

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

***** 451.802 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.802 Exempt securities and transactions; burden of proof; combining exempt offers or sales.

Sec. 402. (a) The following securities are exempted from sections 301 and 403:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of 1 or more of the foregoing, or any certificate of deposit for any of the foregoing, or any guarantee or other obligation made in connection therewith.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of 1 or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued or guaranteed by any federal credit union, any credit union organized and supervised under the laws of this state or any other state or territory of the United States, or any industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company that is a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act, or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province. Also, any equipment trust certificate or equipment note or bond based on chattel mortgages, leases, or agreements for conditional sales of cars, motive power, or other rolling stock mortgages, leased or sold to or furnished for the use of or upon railroads, other common carriers, public utilities, or holding companies supervised by a governmental authority of the United States, a state, Canada, or a Canadian province, or equipment, notes, or bonds where the ownership or title of the equipment is pledged or retained in accordance with the provisions of the laws of the United States, a state, Canada, or a Canadian province, to secure the payment of the equipment trust certificates, bonds, or notes.

(7) Any security listed or approved for listing upon notice of issuance on the New York or American stock exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The administrator may by rule exempt securities listed on other exchanges or may establish criteria for designating other classifications of exempt securities.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. However, unless the securities are part of an issue having an aggregate sales price of \$250,000.00 or less, are sold only to bona fide members of the issuing organization, and are sold without payment of a commission or consulting fee, the issuer shall do all of the following:

(A) Ten days before offer or sale of the security file with the administrator an offering circular in a form the administrator may by rule or order require together with a filing fee of \$50.00, and the administrator does not disallow the exemption.

(B) Not pay a commission or consulting fee to any person except a registered broker-dealer in connection with the offer or sale of the security.

(C) Sell only through registered securities broker-dealers or through persons exempted from the definition of the term "agent" by the administrator. In connection with all of the foregoing, the administrator may by rule or order withdraw or further condition this exemption, or waive the conditions contained in subparagraphs (A) and (B).

(9) Any prime quality negotiable commercial paper sold in an aggregate amount of not less than

\$25,000.00 to any 1 purchaser which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash at a fixed date within 9 months of the date of issuance, exclusive of days of grace, or any nonautomatic renewal of the commercial paper which is likewise limited, or any guarantee of the commercial paper or of any such renewal if the commercial paper is sold through a registered broker-dealer or an institution whose securities are exempted under subsection (a)(3).

(10) Any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit sharing or similar benefit plan.

(11) A security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation national market system and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing. The administrator may, after providing notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:

(A) Deny or revoke this exemption by order for a specific issue of securities.

(B) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.

(C) Decertify the system by order if the administrator determines that the system's requirements are so changed from those listed in securities act release no. 33-6810, 53 F.R. p. 52550 (Dec. 28, 1988), or insufficiently applied that the public interest and protection of investors contemplated by the requirements is no longer afforded.

(b) The following transactions are exempted from sections 301 and 403:

(1) An isolated nonissuer transaction, and with respect to a certificate of interest or participation in an oil, gas or mining title or a lease or payment out of production under a title or lease, any isolated transaction not involving an offer or sale by a promoter, whether effected through a broker-dealer or not.

(2) A nonissuer distribution of an outstanding security whose issuer and any predecessors have been in continuous operation for at least 5 years if a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on the security. For purposes of this subdivision, an issuer or predecessor is in continuous operation only if it has gross operating revenue in each of the 5 years immediately preceding its claim of exemption and has had gross operating revenue of at least \$500,000.00 in not less than 3 of those 5 years.

(3) A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or a transaction among underwriters.

(5) A transaction not part of a series of transactions in related or adjacent properties to individual investors, or a transaction involving an offer or sale to a financial institution as described in subdivision (8), in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) A transaction by an executor, a personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) A bona fide pledge or transaction in foreclosure of a pledge executed by a bona fide pledgee without any purpose of evading this act.

(8) An offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association, pension or profit sharing trust the assets of which are managed by an institutional manager, the treasurer of this state, other financial institution, broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity, or a lender approved by the federal housing administration and who has satisfied any additional requirements established by the administrator by rule or order.

(9) A transaction pursuant to an offering which satisfies in full each of the following requirements:

(A) The issuer and any person acting on its behalf shall exercise reasonable care to assure that purchasers

in this state of the securities in the offering do not resell the securities without compliance with state and federal securities laws. For sales described in subparagraph (D)(2), (3), and (5) that reasonable care shall include, where appropriate, but not necessarily be limited to, all of the following:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his or her own account or on behalf of other persons who may be considered as separate offerees or purchasers.

(2) Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of the securities.

(3) Issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer.

(4) Obtaining from the purchaser a signed agreement that the securities will not be sold without registration under the act or exemption therefrom.

(B) The securities are not offered or sold in reliance upon this subdivision by means of any general advertising or general solicitation, except as approved by the administrator.

(C) A commission is not paid or given directly or indirectly for soliciting any prospective purchaser in this state, except to a broker-dealer registered pursuant to this act who is not affiliated with the issuer or its affiliates. Those payments shall be reflected on the books and records of the broker-dealer, and shall be fully disclosed in writing to each prospective purchaser. The broker-dealer or issuer shall file with the administrator on forms as the administrator prescribes, a confidential report of offering within 30 days after initiation of the offering in this state and every 90 days thereafter until the final report of completion of the offering.

(D) Each sale in the offering made in reliance upon this subdivision meets all of the conditions of 1 of the following:

(1) The sale is to any of the following classes of persons:

(i) Promoters or other persons actively engaged or reasonably expected to be actively engaged in the management of the issuer, or in a professional capacity as attorneys or accountants to the issuer, or directly related by blood or marriage to the promoter or person actively engaged or reasonably expected to be actively engaged in the management of the issuer, if such persons are purchasing with investment intent and the issuer relies upon this subparagraph for sales to not more than 10 persons in this state within a 12-month period.

(ii) Not more than 15 persons whose principal business is the line of business to which the offering relates, and who are qualified by previous experience to evaluate the risks of the investment. The provisions of subparagraph (A) shall not apply to sales covered by subparagraph (D)(1) (i) and (ii).

(2) Sales to not more than 15 persons in this state within any 12-month period, in reliance upon this subparagraph, and the issuer provides to all such offerees at least 48 hours before sale a document that includes all of the following:

(i) Disclosing in reasonable detail the intended application of the proceeds to be received from the offering.

(ii) Disclosing in reasonable detail the current financial condition of the issuer and in the case of a limited partnership or oil and gas venture, the current financial condition of the general partner or oil and gas issuer; except that in the case of a limited partnership interest or interest in oil or gas, the document may merely state that the general partner or oil and gas issuer has a net worth, determined in accordance with generally accepted accounting principles, in excess of a stated sum, and that its net worth exceeds the obligations undertaken by the general partner or oil and gas issuer, and that the assets or operations of the general partner or oil and gas issuer will generate sufficient cash to meet these obligations as they come due.

(iii) Disclosing in all reasonable detail direct or indirect compensation or remuneration to be received by a promoter or affiliates of the promoter and fully identifying the persons who shall be recipients of that compensation.

(iv) Disclosing the form, date, and jurisdiction under which formed, and nature of business of the issuer.

(v) Disclosing the kind and amount of securities to be offered and the offering price or method by which the offering price is computed.

(vi) Stating, except in the case of a corporate issuer, that each investor or his or her designated representative may inspect the books and records of the issuer or the venture at any reasonable time for proper purposes.

(vii) Stating, except in the case of a corporate issuer, that the issuer shall promptly call an informational meeting of all investors upon request by 25% in interest or more of the investors in any class of securities who are unaffiliated with a promoter or affiliate of the promoter.

(viii) Stating, except in the case of a corporate issuer, that the issuer shall agree to maintain at its offices a list of names and addresses of all investors in the entity available to any investor or the designated representative of any investor.

(ix) Stating that the issuer shall provide all investors with a detailed written statement of the application of

the proceeds of the offering within 6 months after commencement of the offering or upon completion, whichever occurs first, and with annual current balance sheets and income statements to investors thereafter.

(3) Sales to not more than 35 persons in this state within any 12-month period in reliance upon this subparagraph, if all of the following conditions are met:

(i) The offeror files with the administrator an exemption application, an offering circular, and a \$100.00 filing fee.

(ii) The administrator by order finds the offering consistent with section 306 and declares this exemption effective.

(iii) The offering is made upon conditions and with information or provisions in the offering circular as the administrator may require.

(iv) The offering circular is delivered to each purchaser at least 48 hours before the sale to the purchaser.

(4) Sales made by a person other than an issuer to not more than 10 persons pursuant to offers to not more than 15 persons in this state within a 12-month period in reliance upon this subparagraph, if the offering is not part of a distribution of the issuer's securities.

(5) Sales made to a person who the seller has reasonable grounds to believe and does believe is 1 of the following:

(i) A business entity having either net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of \$1,000,000.00 at the time of purchase, and after the purchase has less than 10% of its total assets invested in the securities of the issuer.

(ii) An individual who after the purchase has an investment of \$50,000.00 or more in the securities of the issuer, including installment payments to be made within 1 year after purchase by the investor; has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00; and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or has obtained the advice of an attorney, certified public accountant, investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under this act, with respect to the merits and risks of the prospective investment.

(E) For purposes of this subparagraph:

(1) Each offer or sale made to a pension or profit sharing trust shall be considered to have been made to each beneficiary as an individual offeree unless all of the following apply:

(i) The trust has an independent trustee.

(ii) The issuer makes inquiry and reasonably believes that the trust invests not more than 10% of its assets in the securities sold by the issuer.

(iii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the trust was not formed to purchase the securities of the issuer.

(2) Each offer or sale made to a partnership or association shall be deemed to have been made to each partner or member as an individual unless both of the following occur:

(i) The issuer makes inquiry and reasonably believes that the partnership or association invests not more than 10% of its assets in the securities offered or sold by the issuer.

(ii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the partnership or association or solicitation of its investors and the issuer makes inquiry and reasonably believes that the partnership or association was not formed to purchase the securities of the issuer.

(3) Each offer or sale made to a corporation or business trust shall be considered to have been made to each security holder of the corporation or business trust as an individual unless within the 2-year period before the initial offer of the securities the issuer was not directly or indirectly connected with the formation or subsequent operation of the corporation or trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the corporation or trust, or in the case of a wholly owned subsidiary, its parent, was not formed to purchase the securities of the issuer and 1 of the following applies:

(i) A class of securities of the corporation or trust is registered pursuant to the securities exchange act of 1934.

(ii) The decision of the corporation or trust to acquire the shares of the issuer is directly or indirectly related to the business of the corporation or trust and not for investment purposes, and its principal business is not investing in securities.

(iii) The issuer makes inquiry and reasonably believes that the corporation or trust invests not more than 10% of its assets in the securities offered or sold by the issuer.

(4) An offer or sale to an investment company registered under the investment company act of 1940 constitutes an offer or sale to an individual.

(5) Husband, wife, and children living as a family are considered to be 1 individual.

(6) Each client of an investment adviser or federally covered adviser, each customer of a broker-dealer, or a person with a similar relationship shall be considered an offeree or purchaser for purposes of this subdivision regardless of the amount of discretion given to the investment adviser or federally covered adviser, broker-dealer, or other person to act on behalf of the client, customer, or trust.

(F) The administrator may by rule or order as to any security or transaction, or any type of security or transaction, increase the number of offerees or purchasers, waive any conditions, and in conjunction with a request to exercise its discretion under these provisions, the administrator may further condition this exemption.

(10) Any offer or sale of a preorganization certificate or subscription in a corporation, and the issuance of securities pursuant thereto, if all of the following apply:

(A) No commission is paid or given directly or indirectly for soliciting any prospective subscriber. The administrator may by rule or order waive this condition and require reports of sales under this exemption.

(B) There are not more than 10 purchasers.

(C) Advertising is not published or circulated unless it has been reviewed and no objection thereto is made by the administrator in writing.

(D) The seller reasonably believes that all the buyers in this state, other than those designated in subsection (b)(8), are purchasing for investment.

(11) A transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if either of the following occurs:

(A) A commission, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state and the offer is made either to holders of the convertible securities or warrants and relates to the underlying security, or the securities are purchased by not more than 25 security holders in this state within a 12-month period.

(B) Twenty business days before any offer, the issuer files with the administrator the offering circular or other materials proposed to be sent to security holders and other persons describing the terms of the offer together with a filing fee of \$100.00 and the administrator does not by order disallow the exemption within the next 20 business days.

(12) An offer, but not a sale, of a security for which a registration statement or exemption order request was filed under this act if a stop order is not in effect and a public proceeding or examination looking toward a stop order is not pending and if made in compliance with section 307.

(13) An offer, sale, or issuance of securities pursuant to an investment contract or option which is exempt under subsection (a)(10).

(14) An offer or sale of a security as contemplated under the small business investment act of 1958 to the federal small business administration, or by a small business concern to a small business investment company or to a development company for equity capital provided or loans made, or by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans.

(15) An offer or sale of any security by a nonprofit development corporation, formed and existing under the laws of this state, if the primary purpose of the corporation is to promote and assist the growth and development of business enterprises in the area covered by its operations.

(16) The distribution by a cooperative corporation of its securities to its patrons as patronage refunds or returns distributed on a patronage basis.

(17) A nonissuer transaction effected by or through a broker-dealer in any outstanding security of the same class as that which has been designated by order by the administrator as eligible for trading in this state. A person requesting a designation order shall pay a filing fee of \$100.00.

(18) The sale of capital stock issued by a professional service corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(19) A transaction incident to a class vote by shareholders pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation.

(20) A transaction that the administrator by order exempts from the registration provisions of this act after a determination that registration is not necessary in the public interest and for the protection of investors. An order may be granted either before or after consummation of the transaction upon the petition of any interested party in the transaction.

(21) A transaction made pursuant to a uniform limited offering exemption filing with the administrator. A

person claiming under this subdivision shall pay a filing fee of \$100.00 at the time of filing the initial notice form.

(c) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) Offers or sales which are exempt under subsection (b)(1) through (20) may be combined to exempt an entire transaction or series of transactions.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1968, Act 171, Eff. Nov. 15, 1968;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1987, Act 194, Imd. Eff. Dec. 2, 1987;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.