-dealer registered or required to be
11 registered under this act and an investment adviser registered or
12 required to be registered under this act shall make and maintain
13 the accounts, correspondence, memoranda, papers, books, and other
14 records required by rule or order of the administrator. The records
15 required to be maintained under this subsection shall be maintained
16 as follows:

17 (a) Broker-dealer records may be maintained in any form of
18 data storage acceptable under section 17(a) of the securities
19 exchange act of 1934, 15 USC 78q, if they are readily accessible to
20 the administrator.

21 (b) Investment adviser records may be maintained in any form
22 of data storage required by rule or order under this act.

23 (4) The records of a broker-dealer registered or required to
24 be registered under this act and of an investment adviser
25 registered or required to be registered under this act are subject
26 to reasonable periodic, special, or other audits or inspections by
27 a representative of the administrator, in or outside of this state,

1 as the administrator considers necessary or appropriate in the
2 public interest and for the protection of investors. An audit or
3 inspection may be made at any time and without prior notice. The
4 administrator may copy and remove for audit or inspection copies of
5 all records the administrator reasonably considers necessary or
6 appropriate to conduct the audit or inspection. The administrator
7 may assess a reasonable charge for conducting an audit or
8 inspection under this subsection.

9 (5) Subject to section 15(h) of the securities exchange act of
10 1934, 15 USC 78o, or section 222 of the investment advisers act of
11 1940, 15 USC 80b-18a, a rule or order under this act may require a
12 broker-dealer and investment adviser that has custody of or
13 discretionary authority over funds or securities of a client to
14 obtain insurance or post a bond or other satisfactory form of
15 security in an amount established by the administrator by rule or
16 order. The administrator may determine the requirements of the
17 insurance, bond, or other satisfactory form of security. Insurance
18 or a bond or other satisfactory form of security shall not be
19 required of a broker-dealer registered under this act whose net
20 capital exceeds, or of an investment adviser registered under this
21 act whose minimum financial requirements exceed, the amounts
22 required by rule or order under this act. The insurance, bond, or
23 other satisfactory form of security must permit an action by a
24 person to enforce any liability on the insurance, bond, or other
25 satisfactory form of security if commenced within the time
26 limitations in section 509(10)(b).

27 (6) Subject to section 15(h) of the securities exchange act of

1 1934, 15 USC 78o, or section 222 of the investment advisers act of
2 1940, 15 USC 80b-18a, an agent shall not have custody of funds or
3 securities of a customer except under the supervision of a broker-
4 dealer and an investment adviser representative shall not have
5 custody of funds or securities of a client except under the
6 supervision of an investment adviser or federal covered investment
7 adviser. A rule or order under this act may prohibit, limit, or
8 impose conditions on the custody of funds or securities of a
9 customer by a broker-dealer and on the custody of securities or
10 funds of a client by an investment adviser.

11 (7) With respect to an investment adviser registered or
12 required to be registered under this act, a rule or order under
13 this act may require that information or other record be furnished
14 or disseminated to clients or prospective clients in this state as
15 necessary or appropriate in the public interest and for the
16 protection of investors and advisory clients.

17 (8) A rule or order under this act may require an individual
18 registered under section 402 or 404 to participate in a continuing
19 education program approved by the securities and exchange
20 commission and administered by a self-regulatory organization or,
21 in the absence of such a program, a rule or order under this act
22 may require continuing education for an individual registered under
23 section 404.

24 Sec. 412. (1) If the administrator finds that the order is in
25 the public interest and subsection (4) authorizes the action, an
26 order under this act may deny an application or condition or limit
27 registration of an applicant to be a broker-dealer, agent,

1 investment adviser, or investment adviser representative and, if
2 the applicant is a broker-dealer or investment adviser, of a
3 partner, officer, or director, or a person having a similar status
4 or performing similar functions, or any person directly or
5 indirectly in control of the broker-dealer or investment adviser.

6 (2) If the administrator finds that the order is in the public
7 interest and subsection (4) authorizes the action, an order under
8 this act may revoke, suspend, condition, or limit the registration
9 of a registrant and if the registrant is a broker-dealer or
10 investment adviser, of a partner, officer, or director, or a person
11 having a similar status or performing similar functions, or a
12 person directly or indirectly in control of the broker-dealer or
13 investment adviser. However, the administrator may not do any of
14 the following:

15 (a) Institute a revocation or suspension proceeding under this
16 subsection based on an order issued under a law of another state
17 that is reported to the administrator or a designee of the
18 administrator more than 1 year after the date of the order on which
19 it is based.

20 (b) Under subsection (4)(e)(i) or (ii), issue an order on the
21 basis of an order issued under the securities act of another state
22 unless the other order was based on conduct for which subsection
23 (4) would authorize the action had the conduct occurred in this
24 state.

25 (3) If the administrator finds that the order is in the public
26 interest and subsection (4)(a) to (f), (i) to (j), or (l) to (n)
27 authorizes the action, an order under this act may censure, impose

1 a bar, or impose a civil fine in an amount not to exceed a maximum
2 of \$10,000.00 for a single violation or \$500,000.00 for more than 1
3 violation on a registrant and, if the registrant is a broker-dealer
4 or investment adviser, on a partner, officer, or director, a person
5 having a similar status or performing similar functions, or a
6 person directly or indirectly in control of the broker-dealer or
7 investment adviser.

8 (4) A person may be disciplined under subsections (1) to (3)
9 if any of the following apply to the person:

10 (a) The person filed an application for registration in this
11 state under this act or the predecessor act within the previous 10
12 years, which, as of the effective date of registration or as of any
13 date after filing in the case of an order denying effectiveness,
14 was incomplete in any material respect or contained a statement
15 that, in light of the circumstances under which it was made, was
16 false or misleading with respect to a material fact.

17 (b) The person willfully violated or willfully failed to
18 comply with this act or the predecessor act or a rule adopted or
19 order issued under this act or the predecessor act within the
20 previous 10 years.

21 (c) The person was convicted of any felony or within the
22 previous 10 years was convicted of a misdemeanor involving a
23 security, a commodity futures or option contract, or an aspect of a
24 business involving securities, commodities, investments,
25 franchises, insurance, banking, or finance.

26 (d) The person is enjoined or restrained by a court of
27 competent jurisdiction in an action instituted by the administrator

1 under this act or the predecessor act, a state, the securities and
2 exchange commission, or the United States from engaging in or
3 continuing an act, practice, or course of business involving an
4 aspect of a business involving securities, commodities,
5 investments, franchises, insurance, banking, or finance.

6 (e) The person is the subject of an order, issued after notice
7 and opportunity for hearing by any of the following:

8 (i) The securities or other financial services regulator of a
9 state, or the securities and exchange commission or other federal
10 agency denying, revoking, barring, or suspending registration as a
11 broker-dealer, agent, investment adviser, federal covered
12 investment adviser, or investment adviser representative.

13 (ii) The securities regulator of a state or the securities and
14 exchange commission against a broker-dealer, agent, investment
15 adviser, investment adviser representative, or federal covered
16 investment adviser.

17 (iii) The securities and exchange commission or a self-
18 regulatory organization suspending or expelling the registrant from
19 membership in a self-regulatory organization.

20 (iv) A court adjudicating a United States postal service fraud.

21 (v) The insurance regulator of a state denying, suspending, or
22 revoking the license or registration of an insurance agent.

23 (vi) A depository institution or financial services regulator
24 suspending or barring the person from the depository institution or
25 other financial services business.

26 (f) The person is the subject of an adjudication or
27 determination, after notice and opportunity for hearing, by the

1 securities and exchange commission, the commodity futures trading
2 commission, the federal trade commission, a federal depository
3 institution regulator, or a depository institution, insurance, or
4 other financial services regulator of a state that the person
5 willfully violated the securities act of 1933, the securities
6 exchange act of 1934, the investment advisers act of 1940, the
7 investment company act of 1940, or the commodity exchange act, the
8 securities or commodities law of a state, or a federal or state law
9 under which a business involving investments, franchises,
10 insurance, banking, or finance is regulated.

11 (g) The person is insolvent, either because the person's
12 liabilities exceed the person's assets or because the person cannot
13 meet the person's obligations as they mature. The administrator
14 shall not enter an order against an applicant or registrant under
15 this subdivision without a finding of insolvency as to the
16 applicant or registrant.

17 (h) The person refuses to allow or otherwise impedes the
18 administrator from conducting an audit or inspection under section
19 411(4) or refuses access to a registrant's office to conduct an
20 audit or inspection under section 411(4).

21 (i) The person has failed to reasonably supervise an agent,
22 investment adviser representative, or other individual, if the
23 agent, investment adviser representative, or other individual was
24 subject to the person's supervision and committed a violation of
25 this act or the predecessor act or a rule adopted or order issued
26 under this act or the predecessor act within the previous 10 years.

27 (j) The person has not paid the proper filing fee within 30

1 days after having been notified by the administrator of a
2 deficiency. The administrator shall vacate an order under this
3 paragraph when the deficiency is corrected.

4 (k) After notice and opportunity for a hearing, 1 or more of
5 the following have occurred within the previous 10 years:

6 (i) A court of competent jurisdiction has found the person to
7 have willfully violated the laws of a foreign jurisdiction under
8 which the business of securities, commodities, investment,
9 franchises, insurance, banking, or finance is regulated.

10 (ii) The person was found to have been the subject of an order
11 of a securities regulator of a foreign jurisdiction denying,
12 revoking, or suspending the right to engage in the business of
13 securities as a broker-dealer, agent, investment adviser,
14 investment adviser representative, or similar person.

15 (iii) The person was found to have been suspended or expelled
16 from membership by or participation in a securities exchange or
17 securities association operating under the securities laws of a
18 foreign jurisdiction.

19 (l) The person is the subject of a cease and desist order
20 issued by the securities and exchange commission or issued under
21 the securities, commodities, investment, franchise, banking,
22 finance, or insurance laws of a state.

23 (m) The person has engaged in dishonest or unethical practices
24 in the securities, commodities, investment, franchise, banking,
25 finance, or insurance business within the previous 10 years.

26 (n) The person is not qualified on the basis of factors such
27 as training, experience, and knowledge of the securities business.

1 If an application is made by an agent for a broker-dealer that is a
2 member of a self-regulatory organization or by an individual for
3 registration as an investment adviser representative, a denial
4 order shall not be based on this subdivision if the individual has
5 successfully completed all examinations required by subsection (5).
6 The administrator may require an applicant for registration under
7 section 402 or 404 who has not been registered in a state within
8 the 2 years preceding the filing of an application in this state to
9 successfully complete an examination.

10 (5) A rule or order under this act may require that an
11 examination, including an examination developed or approved by an
12 organization of securities regulators, be successfully completed by
13 a class of individuals or all individuals. An order under this act
14 may waive an examination as to an individual and a rule under this
15 act may waive an examination as to a class of individuals if the
16 administrator determines that the examination is not necessary or
17 appropriate in the public interest and for the protection of
18 investors.

19 (6) The administrator may suspend or deny an application
20 summarily, restrict, condition, limit, or suspend a registration,
21 or censure, bar, or impose a civil fine on a registrant pending
22 final determination of an administrative proceeding. On the
23 issuance of the order, the administrator shall promptly notify each
24 person subject to the order that the order has been issued, the
25 reasons for the action, and that, within 15 days after the receipt
26 of a request in a record from the person, the matter will be
27 scheduled for a hearing. If a hearing is not requested by a person

1 subject to the order or is not ordered by the administrator within
2 30 days after the date of service of the order, the order is final.
3 If a hearing is requested or ordered, the administrator, after
4 notice of and opportunity for hearing to each person subject to the
5 order, may modify or vacate the order or extend the order until
6 final determination.

7 (7) Except under subsection (6), an order shall not be issued
8 under this section unless all of the following have occurred:

9 (a) Appropriate notice has been given to the applicant or
10 registrant.

11 (b) Opportunity for hearing has been given to the applicant or
12 registrant.

13 (c) Findings of fact and conclusions of law have been made on
14 the record pursuant to the administrative procedures act of 1969,
15 1969 PA 306, MCL 24.201 to 24.328.

16 (8) A person who controls, directly or indirectly, a person
17 not in compliance with this section may be disciplined by order of
18 the administrator under subsections (1) to (3) to the same extent
19 as the noncomplying person, unless the controlling person did not
20 know, and in the exercise of reasonable care could not have known,
21 of the existence of conduct that is a basis for discipline under
22 this section.

23 (9) The administrator shall not institute a proceeding under
24 subsection (1), (2), or (3) solely based on material facts actually
25 known by the administrator unless an investigation or the
26 proceeding is instituted within 1 year after the administrator
27 actually knew the material facts.

1 Sec. 413. A broker-dealer acting as a finder shall not do any
2 of the following:

3 (a) Take possession of funds or securities in connection with
4 the transaction for which payment is made for services as a finder.

5 (b) Fail to disclose clearly and conspicuously in writing to
6 all persons involved in the transaction as a result of the broker-
7 dealer's finding activities before the sale or purchase that the
8 person is acting as a finder, any payment for services as a finder,
9 the method and amount of payment, and any beneficial interest,
10 direct or indirect, of the broker-dealer, or a member of the
11 broker-dealer's immediate family if the broker-dealer is an
12 individual, in the issue of the securities that are the subject of
13 services as a finder.

14 (c) Participate in the offer, purchase, or sale of a security
15 in violation of section 301. However, if the broker-dealer makes a
16 reasonable effort to ascertain if a registration has been effected
17 or an exemption order granted in this state or to ascertain the
18 basis for an exemption claim and does not have knowledge that the
19 proposed transaction would violate section 301, the broker-dealer's
20 activities as a finder do not violate section 301.

21 (d) Participate in the offer, purchase, or sale of a security
22 without obtaining information relative to the risks of the
23 transaction, the direct or indirect compensation to be received by
24 promoters, partners, officers, directors, or their affiliates, the
25 financial condition of the issuer, and the use of proceeds to be
26 received from investors, or fail to read any offering materials
27 obtained. This section does not require independent investigation

1 or alteration of offering materials furnished to the broker-dealer.

2 (e) Fail to inform or otherwise ensure disclosure to all
3 persons involved in the transaction as a result of the broker-
4 dealer's finding activities of any material information which the
5 broker-dealer knows, or in the exercise of reasonable care should
6 know based on the information furnished to the broker-dealer, is
7 material in making an investment decision, until conclusion of the
8 transaction.

9 (f) Locate, introduce, or refer persons that the broker-dealer
10 knows, or after a reasonable inquiry should know, are not suitable
11 investors by reason of their financial condition, age, experience,
12 or need to diversify investments.

13 ARTICLE 5

14 FRAUD AND LIABILITIES

15 Sec. 501. It is unlawful for a person, in connection with the
16 offer, sale, or purchase of a security, to directly or indirectly
17 do any of the following:

18 (a) Employ a device, scheme, or artifice to defraud.

19 (b) Make an untrue statement of a material fact or omit to
20 state a material fact necessary in order to make the statements
21 made, in the light of the circumstances under which they were made,
22 not misleading.

23 (c) Engage in an act, practice, or course of business that
24 operates or would operate as a fraud or deceit on another person.

25 Sec. 502. (1) It is unlawful for a person that advises others
26 for compensation, either directly or indirectly or through
27 publications or writings, as to the value of securities or the

1 advisability of investing in, purchasing, or selling securities, or
2 that, for compensation and as part of a regular business, issues or
3 promulgates analyses or reports relating to securities, to do any
4 of the following:

5 (a) Employ a device, scheme, or artifice to defraud another
6 person.

7 (b) Engage in an act, practice, or course of business that
8 operates or would operate as a fraud or deceit upon another person.

9 (2) An investment adviser acting as a finder shall not do any
10 of the following:

11 (a) Take possession of funds or securities in connection with
12 the transaction for which payment is made for services as a finder.

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

21 (c) Participate in the offer, purchase, or sale of a security
22 in violation of section 301. However, if the investment adviser
23 makes a reasonable effort to ascertain if a registration has been
24 effected or an exemption order granted in this state or to
25 ascertain the basis for an exemption claim and does not have
26 knowledge that the proposed transaction would violate section 301,
27 his or her activities as a finder do not violate section 301.

1 (d) Participate in the offer, purchase, or sale of a security
2 without obtaining information relative to the risks of the
3 transaction, the direct or indirect compensation to be received by
4 promoters, partners, officers, directors, or their affiliates, the
5 financial condition of the issuer, and the use of proceeds to be
6 received from investors, or fail to read any offering materials
7 obtained. This subdivision does not require independent
8 investigation or alteration of offering materials furnished to the
9 finder.

10 (e) Fail to inform or otherwise ensure disclosure to all
11 persons involved in the transaction as a result of his or her
12 finding activities of any material information which the finder
13 knows, or in the exercise of reasonable care should know based on
14 the information furnished to him or her, is material in making an
15 investment decision, until conclusion of the transaction. This
16 subdivision does not require the finder to independently generate
17 information.

18 (f) Locate, introduce, or refer persons that the finder knows,
19 or after a reasonable inquiry should know, are not suitable
20 investors by reason of their financial condition, age, experience,
21 or need to diversify investments.

22 (3) A rule or order under this act may do any of the
23 following:

24 (a) Define an act, practice, or course of business of an
25 investment adviser or an investment adviser representative, other
26 than a supervised person of a federal covered investment adviser,
27 as fraudulent, deceptive, or manipulative, and prescribe means

1 reasonably designed to prevent investment advisers and investment
2 adviser representatives, other than supervised persons of a federal
3 covered investment adviser, from engaging in acts, practices, and
4 courses of business defined as fraudulent, deceptive, or
5 manipulative.

6 (b) Specify the contents of an investment advisory contract
7 entered into, extended, or renewed by an investment adviser.

8 Sec. 503. (1) In a civil action or administrative proceeding
9 under this act, a person claiming an exemption, exception,
10 preemption, or exclusion has the burden to prove the applicability
11 of the exemption, exception, preemption, or exclusion.

12 (2) In a criminal proceeding under this act, a person claiming
13 an exemption, exception, preemption, or exclusion has the burden of
14 going forward with evidence of the claim.

15 Sec. 504. (1) Subject to subsection (2), a rule or order under
16 this act may require the filing of a prospectus, pamphlet,
17 circular, form letter, advertisement, sales literature, or other
18 advertising record relating to a security or investment advice
19 addressed or intended for distribution to prospective investors,
20 including clients or prospective clients of a person registered or
21 required to be registered as an investment adviser under this act.

22 (2) This section does not apply to sales and advertising
23 literature specified in subsection (1) relating to a federal
24 covered security, a federal covered investment adviser, or a
25 security or transaction exempted by section 201, 202, or 203 except
26 as required under section 201(g).

27 Sec. 505. A person shall not make or cause to be made, in a

1 record that is used in an action or proceeding or filed under this
2 act, a statement that, at the time and in the light of the
3 circumstances under which it is made, is false or misleading in a
4 material respect, or, in connection with the statement, omit to
5 state a material fact necessary to make the statement made, in the
6 light of the circumstances under which it was made, not false or
7 misleading.

8 Sec. 506. The filing of an application for registration, a
9 registration statement, a notice filing under this act, or the
10 registration of a person, the notice filing by a person, or the
11 registration of a security under this act does not constitute a
12 finding by the administrator that a record filed under this act is
13 true, complete, and not misleading. The filing or registration or
14 the availability of an exemption, exception, preemption, or
15 exclusion for a security or a transaction does not mean that the
16 administrator has passed upon the merits or qualifications of, or
17 recommended or given approval to, a person, security, or
18 transaction. A person shall not make or cause to be made to a
19 purchaser, customer, client, or prospective customer or client a
20 representation inconsistent with this section.

21 Sec. 507. A broker-dealer, agent, investment adviser, federal
22 covered investment adviser, or investment adviser representative is
23 not liable to another broker-dealer, agent, investment adviser,
24 federal covered investment adviser, or investment adviser
25 representative for defamation relating to a statement that is
26 contained in a record required by the administrator, or designee of
27 the administrator, the securities and exchange commission, or a

1 self-regulatory organization, unless the person knew, or should
2 have known at the time that the statement was made, that it was
3 false in a material respect or the person acted in reckless
4 disregard of the statement's truth or falsity.

5 Sec. 508. (1) A person that willfully violates this act or a
6 rule adopted or order issued under this act, except section 504 or
7 the notice filing requirements of section 302 or 405, or that
8 willfully violates section 505 knowing the statement made to be
9 false or misleading in a material respect, is guilty of a felony
10 punishable by imprisonment for not more than 10 years or a fine of
11 not more than \$500,000.00 for each violation, or both. An
12 individual convicted of violating a rule or order under this act
13 may be fined, but shall not be imprisoned, if the individual did
14 not have knowledge of the rule or order.

15 (2) The attorney general or the proper prosecuting attorney
16 may institute appropriate criminal proceedings under this act with
17 or without a reference from the administrator.

18 (3) This act does not limit the power of this state to punish
19 a person for conduct that constitutes a crime under other laws of
20 this state.

21 Sec. 509. (1) Enforcement of civil liability under this
22 section is subject to the securities litigation uniform standards
23 act of 1998.

24 (2) A person is liable to the purchaser if the person sells a
25 security in violation of section 301, or by means of an untrue
26 statement of a material fact or an omission to state a material
27 fact necessary in order to make the statement made, in light of the

1 circumstances under which it is made, not misleading, the purchaser
2 not knowing the untruth or omission, and the seller not sustaining
3 the burden of proof that the seller did not know and, in the
4 exercise of reasonable care, could not have known of the untruth or
5 omission. All of the following apply to an action under this
6 subsection:

7 (a) The purchaser may maintain an action to recover the
8 consideration paid for the security, less the amount of any income
9 received on the security, and interest at 6% per year from the date
10 of the purchase, costs, and reasonable attorney fees determined by
11 the court, upon the tender of the security, or for actual damages
12 as provided in subdivision (c).

13 (b) The tender referred to in subdivision (a) may be made any
14 time before entry of judgment. Tender requires only notice in a
15 record of ownership of the security and willingness to exchange the
16 security for the amount specified. A purchaser that no longer owns
17 the security may recover actual damages as provided in subdivision
18 (c).

19 (c) Actual damages in an action arising under this subsection
20 are the amount that would be recoverable upon a tender less the
21 value of the security when the purchaser disposed of it and
22 interest at 6% from the date of purchase, costs, and reasonable
23 attorney fees determined by the court.

24 (3) A person is liable to the seller if the person buys a
25 security by means of an untrue statement of a material fact or
26 omission to state a material fact necessary in order to make the
27 statement made, in light of the circumstances under which it is

1 made, not misleading, if the seller did not know of the untruth or
2 omission and the purchaser does not sustain the burden of proving
3 that the purchaser did not know, and in the exercise of reasonable
4 care could not have known, of the untruth or omission. All of the
5 following apply to an action under this subsection:

6 (a) The seller may maintain an action to recover the security,
7 any income received on the security, costs, and reasonable attorney
8 fees determined by the court, on the tender of the purchase price,
9 or for actual damages as provided in subdivision (c).

10 (b) The tender referred to in subdivision (a) may be made any
11 time before entry of judgment. Tender requires only notice in a
12 record of the present ability to pay the amount tendered and
13 willingness to take delivery of the security for the amount
14 specified. If the purchaser no longer owns the security, the seller
15 may recover actual damages as provided in subdivision (c).

16 (c) Actual damages in an action arising under this subsection
17 are the difference between the price at which the security was sold
18 and the value the security would have had at the time of the sale
19 in the absence of the purchaser's conduct causing liability,
20 interest at 6% from the date of sale of the security, costs, and
21 reasonable attorney fees determined by the court.

22 (4) A person acting as a broker-dealer or agent that sells or
23 buys a security in violation of section 401(1), 402(1), or 506 is
24 liable to the customer. The customer, if a purchaser, may maintain
25 an action for recovery of actual damages as specified in subsection
26 (2) or, if a seller, a remedy as specified in subsection (3).

27 (5) A person acting as an investment adviser or investment

1 adviser representative that provides investment advice for
2 compensation in violation of section 403(1), 404(1), or 506 is
3 liable to the client. The client may maintain an action at law or
4 in equity to recover the consideration paid for the advice,
5 interest at 6% from the date of payment, costs, and reasonable
6 attorney fees determined by the court.

7 (6) A person that receives, directly or indirectly, any
8 consideration for providing investment advice to another person and
9 that employs a device, scheme, or artifice to defraud the other
10 person or engages in an act, practice, or course of business that
11 operates or would operate as a fraud or deceit on the other person
12 is liable to the other person. The person defrauded may maintain an
13 action to recover the consideration paid for the advice and the
14 amount of any actual damages caused by the fraudulent conduct that
15 gives rise to liability under this subsection, interest at 6% from
16 the date of the fraudulent conduct, costs, and reasonable attorney
17 fees determined by the court, less the amount of any income
18 received as a result of the fraudulent conduct. This subsection
19 does not apply to a broker-dealer or its agents if the investment
20 advice provided is solely incidental to transacting business as a
21 broker-dealer and no special compensation is received for the
22 investment advice.

23 (7) The following persons are liable jointly and severally
24 with and to the same extent as persons liable under subsections (2)
25 to (6):

26 (a) A person that directly or indirectly controls a person
27 liable under subsections (2) to (6), unless the controlling person

1 sustains the burden of proving that the controlling person did not
2 know, and in the exercise of reasonable care could not have known,
3 of the existence of the conduct by reason of which the liability is
4 alleged to exist.

5 (b) An individual who is a managing partner, executive
6 officer, or director of a person liable under subsections (2) to
7 (6), including each individual having a similar status or
8 performing similar functions, unless the individual sustains the
9 burden of proving that the individual did not know and, in the
10 exercise of reasonable care could not have known, of the existence
11 of the conduct by reason of which the liability is alleged to
12 exist.

13 (c) An individual who is an employee of or associated with a
14 person liable under subsections (2) to (6) and who materially aids
15 the conduct giving rise to the liability, unless the individual
16 sustains the burden of proving that the individual did not know
17 and, in the exercise of reasonable care could not have known, of
18 the existence of the conduct by reason of which the liability is
19 alleged to exist.

20 (d) A person that is a broker-dealer, agent, investment
21 adviser, or investment adviser representative that materially aids
22 the conduct giving rise to the liability under subsections (2) to
23 (6), unless the person sustains the burden of proving that the
24 person did not know and, in the exercise of reasonable care could
25 not have known, of the existence of the conduct by reason of which
26 liability is alleged to exist.

27 (8) A person liable under this section has a right of

1 contribution as in cases of contract against any other person
2 liable under this section for the same conduct.

3 (9) A cause of action under this section survives the death of
4 an individual who might have been a plaintiff or defendant.

5 (10) A person may not obtain relief if an action is not
6 commenced within 1 of the following time limits, as applicable:

7 (a) Under subsection (2) for violation of section 301, or
8 under subsection (4) or (5), unless the action is commenced within
9 1 year after the violation occurred.

10 (b) Under subsection (2), other than for violation of section
11 301, or under subsection (3) or (6), unless the action is commenced
12 within the earlier of 2 years after discovery of the facts
13 constituting the violation or 5 years after the violation occurred.

14 (11) A person that has made or engaged in the performance of a
15 contract in violation of this act or a rule adopted or order issued
16 under this act, or that has acquired a purported right under the
17 contract with knowledge of the facts by reason of which its making
18 or performance was in violation of this act, may not base an action
19 on the contract.

20 (12) A condition, stipulation, or provision binding a person
21 purchasing or selling a security or receiving investment advice to
22 waive compliance with this act or a rule adopted or order issued
23 under this act is void.

24 (13) The rights and remedies provided by this act are in
25 addition to any other rights or remedies that may exist, but this
26 act does not create a cause of action not specified in this section
27 or section 411(5).

1 Sec. 510. A purchaser, seller, or recipient of investment
2 advice may not maintain an action under section 509 if all of the
3 following are met:

4 (a) The purchaser, seller, or recipient of investment advice
5 receives in a record, before the action is commenced, an offer that
6 does all of the following:

7 (i) States the respect in which liability under section 509 may
8 have arisen and fairly advises the purchaser, seller, or recipient
9 of investment advice of that person's rights in connection with the
10 offer, including financial or other information necessary to
11 correct all material misstatements or omissions in the information
12 that was required by this act to be furnished to that person at the
13 time of the purchase, sale, or investment advice.

14 (ii) If the basis for relief under this section may have been a
15 violation of section 509(2), offers to repurchase the security for
16 cash, payable on delivery of the security, equal to the
17 consideration paid, and interest at 6% per year from the date of
18 purchase, less the amount of any income received on the security,
19 or, if the purchaser no longer owns the security, offers to pay the
20 purchaser upon acceptance of the offer damages in an amount that
21 would be recoverable upon a tender, less the value of the security
22 when the purchaser disposed of it, and interest at 6% from the date
23 of purchase in cash equal to the damages computed in the manner
24 provided in this subsection.

25 (iii) If the basis for relief under this section may have been a
26 violation of section 509(3), offers to tender the security, on
27 payment by the seller of an amount equal to the purchase price

1 paid, less income received on the security by the purchaser and
2 interest at 6% from the date of the sale, or if the purchaser no
3 longer owns the security, offers to pay the seller upon acceptance
4 of the offer, in cash, damages in the amount of the difference
5 between the price at which the security was purchased and the value
6 the security would have had at the time of the purchase in the
7 absence of the purchaser's conduct that may have caused liability
8 and interest at 6% from the date of the sale.

9 (iv) If the basis for relief under this section may have been a
10 violation of section 509(4), and if the customer is a purchaser,
11 offers to pay as specified in subdivision (a)(ii) or, if the
12 customer is a seller, offers to tender or to pay as specified in
13 subdivision (a)(iii).

14 (v) If the basis for relief under this section may have been a
15 violation of section 509(5), offers to reimburse in cash the
16 consideration paid for the advice and interest at 6% from the date
17 of payment.

18 (vi) If the basis for relief under this section may have been a
19 violation of section 509(6), offers to reimburse in cash the
20 consideration paid for the advice and the amount of any actual
21 damages that may have been caused by the conduct, and interest at
22 6% from the date of the violation causing the loss.

23 (vii) States that the offer must be accepted by the purchaser,
24 seller, or recipient of investment advice within 30 days after the
25 date of its receipt by the purchaser, seller, or recipient of
26 investment advice or within a shorter period of not less than 3
27 days that the administrator, by order, specifies.

1 (b) The offeror has the present ability to pay the amount
2 offered or to tender the security under subdivision (a).

3 (c) The offer under subdivision (a) is delivered to the
4 purchaser, seller, or recipient of investment advice or sent in a
5 manner that ensures receipt by the purchaser, seller, or recipient
6 of investment advice.

7 (d) The purchaser, seller, or recipient of investment advice
8 that accepts the offer under subdivision (a) in a record within the
9 period specified under subdivision (a)(vii) is paid in accordance
10 with the terms of the offer.

11 ARTICLE 6

12 ADMINISTRATION AND JUDICIAL REVIEW

13 Sec. 601. (1) The administrator shall administer this act.

14 (2) The administrator or officer, employee, or designee of the
15 administrator shall not use for personal benefit or the benefit of
16 others records or other information obtained by or filed with the
17 administrator that are not public under section 607(2). This act
18 does not authorize the administrator or an officer, employee, or
19 designee of the administrator to disclose the record or
20 information, except in accordance with section 602, 607(3), or 608.

21 (3) This act does not create or diminish any privilege or
22 exemption that exists at common law, by statute, by rule, or
23 otherwise.

24 (4) The administrator may develop and implement investor
25 education initiatives to inform the public about investing in
26 securities, with particular emphasis on the prevention and
27 detection of securities fraud. In developing and implementing these

1 initiatives, the administrator may collaborate with public and
2 nonprofit organizations with an interest in investor education. The
3 administrator may accept grants or donations from a person that is
4 not affiliated with the securities industry or from a nonprofit
5 organization, regardless of whether or not the organization is
6 affiliated with the securities industry, to develop and implement
7 investor education initiatives. This subsection does not authorize
8 the administrator to require participation or monetary
9 contributions of a registrant in an investor education program.

10 (5) The securities investor education and training fund is
11 created in the state treasury. All of the following apply to the
12 securities investor education and training fund:

13 (a) The state treasurer shall credit to the fund all civil
14 fines, costs of investigations, and other administrative
15 assessments received under this act and may receive money or other
16 assets from any source for deposit into the fund.

17 (b) The state treasurer shall direct the investment of the
18 fund. The state treasurer shall credit to the fund interest and
19 earnings from fund investments.

20 (c) If the amount of money in the fund at the close of any
21 fiscal year is \$1,000,000.00 or less, that money shall remain in
22 the fund and shall not lapse to the general fund. If the amount of
23 money in the fund at the close of any fiscal year is more than
24 \$1,000,000.00, \$1,000,000.00 shall remain in the fund and shall not
25 lapse to the general fund, and the balance of the money shall be
26 credited to the general fund.

27 (d) The administrator is the administrator of the fund for

1 auditing purposes.

2 (e) The administrator shall use or disburse money appropriated
3 from the fund for the education and training of Michigan residents
4 in matters concerning securities laws and investment issues.

5 (6) All fees and civil or administrative fines received under
6 this act shall be deposited in the state treasury to the credit of
7 the administrator, to be used pursuant to legislative appropriation
8 by the administrator in carrying out those duties required by law.
9 After the payment of the amounts appropriated by the legislature
10 for the necessary expenses incurred in the administration of this
11 act, the money remaining shall be credited to the general fund of
12 this state.

13 Sec. 602. (1) The administrator may do any of the following:

14 (a) Conduct public or private investigations in or out of this
15 state that the administrator considers necessary or appropriate to
16 determine whether any person has violated, is violating, or is
17 about to violate this act or a rule adopted or order issued under
18 this act, or to aid in the enforcement of this act or the adoption
19 of rules and forms under this act.

20 (b) Require or permit a person to testify, file a statement,
21 or produce a record, under oath or otherwise as the administrator
22 determines, as to all the facts and circumstances concerning a
23 matter to be investigated or about which an action or proceeding is
24 to be commenced.

25 (c) Publish a record concerning an action, proceeding, or
26 investigation under, or a violation of, this act or a rule adopted
27 or order issued under this act if the administrator determines it

1 is necessary or appropriate in the public interest and for the
2 protection of investors.

3 (2) For the purpose of an investigation under this act, the
4 administrator or a designated officer may administer oaths and
5 affirmations, subpoena witnesses, seek compulsion of attendance,
6 take evidence, require the filing of statements, and require the
7 production of any records that the administrator considers relevant
8 or material to the investigation.

9 (3) If a person fails to appear or refuses to testify, file a
10 statement, produce records, or otherwise fails to obey a subpoena
11 as required by the administrator under this act, the administrator
12 may refer the matter to the attorney general or the proper
13 prosecuting attorney, who may apply to the circuit court of Ingham
14 county or a court of another state to enforce compliance. The court
15 may do any of the following:

16 (a) Hold the person in contempt.

17 (b) Order the person to appear before the administrator.

18 (c) Order the person to testify about the matter under
19 investigation or in question.

20 (d) Order the production of records.

21 (e) Grant injunctive relief, including restricting or
22 prohibiting the offer or sale of securities or the providing of
23 investment advice.

24 (f) Order a civil fine of not less than \$10,000.00 and not
25 more than \$500,000.00 for each violation.

26 (g) Grant any other necessary or appropriate relief.

27 (4) This section does not preclude a person from applying to

1 the circuit court of Ingham county or a court of another state for
2 appropriate relief from a request to appear, testify, file a
3 statement, produce records, or obey a subpoena.

4 (5) An individual is not excused from attending, testifying,
5 filing a statement, producing a record or other evidence, or
6 obeying a subpoena of the administrator under this act or in an
7 action commenced or proceeding instituted by the administrator
8 under this act on the ground that the required testimony,
9 statement, record, or other evidence, directly or indirectly, may
10 tend to incriminate the individual or subject the individual to a
11 criminal fine, administrative or civil fine, or forfeiture. If the
12 individual refuses to testify, file a statement, or produce a
13 record or other evidence on the basis of the individual's privilege
14 against self-incrimination, the administrator may apply to the
15 circuit court to compel the testimony, the filing of the statement,
16 the production of the record, or the giving of other evidence. The
17 testimony, record, or other information compelled under a court
18 order obtained under this subsection shall not be used, directly or
19 indirectly, against the individual in a criminal case, except in a
20 prosecution for perjury, contempt, or otherwise failing to comply
21 with the order.

22 (6) At the request of the securities regulator of another
23 state or a foreign jurisdiction, the administrator may provide
24 assistance if the requesting regulator states that it is conducting
25 an investigation to determine whether a person has violated, is
26 violating, or is about to violate a law or rule of the other state
27 or foreign jurisdiction relating to securities matters which the

1 requesting regulator administers or enforces. The administrator may
2 provide the assistance by using the authority to investigate and
3 the powers conferred by this section as the administrator
4 determines is necessary or appropriate. The assistance may be
5 provided without regard to whether the conduct described in the
6 request would also constitute a violation of this act or other law
7 of this state if occurring in this state. In deciding whether to
8 provide the assistance, the administrator may consider whether the
9 requesting regulator is permitted and has agreed to provide
10 assistance reciprocally within its state or foreign jurisdiction to
11 the administrator on securities matters when requested, whether
12 compliance with the request would violate or prejudice the public
13 policy of this state, and the availability of resources and
14 employees of the administrator to carry out the request for
15 assistance.

16 Sec. 603. (1) If it appears to the administrator that a person
17 has engaged, is engaging, or is about to engage in an act,
18 practice, or course of business constituting a violation of this
19 act or a rule adopted or order issued under this act, or that a
20 person has, is, or is about to engage in an act, practice, or
21 course of business that materially aids a violation of this act or
22 a rule adopted or order issued under this act, the administrator
23 may maintain an action in the circuit court to enjoin the act,
24 practice, or course of business and to enforce compliance with this
25 act or a rule adopted or order issued under this act.

26 (2) In an action under this section and upon a proper showing,
27 the court may do any of the following:

1 (a) Issue a permanent or temporary injunction, restraining
2 order, or a declaratory judgment.

3 (b) Issue an order for other appropriate or ancillary relief,
4 including any of the following:

5 (i) An asset freeze, accounting, writ of attachment, writ of
6 general or specific execution, and an appointment of a receiver or
7 conservator, which may be the administrator, for the defendant or
8 the defendant's assets.

9 (ii) An order to the administrator to take charge and control
10 of a defendant's property, including investment accounts and
11 accounts in a depository institution, rents, and profits, to
12 collect debts, and to acquire and dispose of property.

13 (iii) The imposition of a civil fine of not more than \$10,000.00
14 for a single violation or \$500,000.00 for multiple violations.

15 (iv) An order of rescission, restitution, or disgorgement
16 directed to a person that has engaged in an act, practice, or
17 course of business constituting a violation of this act or the
18 predecessor act or a rule adopted or order issued under this act or
19 the predecessor act.

20 (v) An order for the payment of prejudgment and postjudgment
21 interest.

22 (c) Granting other relief that the court considers
23 appropriate.

24 (3) The administrator shall not be required to post a bond in
25 an action under this section.

26 Sec. 604. (1) If the administrator determines that a person
27 has engaged, is engaging, or is about to engage in an act,

1 practice, or course of business constituting a violation of this
2 act or a rule adopted or order issued under this act, or that a
3 person has materially aided, is materially aiding, or is about to
4 materially aid an act, practice, or course of business constituting
5 a violation of this act or a rule adopted or order issued under
6 this act, the administrator may do 1 or more of the following:

7 (a) Issue an order directing the person to cease and desist
8 from engaging in the act, practice, or course of business or to
9 take other action necessary or appropriate to comply with this act.

10 (b) Issue an order denying, suspending, revoking, or
11 conditioning the exemptions for a broker-dealer under section
12 401(2)(a)(iv) or (vi) or an investment adviser under section
13 403(2)(a)(iii).

14 (c) Issue an order under section 204.

15 (2) An order under subsection (1) is effective on the date of
16 issuance. Upon issuance of the order, the administrator shall
17 promptly serve each person subject to the order with a copy of the
18 order and a notice that the order has been entered. The order must
19 include a statement of any civil fine or costs of the investigation
20 the administrator will seek, a statement of the reasons for the
21 order, and notice that the matter will be scheduled for a hearing
22 within 15 days after receipt of a request in a record from the
23 person. If a person subject to the order does not request a hearing
24 and none is ordered by the administrator within 30 days after the
25 date of service of the order, the order, including any civil fine
26 imposed or requirement for payment of the costs of investigation
27 sought in a statement in that order, becomes final as to that

1 person by operation of law. If a hearing is requested or ordered,
2 the administrator, after notice of and opportunity for hearing to
3 each person subject to the order, may modify or vacate the order or
4 extend it until final determination.

5 (3) If a hearing is requested or ordered pursuant to
6 subsection (2), the hearing shall be held pursuant to the
7 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
8 24.328. A final order shall not be issued unless the administrator
9 makes findings of fact and conclusions of law on the record
10 pursuant to the administrative procedures act of 1969, 1969 PA 306,
11 MCL 24.201 to 24.328. The final order may make final, vacate, or
12 modify the order issued under subsection (1).

13 (4) In a final order issued under this section, the
14 administrator may do any of the following:

15 (a) Impose a civil fine of not more than \$10,000.00 for a
16 single violation of this act or a rule adopted or order issued
17 under this act or \$500,000.00 for multiple violations.

18 (b) In addition to a civil fine imposed under subdivision (a),
19 if the violation or violations of this act or a rule adopted or
20 order issued under this act includes an act, practice, or course of
21 business directed at, or that resulted in damage to, any of the
22 following, the administrator may impose a civil fine of not more
23 than \$10,000.00 for a single violation or \$500,000.00 for multiple
24 violations:

25 (i) One or more individuals who are 60 years of age or older.

26 (ii) One or more individuals who the administrator determines
27 were unable to protect their financial interests due to disability

1 or illiteracy or an inability to understand the language of an
2 agreement presented to them.

3 (c) Charge the actual cost of an investigation or proceeding
4 for a violation of this act or a rule adopted or order issued under
5 this act.

6 (5) If a petition for judicial review of a final order is not
7 filed in accordance with section 609, the administrator may file a
8 certified copy of the final order with the clerk of a court of
9 competent jurisdiction. The filed order shall have the same effect
10 as a judgment of the court and may be recorded, enforced, or
11 satisfied in the same manner as a judgment of the court.

12 (6) If a person fails to comply with an order under this
13 section, the administrator may petition a court of competent
14 jurisdiction to enforce the order. The court shall not require the
15 administrator to post a bond. If the court finds, after service and
16 opportunity for hearing, that the person is not in compliance with
17 the order, the court may adjudge the person in civil contempt of
18 the order. The court may impose an additional civil fine against
19 the person for contempt in an amount not less than \$10,000.00 or
20 more than \$500,000.00 for each violation and may grant any other
21 relief the court determines is just and proper in the
22 circumstances.

23 Sec. 605. (1) The administrator may do any of the following:

24 (a) Issue forms and orders and, after notice and comment, may
25 adopt and amend rules necessary or appropriate to carry out this
26 act, and may repeal rules, including rules and forms governing
27 registration statements, applications, notice filings, reports, and

1 other records.

2 (b) By rule, define terms, whether or not used in this act, if
3 the definitions are not inconsistent with this act.

4 (c) By rule, classify securities, persons, and transactions
5 and adopt different requirements for different classes.

6 (2) A rule or form shall not be adopted or amended or an order
7 issued or amended under this act unless the administrator finds
8 that the rule, form, order, or amendment is necessary or
9 appropriate in the public interest or for the protection of
10 investors and is consistent with the purposes intended by this act.
11 In adopting, amending, and repealing rules and forms, section 608
12 applies in order to achieve uniformity among the states and
13 coordination with federal laws in the form and content of
14 registration statements, applications, reports, and other records,
15 including in the adoption of uniform rules, forms, and procedures.

16 (3) Subject to section 15(h) of the securities exchange act of
17 1934, 15 USC 78o, and section 222 of the investment advisers act of
18 1940, 15 USC 80b-18a, the administrator may require that a
19 financial statement filed under this act be prepared in accordance
20 with generally accepted accounting principles in the United States
21 and comply with other requirements specified by rule or order under
22 this act. A rule or order under this act may establish any of the
23 following:

24 (a) Subject to section 15(h) of the securities exchange act of
25 1934, 15 USC 78o, and section 222 of the investment advisers act of
26 1940, 15 USC 80b-18a, the form and content of financial statements
27 required under this act.

1 (b) Whether unconsolidated financial statements must be filed.

2 (c) Whether required financial statements must be audited by
3 an independent certified public accountant.

4 (4) The administrator may provide interpretative opinions or
5 issue determinations that the administrator will not institute a
6 proceeding or an action under this act against a specified person
7 for engaging in a specified act, practice, or course of business if
8 the determination is consistent with this act. A rule or order
9 under this act may charge a reasonable fee for interpretative
10 opinions or determinations that the administrator will not
11 institute an action or a proceeding under this act.

12 (5) A civil or administrative fine under this act shall not be
13 imposed and liability does not arise for conduct that is engaged in
14 or omitted in good faith conformity with a rule, form, or order of
15 the administrator under this act.

16 (6) A hearing in an administrative proceeding under this act
17 shall be conducted in public unless the administrator for good
18 cause consistent with the purposes intended by this act determines
19 that the hearing not be public.

20 Sec. 606. (1) The administrator shall maintain, or designate a
21 person to maintain, a register of all applications for registration
22 of securities; registration statements; notice filings,
23 applications for registration of broker-dealers, agents, investment
24 advisers, and investment adviser representatives; notice filings by
25 federal covered investment advisers that are or have been effective
26 under this act or the predecessor act; notices of claims of
27 exemption from registration or notice filing requirements contained

1 in a record; orders issued under this act or the predecessor act;
2 and interpretative opinions or no-action determinations issued
3 under this act.

4 (2) The administrator shall make all rules, forms,
5 interpretative opinions, and orders available to the public.

6 (3) Upon request, the administrator shall furnish to a person
7 a copy of a record that is a public record or a certification that
8 the public record does not exist. A rule under this act may
9 establish a reasonable charge for furnishing the record. A copy of
10 the record certified or a certificate of its nonexistence by the
11 administrator is prima facie evidence of a record or its
12 nonexistence.

13 Sec. 607. (1) Subject to subsection (2), records obtained by
14 the administrator or filed under this act, including a record
15 contained in or filed with any registration statement, application,
16 notice filing, or report, are public records and are available for
17 public examination.

18 (2) The following records are not public records and are not
19 available for public examination under subsection (1):

20 (a) A record obtained by the administrator in connection with
21 an audit or inspection under section 411(4) or an investigation
22 under section 602.

23 (b) A part of a report filed in connection with a registration
24 statement under sections 301 and 303 through 305, or a record under
25 section 411(4), that contains trade secrets or confidential
26 information when the person filing the registration statement or
27 report has asserted a claim of confidentiality or privilege that is

1 authorized by law.

2 (c) A record that is not required to be provided to the
3 administrator or filed under this act and is provided to the
4 administrator only on the condition that the record will not be
5 subject to public examination or disclosure.

6 (d) A nonpublic record received from a person specified in
7 section 608.

8 (e) Any social security number, residential address unless
9 used as a business address, or residential telephone number unless
10 used as a business telephone number contained in a record that is
11 filed.

12 (f) A record obtained by the administrator through a designee
13 of the administrator that is determined by a rule or order under
14 this act to have been either of the following:

15 (i) Appropriately expunged from the administrator's records by
16 that designee.

17 (ii) Appropriately determined to be nonpublic or nondisclosable
18 by that designee if the administrator finds that this is in the
19 public interest and for the protection of investors.

20 (3) The administrator may disclose a record obtained in
21 connection with an audit or inspection under section 411(4) or a
22 record obtained in connection with an investigation under section
23 602 if disclosure is for the purpose of a civil, administrative, or
24 criminal investigation, action, or proceeding or to a person
25 specified in section 608(1).

26 Sec. 608. (1) The administrator shall, in its discretion,
27 cooperate, coordinate, consult, and, subject to section 607, share

1 records and information with the securities regulators of 1 or more
2 states, Canada or 1 or more of its provinces or territories, 1 or
3 more foreign jurisdictions, the securities and exchange commission,
4 the United States department of justice, the commodity futures
5 trading commission, the federal trade commission, the securities
6 investor protection corporation, a self-regulatory organization, a
7 national or international organization of securities regulators,
8 federal or state banking and insurance regulators, and any
9 governmental law enforcement agency, in order to effectuate greater
10 uniformity in securities matters among the federal government,
11 self-regulatory organizations, and state and foreign governments.

12 (2) In cooperating, coordinating, consulting, and sharing
13 records and information under this section and in acting by rule,
14 order, or waiver under this act, the administrator shall, in the
15 discretion of the administrator, take into consideration in
16 carrying out the public interest the following general policies:

17 (a) Maximizing effectiveness of regulation for the protection
18 of investors.

19 (b) Maximizing uniformity in federal and state regulatory
20 standards.

21 (c) Minimizing burdens on the business of capital formation,
22 without adversely affecting essentials of investor protection.

23 (3) The cooperation, coordination, consultation, and sharing
24 of records and information authorized by this section includes:

25 (a) Establishing or employing 1 or more designees as a central
26 depository for registration and notice filings under this act and
27 for records required or allowed to be maintained under this act.

1 (b) Developing and maintaining uniform forms.

2 (c) Conducting a joint examination or investigation.

3 (d) Holding a joint administrative hearing.

4 (e) Instituting and prosecuting a joint civil or
5 administrative proceeding.

6 (f) Sharing and exchanging personnel.

7 (g) Coordinating registrations under sections 301 and 401
8 through 404 and exemptions under section 203.

9 (h) Sharing and exchanging records.

10 (i) Formulating rules, statements of policy, guidelines,
11 forms, and interpretative opinions and releases.

12 (j) Formulating common systems and procedures.

13 (k) Notifying the public of proposed rules, forms, statements
14 of policy, and guidelines.

15 (l) Attending conferences and other meetings among securities
16 regulators, which may include representatives of governmental and
17 private organizations involved in capital formation, considered to
18 be necessary or appropriate to promote or achieve uniformity.

19 (m) Developing and maintaining a uniform exemption from
20 registration for small issuers and taking other steps to reduce the
21 burden of raising investment capital by small businesses.

22 Sec. 609. (1) Final orders issued by the administrator under
23 this act are subject to judicial review pursuant to the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328.

26 (2) Rules adopted under this act are subject to judicial
27 review pursuant to the administrative procedures act of 1969, 1969

1 PA 306, MCL 24.201 to 24.328.

2 Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1),
3 404(1), 501, 506, 509, and 510 apply to a person that sells or
4 offers to sell a security if the offer to sell or the sale is made
5 in this state or the offer to purchase or the purchase is made and
6 accepted in this state.

7 (2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509,
8 and 510 apply to a person that purchases or offers to purchase a
9 security if the offer to purchase or the purchase is made in this
10 state or the offer to sell or the sale is made and accepted in this
11 state.

12 (3) For the purpose of this section, an offer to sell or to
13 purchase a security is made in this state, whether or not either
14 party is then present in this state, if either of the following
15 apply to the offer:

16 (a) It originates from this state.

17 (b) It is directed by the offeror to a place in this state and
18 received at the place to which it is directed.

19 (4) For purposes of this section, an offer to purchase or to
20 sell is accepted in this state whether or not either party is then
21 present in this state, if both of the following apply to the
22 acceptance:

23 (a) It is communicated to the offeror in this state, the
24 offeree reasonably believes the offeror to be present in this
25 state, and the acceptance is received at the place in this state to
26 which it is directed.

27 (b) It has not previously been communicated to the offeror,

1 orally or in a record, outside this state.

2 (5) An offer to sell or to purchase is not made in this state
3 when a publisher circulates or there is circulated on the
4 publisher's behalf in this state a bona fide newspaper or other
5 publication of general, regular, and paid circulation that is not
6 published in this state, or that is published in this state but has
7 had more than 2/3 of its circulation outside this state during the
8 previous 12 months, or when a radio or television program or other
9 electronic communication originating outside this state is received
10 in this state. A radio, television program, or other electronic
11 communication is considered as having originated in this state if
12 either the broadcast studio or the originating source of
13 transmission is located in this state, unless any of the following
14 are met:

15 (a) The program or communication is syndicated and distributed
16 from outside this state for redistribution to the general public in
17 this state.

18 (b) The program or communication is supplied by a radio,
19 television, or other electronic network with the electronic signal
20 originating from outside this state for redistribution to the
21 general public in this state.

22 (c) The program or communication is an electronic
23 communication that originates outside this state and is captured
24 for redistribution to the general public in this state by a
25 community antenna or cable, radio, cable television, or other
26 electronic system.

27 (d) The program or communication consists of an electronic

1 communication that originates in this state, but which is not
2 intended for distribution to the general public in this state.

3 (6) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply
4 to a person if the person engages in an act, practice, or course of
5 business instrumental in effecting prohibited or actionable conduct
6 in this state, whether or not either party is then present in this
7 state.

8 Sec. 611. (1) A consent to service of process complying with
9 this section required by this act must be signed and filed in the
10 form required by a rule or order under this act. A consent
11 appointing the administrator the person's agent for service of
12 process in a noncriminal action or proceeding against the person,
13 or the person's successor, or personal representative under this
14 act or a rule adopted or order issued by the administrator under
15 this act after the consent is filed, has the same force and
16 validity as if the service were made personally on the person
17 filing the consent. A person that has filed a consent complying
18 with this subsection in connection with a previous application for
19 registration or notice filing need not file an additional consent.

20 (2) If a person, including a nonresident of this state,
21 engages in an act, practice, or course of business prohibited or
22 made actionable by this act or a rule adopted or order issued by
23 the administrator under this act and the person has not filed a
24 consent to service of process under subsection (1), that act,
25 practice, or course of business constitutes the appointment of the
26 administrator as the person's agent for service of process in a
27 noncriminal action or proceeding against the person, the person's

1 successor, or personal representative.

2 (3) Service under subsection (1) or (2) may be made by
3 providing a copy of the process to the office of the administrator,
4 but it is not effective unless both of the following are met:

5 (a) The plaintiff, which may be the administrator, promptly
6 sends notice of the service and a copy of the process, return
7 receipt requested, to the defendant or respondent at the address
8 given in the consent to service of process or, if a consent to
9 service of process has not been filed, at the last known address,
10 or takes other reasonable steps to give notice.

11 (b) The plaintiff files an affidavit of compliance with this
12 subsection in the action or proceeding on or before the return day
13 of the process, if any, or within the time that the court or the
14 administrator in a proceeding before the administrator allows.

15 (4) Service as provided in subsection (3) may be used in a
16 proceeding before the administrator or by the administrator in a
17 civil action in which the administrator is the moving party.

18 (5) If the process is served under subsection (3), the court
19 or the administrator in a proceeding before the administrator shall
20 order continuances as are necessary or appropriate to afford the
21 defendant or respondent reasonable opportunity to defend.

22 Sec. 612. If any provision of this act or its application to
23 any person or circumstances is held invalid, the invalidity does
24 not affect other provisions or applications of this act that can be
25 given effect without the invalid provision or application, and to
26 this end, the provisions of this act are severable.

27 ARTICLE 7

TRANSITION

Sec. 701. This act takes effect October 1, 2009.

Sec. 702. The uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, is repealed.

Sec. 703. (1) The predecessor act exclusively governs all actions, prosecutions, or proceedings that are pending or may be maintained or instituted on the basis of facts or circumstances occurring before the effective date of this act, but a civil action shall not be maintained to enforce any liability under the predecessor act unless commenced within any period of limitation that applied when the cause of action accrued or within 3 years after the effective date of this act, whichever is earlier.

(2) All effective registrations under the predecessor act, all administrative orders relating to the registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and all conditions imposed upon the registrations under the predecessor act remain in effect for the same time period they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(3) The predecessor act exclusively governs any offer or sale made within 1 year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.