

UNIFORM SECURITIES ACT (2002) (EXCERPT)

Act 551 of 2008

ARTICLE 3

REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED SECURITIES

451.2301 Offer or sale of security; requirements.

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

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under sections 201 to 203.
- (c) The security is registered under this act.

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.

451.2302 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.

451.2303 Securities registration by coordination.

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

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

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

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

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

(d) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

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

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

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

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

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

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

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.

451.2304 Securities registration by qualification.

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

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

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

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

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

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

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

(f) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address, the amount of securities of the issuer held by the person as of the date of the filing of the registration statement, a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected, and a statement of the reasons for making the offering.

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

(h) The kind and amount of securities to be offered, the proposed offering price or the method by which it is to be computed, any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class, the basis upon which the offering is to be made if otherwise than for cash, the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts, the estimated amounts of other selling expenses, including legal, engineering, and accounting charges, the name and address of each underwriter and each recipient of a finder's fee, a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

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

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

(k) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years, and a copy of the contract.

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

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

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

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

(p) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

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

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

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

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

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

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

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

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

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

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

(c) Payment pursuant to the sale.

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

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.

451.2305 Registration statement; persons permitted to file; filing fee; information; incorporation by reference; nonissuer distribution; deposit of security in escrow; impoundment of proceeds; conditions; form of subscription or sale contract; duration of registration statement; reports; posteffective amendments.

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

(2) A person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 or more than \$1,250.00. If an application for registration is withdrawn before the effective date or a preeffective stop order is issued under section 306, the administrator shall retain a fee of \$100.00 if the initial review has not been commenced, and the full filing fee after review has been commenced.

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

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

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

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

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

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

(6) A rule or order under this act may require as a condition of registration that a security issued within the previous 5 years, or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash, be deposited in escrow and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule or order under this act, but the administrator shall not reject a depository institution solely because of its location in another state.

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

(8) Except while a stop order is in effect under section 306, a registration statement is effective for 1 year after its effective date, or for a longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer

transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until 1 year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

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

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

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.

451.2306 Denying, suspending, or revoking effectiveness; stop order; publication of guidelines, rules, or orders; conditions prohibiting issuance of stop order; summary revocation, denial, postponement, or suspension of effectiveness; modifying or vacating stop order.

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

(a) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 305(10) as of its effective date, or a report under section 305(9) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

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

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

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

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

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

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

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

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

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

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

(3) The administrator shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became

effective unless the proceeding is instituted within 30 days after the registration statement became effective.

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

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

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

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

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

(6) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

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.

451.2307 Waiver or modification of requirements of MCL 451.2302, 451.2303, and 451.2304(2), or certain requirements of MCL 451.2305(9).

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

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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.