

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

451.2302 Notice filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

greater of the following:

- (i) The renewal fee determined under subdivision (a).
- (ii) A renewal fee determined under subdivision (a), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.
- (d) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period are less than the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for the 1-year notice filing period, the issuer is not entitled to a refund of any part of the renewal fee for that period or adjustment of the renewal fee for any renewal period.
- (e) Upon written request of the administrator, an issuer shall provide sales reports showing the issuer's nonexempt sales of a security in this state for the current and 2 previous 1-year notice filing periods, but the issuer is not otherwise required to provide a sales report to the administrator in connection with a renewal of a notice filing.
- (f) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer an administrative fine in the amount of the renewal fees the issuer would have paid under subdivision (a) if its projections had been accurate. This administrative fine is in addition to an increased fee for renewal under subdivision (c), if any.
- (9) If the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state, except a federal covered security under section 18(b)(1) of the securities act of 1933, 15 USC 77r. If the deficiency is corrected, the stop order is void as of the time of its issuance and no other charge or administrative or civil fine may be imposed by the administrator.

History: 2008, Act 551, Eff. Oct. 1, 2009.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.