

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

***** 451.801 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.801 Definitions.

Sec. 401. As used in this act, unless the context otherwise requires:

(a) "Administrator" means the office of financial and insurance services of the department of consumer and industry services.

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

(c) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by section 402(a)(1), (2), (3), (4), (5), (9), or (10), (2) effecting transactions exempted by section 402(b), (3) effecting transactions in a covered security as defined in section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933, 15 U.S.C. 77r, or (4) effecting transactions with existing employees, partners, officers, or directors of the issuer or any of its subsidiaries if, in connection with all of these 4 cases, no commission is paid or given directly or indirectly for soliciting any person in this state. "Agent" does not include an officer or general partner of an issuer whose securities are registered under the provisions of this act, who represents the issuer in effecting transactions in the registered securities, if no commission is paid or given directly or indirectly for soliciting any person in this state. "Agent" does not include a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). "Agent" does not include a person whose transactions in this state are limited to only those transactions set forth in section 15(h)(2) of the securities exchange act of 1934, 15 U.S.C. 78o. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition. The administrator may by rule or order exclude other persons from the definition of the word "agent".

(d) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, (4) a person who has no place of business in this state if (A) he or she effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months he or she does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in clause (A) of this subdivision, whether or not the offeror or any of the offerees is then present in this state, or (5) a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). The administrator may by rule or order exclude other persons from the definition of the word "broker-dealer".

(e) "Commission" means any payment in cash, securities, or goods for offering or selling, promise, or commitment to provide payment in the future for offering or selling, or any other similar payment. Commission does not include a real estate commission commensurate with fees paid in the area for similar services, paid to licensed real estate brokers solely for real estate services which have been rendered, or payment by a person to a lawyer or accountant in connection with advice or recommendations made by a lawyer or accountant to the client with whom the lawyer or accountant has an established professional relationship, if disclosure of the payment and the interest of the lawyer or accountant in the transaction or in the issuer or any affiliate of the issuer, is made in writing to the client before the sale. Officers, directors, and partners of an issuer or purchaser, or persons occupying a similar status shall not be considered a finder if their contact was purely incidental and their compensation was not directly or indirectly tied to or conditioned upon involvement in securities solicitation or purchase.

(f) "Direct or indirect compensation or remuneration" means any payment, receipt or use of proceeds of an offering for the benefit of the promoter, general partners, officers or directors, or persons occupying similar positions or their affiliates, any receipt, payment, or use of securities or goods by those persons at less than the amount public investors paid for the securities or goods, or any markup charged on sale of property to the entity raising capital, any advantageous contractual relationships, any real estate commission, or other similar

payments or arrangements to those persons.

(g) "Federally covered adviser" means a person that is registered under section 203 of the investment advisers act of 1940. The term does not include a person excluded from the definition of investment adviser under subdivision (l)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (11).

(h) "Federally covered security" means any security that is a "covered security" under the securities act of 1933 or rules or regulations promulgated under that act.

(i) "Finder" means a person who, for consideration, participates in the offer to sell, sale, or purchase of securities or commodities 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 402(b)(19). The administrator may by rule or order exclude other persons from this definition.

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

(k) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(l) "Investment adviser" means any person who, for consideration, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities, who, for consideration and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or who acts as a finder in conjunction with the offer, sale, or purchase of a security. "Investment adviser" does not include any of the following:

(1) A bank, savings institution, or trust company.

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

(3) A broker-dealer or a registered agent acting on behalf of a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for the services.

(4) A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of a client.

(5) A person who has no place of business in this state if either of the following applies:

(A) His or her only clients in this state are other investment advisers, federally covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts the assets of which are managed by a bank or trust company or other institutional manager, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.

(B) During any period of 12 consecutive months he or she does not have more than 5 clients in this state other than those specified in subparagraph (A).

(6) A person excluded from the definition of investment adviser under section 202(a)(11) of the investment advisers act of 1940, 15 U.S.C. 80b-2.

(7) Any other persons not within the intent of this subdivision as the administrator may by rule or order designate.

(8) A trustee whose custody of assets is pursuant to judicial appointment, or appointment under a trust indenture or agreement, and who does not hold himself or herself out to the general public as giving advice to others with respect to securities and who maintains close contact with the personal financial affairs of his or her clients as a part of his or her fiduciary responsibilities, or a person who gives advice only to such a trustee.

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

(10) A person who is a federally covered adviser.

(11) A person who is employed by or associated with an investment adviser.

(m) "Investment adviser representative" means a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual except a clerical or ministerial employee or other employee or associate designated by the administrator by rule or order as within the intent of this subsection, who is employed by or associated with either of the following:

(1) An investment adviser that is registered or required to be registered under this act and who does any of the following:

(i) Makes any recommendations or otherwise renders advice regarding securities.

(ii) Manages accounts or portfolios of clients.

(iii) Determines which recommendation or advice regarding securities should be given.

(iv) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

- (v) Supervises employees who perform any of the activities described in subparagraph (i), (ii), (iii), or (iv).
- (2) A federally covered adviser that is subject to section 203A of title II of the investment advisers act of 1940, 15 U.S.C. 80b-3a, and is designated by the administrator by rule or order.
- (n) "Investment advisers act of 1940" means the investment advisers act of 1940, title II of chapter 686, 54 Stat. 847, 15 U.S.C. 80b-1 to 80b-21.
- (o) "Investment company act of 1940" means the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64.
- (p) "Issuer" means any person who issues or proposes to issue any security, except that:
 - (1) For certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.
 - (2) For certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under titles or leases, the term "issuer" means the owner of the oil, gas, or mining titles or leases or payments out of production or any fractional part thereof who creates and sells certificates of interest or participation therein.
- (q) "Nonissuer" means not directly or indirectly for the benefit of the issuer. A sale of securities shall be considered to be indirectly for the benefit of the issuer if all of the following conditions are met:
 - (1) The sale is directly or indirectly made for the benefit of a director or executive officer of the issuer, or a person occupying a similar status or performing similar functions, or a beneficial owner of 10% or more of any class of equity securities of the issuer.
 - (2) The sale, together with all sales made in this state by or for the benefit of the issuer during the 6-month period immediately before the date of the sale, otherwise than pursuant to a registration statement or exemption order under this act, exceeds 1% of the outstanding securities of the class of securities being sold.
 - (3) The securities are not of a class that has been designated by the administrator as eligible for trading in this state.
- (r) "Notice filing" means the documents filed with the administrator under section 202a or 308, or both, as applicable.
- (s) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.
- (t) "Promoter" means a person who, acting alone or in conjunction with 1 or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or a person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, 10% or more of the proceeds from the sale of any class of securities or 10% or more of the equity interest in the issuer after the offering is complete. However, a person who receives such an amount of securities or proceeds either solely as underwriting commissions pursuant to an offering of securities registered under this act or solely in consideration of property or legal or accounting services shall not be considered a promoter within the meaning of this subsection if the person does not otherwise take part in founding and organizing the enterprise.
- (u) "Public utility holding company act of 1935" means the public utility holding company act of 1935, title I of chapter 687, 49 Stat. 838.
- (v) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.
- (2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.
- (3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.
- (4) A purported gift of assessable stock is considered to involve an offer and sale.
- (5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- (6) The terms defined in this subdivision do not include:
 - (A) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or

property dividend when each stockholder may elect to take the dividend in cash or property or in stock.

(B) Any act incident to a judicially approved reorganization in which a security is issued in exchange for 1 or more outstanding securities, claims, or property interests, or partly in exchange and partly for cash.

(w) "Securities act of 1933" means the securities act of 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r and 77s to 77aa.

(x) "Securities exchange act of 1934" means the securities exchange act of 1934, chapter 404, 48 Stat. 881.

(y) "Securities investor protection act of 1970" means the securities investor protection act of 1970, Public Law 91-598, 84 Stat. 1636.

(z) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any 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. "Security" includes any contractual or quasi contractual arrangement pursuant to which: (1) a person furnishes capital, other than services, to an issuer; (2) a portion of that capital is subjected to the risks of the issuer's enterprise; (3) the furnishing of that capital is induced by the representations of an issuer, promoter, or their 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; (4) the person furnishing the capital does not intend to be actively involved in the management of the enterprise in a meaningful way; and (5) a promoter or its affiliates anticipate, at the time the capital is furnished, that financial gain may be realized as a result thereof. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period or a commodity contract. The administrator may exclude by rule or by order other transactions or agreements from the definition of the word "security".

(aa) "Small business investment act of 1958" means the small business investment act of 1958, Public Law 85-699, 72 Stat. 689.

(bb) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 339, Imd. Eff. July 23, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1985, Act 120, Imd. Eff. July 31, 1985;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 of the Michigan Administrative Code.