

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

ARTICLE 1
GENERAL PROVISIONS

451.2101 Short title.

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

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.

451.2102 Definitions; A to G.

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

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

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

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

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

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

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

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

(B) A substantial portion of its business consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to 12 USC 92a.

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

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

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

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

(i) An agent.

(ii) An issuer.

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

(iv) An international banking institution.

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

(e) "Depository institution" means a bank; or a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by federal statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law; or a bank that does not receive deposits because of a limitation in its charter, articles of incorporation, or articles of association. The term does not include any of the following:

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

(ii) A Morris Plan bank.

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

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

(g) "Federal covered security" means a security that is, or upon completion of a transaction will be, a

covered security under section 18(b) of the securities act of 1933, 15 USC 77r, or rules or regulations adopted under that provision.

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

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

(j) "Fraud," "deceit," and "defraud" include, but are not limited to, common law deceit.

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

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.

451.2102a Definitions; I.

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

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

(i) A depository institution or international banking institution.

(ii) An insurance company.

(iii) A separate account of an insurance company.

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

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

(vi) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$2,500,000.00 or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.

(vii) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$2,500,000.00 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.

(viii) A trust, if it has total assets in excess of \$2,500,000.00, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (vi) or (vii), regardless of size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans.

(ix) An organization described in section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$2,500,000.00.

(x) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958, 15 USC 681, with total assets in excess of \$2,500,000.00.

(xi) A business development company as defined in section 202(a)(22) of the investment advisers act of 1940, 15 USC 80b-2, with total assets in excess of \$2,500,000.00.

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

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

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

(xv) Any other person, other than an individual, of institutional character with total assets in excess of \$2,500,000.00 not organized for the specific purpose of evading this act.

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

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

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

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

(e) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include any of the following:

(i) An investment adviser representative.

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

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

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

(v) A federal covered investment adviser.

(vi) A depository institution.

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

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

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

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

(i) Performs only clerical or ministerial acts.

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

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

(A) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is an "investment adviser representative" as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3.

(B) Has a "place of business" in this state as that term is defined in rule 203A-3 adopted under section 203A of the investment advisers act of 1940, 17 CFR 275.203A-3, and is not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 15 USC 80b-2.

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

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

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

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

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

History: 2008, Act 551, Eff. Oct. 1, 2009;—Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013.

Compiler's note: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance

451.2102b Definitions; N to R.

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

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

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

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

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

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

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

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

(f) "Price amendment" means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

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

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

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.

451.2102c Definitions; S.

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

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

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

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

(iii) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

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

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

- (i) The term includes a contractual or quasi-contractual arrangement that meets all of the following:
 - (A) A person furnishes capital, other than services, to an issuer under the arrangement.
 - (B) A portion of the capital furnished under sub-subparagraph (A) is subjected to the risks of the issuer's enterprise.
 - (C) The furnishing of capital under sub-subparagraph (A) is induced by representations made by an issuer, promoter, or the issuer's or promoter's affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise.
 - (D) The person furnishing the capital under sub-subparagraph (A) does not intend to be actively involved in the management of the enterprise in a meaningful way.
 - (E) At the time the capital is furnished, a promoter or its affiliates anticipate that financial gain may be realized as a result of the furnishing.
- (ii) The term includes both a certificated and an uncertificated security.
- (iii) The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.
- (iv) The term does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974.
- (v) The term includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this subparagraph, a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.
- (vi) The term may include, as an investment contract, an interest in a limited partnership, a limited liability company, or a limited liability partnership.
- (d) "Self-regulatory organization" means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rule-making board established under the securities exchange act of 1934.
- (e) "Sign" means, with present intent to authenticate or adopt a record, either of the following:
 - (i) To execute or adopt a tangible symbol.
 - (ii) To attach or logically associate with the record an electronic symbol, sound, or process.
- (f) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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.

451.2103 Additional definitions.

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

- (a) "Commodity exchange act" means the commodity exchange act, 7 USC 1 to 27f.
- (b) "Electronic signatures in global and national commerce act" means the electronic signatures in global and national commerce act, 15 USC 7001 to 7031.
- (c) "Employee retirement income security act of 1974" means the employee retirement income security act of 1974, Public Law 93-406.
- (d) "Internal revenue code" means the internal revenue code of 1986, 26 USC 1 to 9833.
- (e) "Investment advisers act of 1940" means the investment advisers act of 1940, 15 USC 80b-1 to 80b-21.
- (f) "Investment company act of 1940" means the investment company act of 1940, 15 USC 80a-1 to 80a-64.
- (g) "National housing act" means the national housing act, 12 USC 1701 to 1750g.
- (h) "Public utility holding company act of 1935" means the public utility holding company act of 1935, 15 USC 79 to 79z-6.
- (i) "Securities act of 1933" means the securities act of 1933, 15 USC 77a to 77aa.
- (j) "Securities exchange act of 1934" means the securities exchange act of 1934, 15 USC 78a to 78nn.
- (k) "Securities investor protection act of 1970" means the securities investor protection act of 1970, 15 USC 78aaa to 78lll.
- (l) "Securities litigation uniform standards act of 1998" means the securities litigation uniform standards act of 1998, Public Law 105-353, 112 Stat. 3227.
- (m) "Small business investment act of 1958" means the small business investment act of 1958, Public Law

85-699.

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

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.

451.2104 Reference to agency or department.

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

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.

451.2105 Applicability of act.

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

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.