

HOUSE BILL No. 5746

April 1, 2004, Introduced by Rep. Koetje and referred to the Committee on Commerce.

A bill to enact the uniform securities act (2002) relating to the issuance, offer, sale, or purchase of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to make uniform the law with reference to securities; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

GENERAL PROVISIONS

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

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

3 (a) "Administrator" means the office of financial and
4 insurance services of the department of labor and economic
5 growth.

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

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

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

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

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

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

27 (B) A substantial portion of its business consists of

1 receiving deposits or exercising fiduciary powers similar to
2 those permitted to be exercised by national banks under the
3 authority of the comptroller of the currency pursuant to section
4 1 of Public Law 87-722, 12 USC 92a.

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

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

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

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

15 (i) An agent.

16 (ii) An issuer.

17 (iii) A bank engaged solely in 1 or more of the activities
18 described in, under the conditions described in, section
19 3(a)(4)(B) of the securities exchange act of 1934, 15 USC 78c.

20 (iv) An international banking institution.

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

22 (e) "Depository institution" means a bank; or a savings
23 institution, trust company, credit union, or similar institution
24 that is organized or chartered under the laws of a state or of
25 the United States, authorized to receive deposits, and supervised
26 and examined by an official or agency of a state or the United
27 States if its deposits or share accounts are insured by the

1 federal deposit insurance corporation, the national credit union
2 share insurance fund, or a successor authorized by federal law.

3 The term does not include any of the following:

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

6 (ii) A Morris Plan bank.

7 (iii) An industrial loan company.

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

10 (g) "Federal covered security" means a security that is, or
11 upon completion of a transaction will be, a covered security
12 under section 18(b) of the securities act of 1933, 15 USC 77r, or
13 rules or regulations adopted under that provision.

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

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

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

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

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

1 requires:

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

4 (i) A depository institution or international banking
5 institution.

6 (ii) An insurance company.

7 (iii) A separate account of an insurance company.

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

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

12 (vi) An employee pension, profit-sharing, or benefit plan if
13 the plan has total assets in excess of \$10,000,000.00 or its
14 investment decisions are made by a named fiduciary, as defined in
15 the employee retirement income security act of 1974, that is a
16 broker-dealer registered under the securities exchange act of
17 1934, an investment adviser registered or exempt from
18 registration under the investment advisers act of 1940, an
19 investment adviser registered under this act, a depository
20 institution, or an insurance company.

21 (vii) A plan established and maintained by a state, a
22 political subdivision of a state, or an agency or instrumentality
23 of a state or a political subdivision of a state for the benefit
24 of its employees, if the plan has total assets in excess of
25 \$10,000,000.00 or its investment decisions are made by a duly
26 designated public official or by a named fiduciary, as defined in
27 the employee retirement income security act of 1974, that is a

1 broker-dealer registered under the securities exchange act of
2 1934, an investment adviser registered or exempt from
3 registration under the investment advisers act of 1940, an
4 investment adviser registered under this act, a depository
5 institution, or an insurance company.

6 (viii) A trust, if it has total assets in excess of
7 \$10,000,000.00, its trustee is a depository institution, and its
8 participants are exclusively plans of the types identified in
9 subparagraph (vi) or (vii), regardless of size of their assets,
10 except a trust that includes as participants self-directed
11 individual retirement accounts or similar self-directed plans.

12 (ix) An organization described in section 501(c)(3) of the
13 internal revenue code, 26 USC 501, a corporation, Massachusetts
14 or similar business trust, limited liability company, or
15 partnership, not formed for the specific purpose of acquiring the
16 securities offered, with total assets in excess of
17 \$10,000,000.00.

18 (x) A small business investment company licensed by the small
19 business administration under section 301(c) of part A of title
20 III of the small business investment act of 1958, 15 USC 681,
21 with total assets in excess of \$10,000,000.00.

22 (xi) A private business development company as defined in
23 section 202(a)(22) of the investment advisers act of 1940, 15 USC
24 80b-2, with total assets in excess of \$10,000,000.00.

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

27 (xiii) A "qualified institutional buyer" as defined in rule

1 144A(a)(1), other than rule 144A(a)(1)(H), adopted under the
2 securities act of 1933, 17 CFR 230.144A(a)(1).

3 (xiv) A "major U.S. institutional investor" as defined in
4 rule 15a-6(b)(4)(i) adopted under the securities exchange act of
5 1934, 17 CFR 240.15a-6(b)(4)(i).

6 (xv) Any other person, other than an individual, of
7 institutional character with total assets in excess of
8 \$10,000,000.00 not organized for the specific purpose of evading
9 this act.

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

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

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

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

23 (e) "Investment adviser" means a person that, for
24 compensation, engages in the business of advising others, either
25 directly or through publications or writings, as to the value of
26 securities or the advisability of investing in, purchasing, or
27 selling securities or that, for compensation and as a part of a

1 regular business, issues or promulgates analyses or reports
2 concerning securities. The term includes a financial planner or
3 other person that, as an integral component of other financially
4 related services, provides investment advice to others for
5 compensation as part of a business or that holds itself out as
6 providing investment advice to others for compensation. The term
7 does not include any of the following:

8 (i) An investment adviser representative.

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

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

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

19 (v) A federal covered investment adviser.

20 (vi) A bank or savings institution.

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

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

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

26 (f) "Investment adviser representative" means an individual
27 employed by or associated with an investment adviser or federal

1 covered investment adviser and who makes any recommendations or
2 otherwise gives investment advice regarding securities, manages
3 accounts or portfolios of clients, determines which
4 recommendation or advice regarding securities should be given,
5 provides investment advice or holds himself or herself out as
6 providing investment advice, receives compensation to solicit,
7 offer, or negotiate for the sale of or for selling investment
8 advice, or supervises employees who perform any of the
9 foregoing. The term does not include an individual who meets any
10 of the following:

11 (i) Performs only clerical or ministerial acts.

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

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

19 (A) Has a "place of business" in this state as that term is
20 defined by rule adopted under section 203A of the investment
21 advisers act of 1940, 15 USC 80b-3a, and is an "investment
22 adviser representative" as that term is defined by rule adopted
23 under section 203A of the investment advisers act of 1940, 15 USC
24 80b-3a.

25 (B) Has a "place of business" in this state as that term is
26 defined by rule adopted under section 203A of the investment
27 advisers act of 1940, 15 USC 80b-3a, and is not a "supervised

1 person" as that term is defined in section 202(a)(25) of the
2 investment advisers act of 1940, 15 USC 80b-2.

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

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

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

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

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

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

27 (a) "Nonissuer transaction" or "nonissuer distribution" means

1 a transaction or distribution not directly or indirectly for the
2 benefit of the issuer.

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

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

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

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

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

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

27 (f) "Price amendment" means the amendment to a registration

1 statement filed under the securities act of 1933 or, if an
2 amendment is not filed, the prospectus or prospectus supplement
3 filed under the securities act of 1933 that includes a statement
4 of the offering price, underwriting and selling discounts or
5 commissions, amount of proceeds, conversion rates, call prices,
6 and other matters dependent upon the offering price.

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

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

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

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

25 (i) A security given or delivered with, or as a bonus on
26 account of, any purchase of securities or any other thing
27 constituting part of the subject of the purchase and having been

1 offered and sold for value.

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

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

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

11 (c) "Security" means a note; stock; treasury stock; security
12 future; bond; debenture; evidence of indebtedness; certificate of
13 interest or participation in a profit-sharing agreement;
14 collateral trust certificate; preorganization certificate or
15 subscription; transferable share; investment contract; voting
16 trust certificate; certificate of deposit for a security;
17 fractional undivided interest in oil, gas, or other mineral
18 rights; put, call, straddle, option, or privilege on a security,
19 certificate of deposit, or group or index of securities,
20 including an interest in or based on the value of that put, call,
21 straddle, option, or privilege on that security, certificate of
22 deposit, or group or index of securities; put, call, straddle,
23 option, or privilege entered into on a national securities
24 exchange relating to foreign currency; an investment in a
25 viatical or life settlement agreement; or, in general, an
26 interest or instrument commonly known as a "security"; or a
27 certificate of interest or participation in, temporary or interim

1 certificate for, receipt for, guarantee of, or warrant or right
2 to subscribe to or purchase, any of the foregoing. All of the
3 following apply to the term security:

4 (i) The term includes a contractual or quasi-contractual
5 arrangement that meets all of the following:

6 (A) A person furnishes capital, other than services, to an
7 issuer under the arrangement.

8 (B) A portion of the capital furnished under sub-subparagraph
9 (A) is subjected to the risks of the issuer's enterprise.

10 (C) The furnishing of capital under sub-subparagraph (A) is
11 induced by representations made by an issuer, promoter, or the
12 issuer's or promoter's affiliates which give rise to a reasonable
13 understanding that a valuable tangible benefit will accrue to the
14 person furnishing the capital as a result of the operation of the
15 enterprise.

16 (D) The person furnishing the capital under sub-subparagraph
17 (A) does not intend to be actively involved in the management of
18 the enterprise in a meaningful way.

19 (E) At the time the capital is furnished, a promoter or its
20 affiliates anticipate that financial gain may be realized as a
21 result of the furnishing.

22 (ii) The term includes both a certificated and an
23 uncertificated security.

24 (iii) The term does not include an insurance or endowment
25 policy or annuity contract under which an insurance company
26 promises to pay a fixed or variable sum of money either in a lump
27 sum or periodically for life or other specified period.

1 (iv) The term does not include an interest in a contributory
2 or noncontributory pension or welfare plan subject to the
3 employee retirement income security act of 1974.

4 (v) The term includes, as an investment contract, an
5 investment in a common enterprise with the expectation of profits
6 to be derived primarily from the efforts of a person other than
7 the investor. As used in this subparagraph, a "common
8 enterprise" means an enterprise in which the fortunes of the
9 investor are interwoven with those of either the person offering
10 the investment, a third party, or other investors.

11 (vi) The term may include, as an investment contract, an
12 interest in a limited partnership, a limited liability company,
13 or a limited liability partnership.

14 (d) "Self-regulatory organization" means a national
15 securities exchange registered under the securities exchange act
16 of 1934, a national securities association of broker-dealers
17 registered under the securities exchange act of 1934, a clearing
18 agency registered under the securities exchange act of 1934, or
19 the municipal securities rule-making board established under the
20 securities exchange act of 1934.

21 (e) "Sign" means, with present intent to authenticate or
22 adopt a record, either of the following:

23 (i) To execute or adopt a tangible symbol.

24 (ii) To attach or logically associate with the record an
25 electronic symbol, sound, or process.

26 (f) "State" means a state of the United States, the District
27 of Columbia, the Commonwealth of Puerto Rico, the United States

1 Virgin Islands, or any territory or insular possession subject to
2 the jurisdiction of the United States.

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

5 (a) "Commodity exchange act" means the commodity exchange
6 act, 7 USC 1 to 25.

7 (b) "Electronic signatures in global and national commerce
8 act" means the electronic signatures in global and national
9 commerce act, Public Law 106-229, 114 Stat. 464.

10 (c) "Employee retirement income security act of 1974" means
11 the employee retirement income security act of 1974, Public Law
12 93-406, 88 Stat. 829.

13 (d) "Internal revenue code" means the United States internal
14 revenue code of 1986.

15 (e) "Investment advisers act of 1940" means the investment
16 advisers act of 1940, title II of chapter 686, 15 USC 80b-1 to
17 80b-21.

18 (f) "Investment company act of 1940" means the investment
19 company act of 1940, title I of chapter 686, 15 USC 80a-1 to
20 80a-64.

21 (g) "National housing act" means the national housing act,
22 chapter 847, 48 Stat. 1246.

23 (h) "Public utility holding company act of 1935" means the
24 public utility holding company act of 1935, title I of chapter
25 687, 15 USC 79 to 79z-6.

26 (i) "Securities act of 1933" means the securities act of
27 1933, title I of chapter 38, 15 USC 77a to 77aa.

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

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

6 (l) "Securities litigation uniform standards act of 1998"
7 means the securities litigation uniform standards act of 1998,
8 Public Law 105-353, 112 Stat. 3227.

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

12 (2) A reference in this act to a federal statute defined in
13 subsection (1) includes that statute and the rules and
14 regulations adopted under that statute. The administrator may,
15 by rule or order, adopt an amendment or successor to a federal
16 statute defined in subsection (1) or rules and regulations
17 adopted under a federal statute defined in subsection (1), a
18 federal statute that is similar to a federal statute defined in
19 subsection (1), or a rule or regulation that is similar to a rule
20 or regulation adopted under a federal statute defined in
21 subsection (1).

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

26 Sec. 105. This act modifies, limits, and supersedes the
27 electronic signatures in global and national commerce act, but

1 does not modify, limit, or supersede section 101(c) of that act,
2 15 USC 7001, or authorize electronic delivery of any of the
3 notices described in section 103(b) of that act, 15 USC 7003.
4 This act authorizes the filing of records and signatures, when
5 specified by provisions of this act or by a rule or order under
6 this act, in a manner consistent with section 104(a) of that act,
7 15 USC 7004.

8 ARTICLE 2

9 EXEMPTIONS FROM REGISTRATION OF SECURITIES

10 Sec. 201. The following securities are exempt from the
11 requirements of sections 301 to 306 and 504:

12 (a) A security, including a revenue obligation or a separate
13 security as defined in rule 131 adopted under the securities act
14 of 1933, 17 CFR 230.131, issued, insured, or guaranteed by the
15 United States; by a state; by a political subdivision of a state;
16 by a public authority, agency, or instrumentality of 1 or more
17 states; by a political subdivision of 1 or more states; or by a
18 person controlled or supervised by and acting as an
19 instrumentality of the United States under authority granted by
20 the Congress; or a certificate of deposit for any of the
21 foregoing.

22 (b) A security issued, insured, or guaranteed by a foreign
23 government with which the United States maintains diplomatic
24 relations, or any of its political subdivisions, if the security
25 is recognized as a valid obligation by the issuer, insurer, or
26 guarantor.

27 (c) A security issued by and representing, or that will

1 represent an interest in or a direct obligation of, or be
2 guaranteed by, any of the following:

3 (i) An international banking institution.

4 (ii) A banking institution organized under the laws of the
5 United States; a member bank of the federal reserve system; or a
6 depository institution a substantial portion of the business of
7 which consists or will consist of either receiving deposits or
8 share accounts that are insured to the maximum amount authorized
9 by statute by the federal deposit insurance corporation, the
10 national credit union share insurance fund, or a successor
11 authorized by federal law or exercising fiduciary powers that are
12 similar to those permitted for national banks under the authority
13 of the comptroller of currency pursuant to section 1 of Public
14 Law 87-722, 12 USC 92a.

15 (iii) Any other depository institution, unless by rule or
16 order the administrator proceeds under section 204.

17 (d) A security issued by and representing an interest in, or
18 a debt of, or insured or guaranteed by, an insurance company
19 authorized to do business in this state.

20 (e) A security issued or guaranteed by a railroad, other
21 common carrier, public utility, or public utility holding company
22 that is any of the following:

23 (i) Regulated in respect to its rates and charges by the
24 United States or a state.

25 (ii) Regulated in respect to the issuance or guarantee of the
26 security by the United States, a state, Canada, or a Canadian
27 province or territory.

1 (iii) A public utility holding company registered under the
2 public utility holding company act of 1935 or a subsidiary of a
3 registered holding company within the meaning of that act.

4 (f) A federal covered security specified in section 18(b)(1)
5 of the securities act of 1933, 15 USC 77r, or a security listed
6 or approved for listing on another securities market specified by
7 rule under this act; a put or a call option contract; warrant; a
8 subscription right on or with respect to those securities; or an
9 option or similar derivative security on a security or an index
10 of securities or foreign currencies issued by a clearing agency
11 registered under the securities exchange act of 1934 and listed
12 or designated for trading on a national securities exchange, a
13 facility of a national securities exchange, or a facility of a
14 national securities association registered under the securities
15 exchange act of 1934 or an offer or sale, of the underlying
16 security in connection with the offer, sale, or exercise of an
17 option or other security that was exempt when the option or other
18 security was written or issued; or an option or a derivative
19 security designated by the securities and exchange commission
20 under section 9(b) of the securities exchange act of 1934, 15 USC
21 78i.

22 (g) A security issued by a person organized and operated
23 exclusively for religious, educational, benevolent, fraternal,
24 charitable, social, athletic, or reformatory purposes, or as a
25 chamber of commerce, and not for pecuniary profit, no part of the
26 net earnings of which inures to the benefit of a private
27 stockholder or other person, or a security of a company that is

1 excluded from the definition of an investment company under
2 section 3(c)(10)(B) of the investment company act of 1940, 15 USC
3 80a-3. With respect to the offer or sale of a note, bond,
4 debenture, or other evidence of indebtedness by a person
5 described in this subdivision, the administrator by rule may
6 limit the availability of this exemption by classifying
7 securities, persons, and transactions, imposing different
8 requirements for different classes, specifying with respect to
9 subparagraph (ii) the scope of the exemption and the grounds for
10 denial or suspension, and requiring an issuer to meet 1 or more
11 of the following:

12 (i) To file a notice specifying the material terms of the
13 proposed offer or sale and copies of any proposed sales and
14 advertising literature to be used and provide that the exemption
15 becomes effective if the administrator does not disallow the
16 exemption within the period established by the rule.

17 (ii) To file a request for exemption authorization for which
18 a rule under this act may specify the scope of the exemption; the
19 requirement of an offering statement; the filing of sales and
20 advertising literature; the filing of consent to service of
21 process complying with section 611; and grounds for denial or
22 suspension of the exemption.

23 (iii) To register under section 304.

24 (h) A member's or owner's interest in, or a retention
25 certificate or like security given in lieu of a cash patronage
26 dividend issued by, a cooperative organized and operated as a
27 nonprofit membership cooperative under the cooperative laws of a

1 state, but not a member's or owner's interest, retention
2 certificate, or like security sold to persons other than bona
3 fide members of the cooperative.

4 (i) An equipment trust certificate in respect to equipment
5 leased or conditionally sold to a person, if any security issued
6 by the person would be exempt under this section or would be a
7 federal covered security under section 18(b)(1) of the securities
8 act of 1933, 15 USC 77r.

9 Sec. 202. (1) The following transactions are exempt from
10 the requirements of sections 301 to 306 and 504:

11 (a) An isolated nonissuer transaction, whether effected by or
12 through a broker-dealer or not.

13 (b) A nonissuer transaction by or through a broker-dealer
14 registered or exempt from registration under this act, and a
15 resale transaction by a sponsor of a unit investment trust
16 registered under the investment company act of 1940, in a
17 security of a class that has been outstanding in the hands of the
18 public for at least 90 days, if all of the following are met at
19 the date of the transaction:

20 (i) The issuer of the security is engaged in business, the
21 issuer is not in the organizational stage or in bankruptcy or
22 receivership, and the issuer is not a blank check, blind pool, or
23 shell company that has no specific business plan or purpose or
24 has indicated that its primary business plan is to engage in a
25 merger or combination of the business with, or an acquisition of,
26 an unidentified person.

27 (ii) The security is sold at a price reasonably related to

1 its current market price.

2 (iii) The security does not constitute the whole or part of
3 an unsold allotment to, or a subscription or participation by,
4 the broker-dealer as an underwriter of the security or a
5 redistribution.

6 (iv) One of the following:

7 (A) A nationally recognized securities manual or its
8 electronic equivalent designated by rule or order under this act
9 or a record filed with the securities and exchange commission
10 that is publicly available and that contains all of the
11 following:

12 (I) A description of the business and operations of the
13 issuer.

14 (II) The names of the issuer's executive officers and the
15 names of the issuer's directors, if any.

16 (III) An audited balance sheet of the issuer as of a date
17 within 18 months before the date of the transaction or, in the
18 case of a reorganization or merger, and when the parties to the
19 reorganization or merger each had an audited balance sheet, a pro
20 forma balance sheet for the combined entity.

21 (IV) An audited income statement for each of the issuer's 2
22 immediately previous fiscal years or for the period of existence
23 of the issuer, whichever is shorter, or, in the case of a
24 reorganization or merger when each party to the reorganization or
25 merger had audited income statements, a pro forma income
26 statement.

27 (B) The issuer of the security has a class of equity

1 securities listed on a national securities exchange registered
2 under the securities exchange act of 1934 or designated for
3 trading on the national association of securities dealers
4 automated quotation system, unless the issuer of the security is
5 a unit investment trust registered under the investment company
6 act of 1940; or the issuer of the security, including its
7 predecessors, has been engaged in continuous business for at
8 least 3 years; or the issuer of the security has total assets of
9 at least \$2,000,000.00 based on an audited balance sheet as of a
10 date within 18 months before the date of the transaction or, in
11 the case of a reorganization or merger when the parties to the
12 reorganization or merger each had the audited balance sheet, a
13 pro forma balance sheet for the combined entity.

14 (c) A nonissuer transaction by or through a broker-dealer
15 registered or exempt from registration under this act in a
16 security of a foreign issuer that is a margin security defined in
17 regulations or rules adopted by the board of governors of the
18 federal reserve system.

19 (d) A nonissuer transaction by or through a broker-dealer
20 registered or exempt from registration under this act in an
21 outstanding security if the guarantor of the security files
22 reports with the securities and exchange commission under the
23 reporting requirements of section 13 or 15(d) of the securities
24 exchange act of 1934, 15 USC 78m or 78o.

25 (e) A nonissuer transaction by or through a broker-dealer
26 registered or exempt from registration under this act in a
27 security that meets 1 or more of the following:

1 (i) Is rated at the time of the transaction by a nationally
2 recognized statistical rating organization in 1 of its 4 highest
3 rating categories.

4 (ii) Has a fixed maturity or a fixed interest or dividend, if
5 both of the following are met:

6 (A) A default has not occurred during the current fiscal year
7 or within the 3 previous fiscal years or during the existence of
8 the issuer and any predecessor if less than 3 fiscal years, in
9 the payment of principal, interest, or dividends on the
10 security.

11 (B) The issuer is engaged in business, is not in the
12 organizational stage or in bankruptcy or receivership, and is not
13 and has not been within the previous 12 months a blank check,
14 blind pool, or shell company that has no specific business plan
15 or purpose or has indicated that its primary business plan is to
16 engage in a merger or combination of the business with, or an
17 acquisition of, an unidentified person.

18 (f) A nonissuer transaction by or through a broker-dealer
19 registered or exempt from registration under this act effecting
20 an unsolicited order or offer to purchase.

21 (g) A nonissuer transaction executed by a bona fide pledgee
22 without any purpose of evading this act.

23 (h) A nonissuer transaction by a federal covered investment
24 adviser with investments under management in excess of
25 \$100,000,000.00 acting in the exercise of discretionary authority
26 in a signed record for the account of others.

27 (i) A transaction in a security, whether or not the security

1 or transaction is otherwise exempt, in exchange for 1 or more
2 bona fide outstanding securities, claims, or property interests,
3 or partly in exchange and partly for cash, if the terms and
4 conditions of the issuance and exchange or the delivery and
5 exchange and the fairness of the terms and conditions have been
6 approved by the administrator at a hearing.

7 (j) A transaction between the issuer or other person on whose
8 behalf the offering is made and an underwriter, or among
9 underwriters.

10 (k) A transaction in a note, bond, debenture, or other
11 evidence of indebtedness secured by a mortgage or other security
12 agreement if all of the following are met:

13 (i) The note, bond, debenture, or other evidence of
14 indebtedness is offered and sold with the mortgage or other
15 security agreement as a unit.

16 (ii) A general solicitation or general advertisement of the
17 transaction is not made.

18 (iii) A commission or other remuneration is not paid or
19 given, directly or indirectly, to a person not registered under
20 this act as a broker-dealer or as an agent.

21 (l) A transaction by an executor, administrator of an estate,
22 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or
23 conservator.

24 (m) A sale or offer to sell to any of the following:

25 (i) An institutional investor.

26 (ii) A federal covered investment adviser.

27 (iii) Any other person exempted by rule or order under this

1 act.

2 (n) A sale or an offer to sell securities of an issuer, if
3 part of a single issue in which all of the following are met:

4 (i) There are not more than 25 purchasers in this state
5 during any 12 consecutive months, other than those designated in
6 subdivision (m).

7 (ii) There is no general solicitation or general advertising
8 used in connection with the offer to sell or sale of the
9 securities.

10 (iii) A commission or other remuneration is not paid or
11 given, directly or indirectly, to a person other than a
12 broker-dealer registered under this act or an agent registered
13 under this act for soliciting a prospective purchaser in this
14 state.

15 (iv) The issuer reasonably believes that all the purchasers
16 in this state other than those designated in subdivision (m) are
17 purchasing for investment.

18 (o) A transaction under an offer to existing security holders
19 of the issuer, including persons that at the date of the
20 transaction are holders of convertible securities, options, or
21 warrants, if a commission or other remuneration, other than a
22 standby commission, is not paid or given, directly or indirectly,
23 for soliciting a security holder in this state.

24 (p) An offer to sell, but not a sale, of a security not
25 exempt from registration under the securities act of 1933 if both
26 of the following are met:

27 (i) A registration or offering statement or similar record as

1 required under the securities act of 1933 has been filed, but is
2 not effective, or the offer is made in compliance with rule 165
3 adopted under the securities act of 1933, 17 CFR 230.165.

4 (ii) A stop order of which the offeror is aware has not been
5 issued against the offeror by the administrator or the securities
6 and exchange commission, and an audit, inspection, or proceeding
7 that is public and may culminate in a stop order is not known by
8 the offeror to be pending.

9 (q) An offer to sell, but not a sale, of a security exempt
10 from registration under the securities act of 1933 if all of the
11 following are met:

12 (i) A registration statement has been filed under this act,
13 but is not effective.

14 (ii) A solicitation of interest is provided in a record to
15 offerees in compliance with a rule adopted by the administrator
16 under this act.

17 (iii) A stop order of which the offeror is aware has not been
18 issued by the administrator under this act, and an audit,
19 inspection, or proceeding that may culminate in a stop order is
20 not known by the offeror to be pending.

21 (r) A transaction involving the distribution of the
22 securities of an issuer to the security holders of another person
23 in connection with a merger, consolidation, exchange of
24 securities, sale of assets, or other reorganization to which the
25 issuer, or its parent or subsidiary, and the other person, or its
26 parent or subsidiary, are parties.

27 (s) A rescission offer, sale, or purchase under section 510.

1 (t) An offer or sale of a security to a person not resident
2 in this state and not present in this state if the offer or sale
3 does not constitute a violation of the laws of the state or
4 foreign jurisdiction in which the offeree or purchaser is present
5 and is not part of an unlawful plan or scheme to evade this act.

6 (u) An offer or sale of a security pursuant to an employee's
7 stock purchase, savings, option, profit-sharing, pension, or
8 similar employees' benefit plan, including any securities, plan
9 interests, and guarantees issued under a compensatory benefit
10 plan or compensation contract, contained in a record, established
11 by the issuer, its parents, its majority-owned subsidiaries, or
12 the majority-owned subsidiaries of the issuer's parent for the
13 participation of their employees including any of the following:

14 (i) Offers or sales of those securities to directors; general
15 partners; trustees, if the issuer is a business trust; officers;
16 or consultants and advisors.

17 (ii) Family members who acquire those securities from those
18 persons through gifts or domestic relations orders.

19 (iii) Former employees, directors, general partners,
20 trustees, officers, consultants, and advisors if those
21 individuals were employed by or providing services to the issuer
22 when the securities were offered.

23 (iv) Insurance agents who are exclusive insurance agents of
24 the issuer, its subsidiaries or parents, or who derive more than
25 50% of their annual income from those organizations.

26 (v) A transaction involving any of the following:

27 (i) A stock dividend or equivalent equity distribution,

1 whether the corporation or other business organization
2 distributing the dividend or equivalent equity distribution is
3 the issuer or not, if nothing of value is given by stockholders
4 or other equity holders for the dividend or equivalent equity
5 distribution other than the surrender of a right to a cash or
6 property dividend if each stockholder or other equity holder may
7 elect to take the dividend or equivalent equity distribution in
8 cash, property, or stock.

9 (ii) An act incident to a judicially approved reorganization
10 in which a security is issued in exchange for 1 or more
11 outstanding securities, claims, or property interests, or partly
12 in exchange and partly for cash.

13 (iii) The solicitation of tenders of securities by an offeror
14 in a tender offer in compliance with rule 162 adopted under the
15 securities act of 1933, 17 CFR 230.162.

16 (w) Subject to subsection (2), a nonissuer transaction in an
17 outstanding security by or through a broker-dealer registered or
18 exempt from registration under this act, if both of the following
19 are met:

20 (i) The issuer is a reporting issuer in a foreign
21 jurisdiction designated in subsection (2)(a), or by rule or order
22 of the administrator, and has been subject to continuous
23 reporting requirements in the foreign jurisdiction for not less
24 than 180 days before the transaction.

25 (ii) The security is listed on the foreign jurisdiction's
26 securities exchange that has been designated in subsection
27 (2)(a), or by rule or order under this act, or is a security of

1 the same issuer that is of senior or substantially equal rank to
2 the listed security or is a warrant or right to purchase or
3 subscribe to any of the foregoing.

4 (2) For purposes of subsection (1)(w), both of the following
5 apply:

6 (a) Canada, together with its provinces and territories, is a
7 designated foreign jurisdiction and the Toronto stock exchange,
8 inc., is a designated securities exchange.

9 (b) After an administrative hearing in compliance with
10 applicable state law, the administrator, by rule or order under
11 this act, may revoke the designation of a securities exchange
12 under subsection (1)(w) or this subsection if the administrator
13 finds that revocation is necessary or appropriate in the public
14 interest and for the protection of investors.

15 Sec. 203. A rule or order under this act may exempt a
16 security, transaction, or offer, or a rule or order under this
17 act may exempt a class of securities, transactions, or offers,
18 from any or all of the requirements of sections 301 to 306 and
19 504, and a rule or order under this act may waive any or all of
20 the conditions for an exemption or offers under sections 201 and
21 202.

22 Sec. 204. (1) Except with respect to a federal covered
23 security or a transaction involving a federal covered security,
24 an order of the administrator under this act may deny or suspend
25 application of, condition, limit, or revoke an exemption created
26 under section 201(c)(iii), (g), or (h) or 202 or an exemption or
27 waiver created under section 203 with respect to a specific

1 security, transaction, or offer. An order under this section may
2 only be issued pursuant to the procedures in section 306(4) or
3 604.

4 (2) A person does not violate section 301, 303 to 306, 504,
5 or 510 by an offer to sell, an offer to purchase, a sale, or a
6 purchase effected after the entry of an order issued under this
7 section if the person did not know, and in the exercise of
8 reasonable care could not have known, of the order.

9

ARTICLE 3

10 REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED
11 SECURITIES

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

14 (a) The security is a federal covered security.

15 (b) The security, transaction, or offer is exempted from
16 registration under sections 201 to 203.

17 (c) The security is registered under this act.

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

24 (a) Before the initial offer of a federal covered security in
25 this state, all records that are part of a federal registration
26 statement filed with the securities and exchange commission under
27 the securities act of 1933, a consent to service of process

1 signed by the issuer, and a fee of \$500.00.

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

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

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

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

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

25 (c) A notice filing may be terminated by filing with the
26 administrator a notice of termination as prescribed by the
27 administrator. The termination is effective upon the

1 administrator's receipt of the notice of termination.

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

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

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

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

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

16 (6) The administrator may issue a stop order suspending the
17 offer and sale of a federal covered security, except a federal
18 covered security under section 18(b)(1) of the securities act of
19 1933, 15 USC 77r, if it finds that the order is in the public
20 interest and there is a failure to comply with this section.

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

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

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

27 (i) If the issuer projects nonexempt sales of the security in

1 this state during the 1-year renewal period of \$250,000.00 or
2 less, \$100.00.

3 (ii) If the issuer projects nonexempt sales of the security
4 in this state during the 1-year renewal period of more than
5 \$250,000.00 but not more than \$700,000.00, \$400.00.

6 (iii) If the issuer projects nonexempt sales of the security
7 in this state during the 1-year renewal period of more than
8 \$700,000.00 but not more than \$1,000,000.00, \$800.00.

9 (iv) If the issuer projects nonexempt sales of the security
10 in this state during the 1-year renewal period of more than
11 \$1,000,000.00, \$1,400.00.

12 (b) For purposes of subdivision (a), an issuer's projection
13 of nonexempt sales of a security must be reasonable and based on
14 any facts known to the issuer at the time of renewal that may
15 affect sales of the security, including, but not limited to,
16 nonexempt sales of the security in this state during the current
17 1-year notice filing period.

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

26 (i) The renewal fee determined under subdivision (a).

27 (ii) A renewal fee determined under subdivision (a), using

1 actual sales during the current notice filing period as the
2 projected sales for the renewal notice filing period.

3 (d) If an issuer's nonexempt sales of a security in this
4 state during a 1-year notice filing period are less than the
5 projections for that period that the issuer had submitted to the
6 administrator for determination of the issuer's renewal fee for
7 the 1-year notice filing period, the issuer is not entitled to a
8 refund of any part of the renewal fee for that period or
9 adjustment of the renewal fee for any renewal period.

10 (e) Upon written request of the administrator, an issuer
11 shall provide sales reports showing the issuer's nonexempt sales
12 of a security in this state for the current and 2 previous 1-year
13 notice filing periods, but the issuer is not otherwise required
14 to provide a sales report to the administrator in connection with
15 a renewal of a notice filing.

16 (f) If the administrator determines that for 2 consecutive
17 1-year notice filing periods an issuer's nonexempt sales of a
18 security in this state exceeded the issuer's sales projections
19 for that period, the administrator may assess the issuer a
20 penalty in the amount of the renewal fees the issuer would have
21 paid under subdivision (a) if its projections had been accurate.
22 This penalty is in addition to an increased fee for renewal under
23 subdivision (c), if any.

24 (9) If the administrator finds that there is a failure to
25 comply with a notice or fee requirement of this section, the
26 administrator may issue a stop order suspending the offer and
27 sale of a federal covered security in this state, except a

1 federal covered security under section 18(b)(1) of the securities
2 act of 1933, 15 USC 77r. If the deficiency is corrected, the
3 stop order is void as of the time of its issuance and no other
4 penalty may be imposed by the administrator.

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

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

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

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

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

25 (d) An undertaking to forward each amendment to the federal
26 prospectus, other than an amendment that delays the effective
27 date of the registration statement, promptly after it is filed

1 with the securities and exchange commission.

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

6 (a) A stop order under subsection (4) or section 306 or
7 issued by the securities and exchange commission is not in effect
8 and a proceeding is not pending against the issuer under section
9 412.

10 (b) The registration statement has been on file for at least
11 20 days or a shorter period provided by rule or order under this
12 act.

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

26 (5) If the federal registration statement becomes effective
27 before each of the conditions in this section is satisfied or is

1 waived by the administrator, the registration statement is
2 automatically effective under this act when all the conditions
3 are satisfied or waived. If the registrant notifies the
4 administrator of the date when the federal registration statement
5 is expected to become effective, the administrator shall promptly
6 notify the registrant by telegram, telephone, or electronic means
7 and promptly confirm this notice by a record, indicating whether
8 all the conditions are satisfied or waived and whether the
9 administrator intends the institution of a proceeding under
10 section 306. The notice by the administrator does not preclude
11 the institution of a proceeding under section 306.

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

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

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

26 (b) With respect to each director and officer of the issuer,
27 and other person having a similar status or performing similar

1 functions, the person's name, address, and principal occupation
2 for the previous 5 years, the amount of securities of the issuer
3 held by the person as of the thirtieth day before the filing of
4 the registration statement, the amount of the securities covered
5 by the registration statement to which the person has indicated
6 an intention to subscribe, and a description of any material
7 interest of the person in any material transaction with the
8 issuer or a significant subsidiary effected within the previous 3
9 years or proposed to be effected.

10 (c) With respect to persons covered by subdivision (b), the
11 aggregate sum of the remuneration paid to those persons during
12 the previous 12 months and estimated to be paid during the next
13 12 months, directly or indirectly, by the issuer, and all
14 predecessors, parents, subsidiaries, and affiliates of the
15 issuer.

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

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

25 (f) With respect to a person on whose behalf any part of the
26 offering is to be made in a nonissuer distribution, the person's
27 name and address, the amount of securities of the issuer held by

1 the person as of the date of the filing of the registration
2 statement, a description of any material interest of the person
3 in any material transaction with the issuer or any significant
4 subsidiary effected within the previous 3 years or proposed to be
5 effected, and a statement of the reasons for making the
6 offering.

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

16 (h) The kind and amount of securities to be offered, the
17 proposed offering price or the method by which it is to be
18 computed, any variation at which a proportion of the offering is
19 to be made to a person or class of persons other than the
20 underwriters, with a specification of the person or class, the
21 basis upon which the offering is to be made if otherwise than for
22 cash, the estimated aggregate underwriting and selling discounts
23 or commissions and finders' fees, including separately cash,
24 securities, contracts, or anything else of value to accrue to the
25 underwriters or finders in connection with the offering, or, if
26 the selling discounts or commissions are variable, the basis of
27 determining them and their maximum and minimum amounts, the

1 estimated amounts of other selling expenses, including legal,
2 engineering, and accounting charges, the name and address of each
3 underwriter and each recipient of a finder's fee, a copy of any
4 underwriting or selling group agreement under which the
5 distribution is to be made, or the proposed form of any such
6 agreement whose terms have not yet been determined, and a
7 description of the plan of distribution of any securities that
8 are to be offered otherwise than through an underwriter.

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

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

1 in the aggregate of those options.

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

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

13 (m) A copy of any prospectus, pamphlet, circular, form
14 letter, advertisement, or other sales literature intended as of
15 the effective date to be used in connection with the offering and
16 any solicitation of interest used in compliance with section
17 202(q)(ii).

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

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

1 binding obligation of the issuer.

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

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

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

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

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

27 (b) The administrator has not issued an order under section

1 306 delaying effectiveness.

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

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

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

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

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

26 (c) Payment pursuant to the sale.

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

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

4 (2) A person filing a registration statement shall pay a
5 filing fee of 1/10 of 1% of the maximum aggregate offering price
6 at which the registered securities are to be offered in this
7 state, but the fee shall in no case be less than \$100.00 or more
8 than \$1,250.00. If an application for registration is withdrawn
9 before the effective date or a preeffective stop order is issued
10 under section 306, the administrator shall retain a fee of
11 \$100.00 if the initial review has not been commenced, and the
12 full filing fee after review has been commenced.

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

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

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

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

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

26 (5) In the case of a nonissuer distribution, information or a
27 record shall not be required under subsection (9) or section 304,

1 unless it is known to the person filing the registration
2 statement or to the person on whose behalf the distribution is to
3 be made, or unless it can be furnished by those persons without
4 unreasonable effort or expense.

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

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

23 (8) Except while a stop order is in effect under section 306,
24 a registration statement is effective for 1 year after its
25 effective date, or for a longer period designated in an order
26 under this act during which the security is being offered or
27 distributed in a nonexempted transaction by or for the account of

1 the issuer or other person on whose behalf the offering is being
2 made or by an underwriter or broker-dealer that is still offering
3 part of an unsold allotment or subscription taken as a
4 participant in the distribution. For the purposes of a nonissuer
5 transaction, all outstanding securities of the same class
6 identified in the registration statement as a security registered
7 under this act are considered to be registered while the
8 registration statement is effective. If any securities of the
9 same class are outstanding, a registration statement may not be
10 withdrawn until 1 year after its effective date. A registration
11 statement may be withdrawn only with the approval of the
12 administrator.

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

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

1 within 1 year after the date of the sale.

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

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

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

24 (c) The security registered or sought to be registered is the
25 subject of a permanent or temporary injunction of a court of
26 competent jurisdiction or an administrative stop order or similar
27 order issued under any federal, foreign, or state law other than

1 this act applicable to the offering, but the administrator shall
2 not institute a proceeding against an effective registration
3 statement under this paragraph more than 1 year after the date of
4 the order or injunction on which it is based, and the
5 administrator shall not issue an order under this subdivision on
6 the basis of an order or injunction issued under the securities
7 act of another state unless the order or injunction was based on
8 conduct that would constitute, as of the date of the order, a
9 ground for a stop order under this section.

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

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

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

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

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

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

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

27 (2) To the extent practicable, the administrator by rule or

1 order under this act shall publish guidelines, rules, or orders
2 that provide notice of conduct that violates subsection (1)(g).

3 (3) The administrator shall not institute a stop order
4 proceeding against an effective registration statement on the
5 basis of conduct or a transaction known to the administrator when
6 the registration statement became effective unless the proceeding
7 is instituted within 30 days after the registration statement
8 became effective.

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

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

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

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

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

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

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

17 ARTICLE 4

18 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER
19 REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

20 Sec. 401. (1) A person shall not transact business in this
21 state as a broker-dealer unless the person is registered under
22 this act as a broker-dealer or is exempt from registration as a
23 broker-dealer under subsection (2) or (4).

24 (2) The following persons are exempt from the registration
25 requirement of subsection (1):

26 (a) A broker-dealer if the broker-dealer does not have a
27 place of business in this state and if the broker-dealer's only

1 transactions effected in this state are with any of the
2 following:

3 (i) The issuer of the securities involved in the
4 transactions.

5 (ii) A person registered as a broker-dealer under this act
6 or not required to be registered as a broker-dealer under this
7 act.

8 (iii) An institutional investor.

9 (iv) A nonaffiliated federal covered investment adviser with
10 investments under management in excess of \$100,000,000.00 acting
11 for the account of others pursuant to discretionary authority in
12 a signed record.

13 (v) A bona fide preexisting customer whose principal place
14 of residence is not in this state and the broker-dealer is
15 registered as a broker-dealer under the securities exchange act
16 of 1934 or not required to be registered under the securities
17 exchange act of 1934 and is registered under the securities act
18 of the state in which the customer maintains a principal place of
19 residence.

20 (vi) A bona fide preexisting customer whose principal place
21 of residence is in this state but who was not present in this
22 state when the customer relationship was established, if both of
23 the following are met:

24 (A) The broker-dealer is registered under the securities
25 exchange act of 1934 or not required to be registered under the
26 securities exchange act of 1934 and is registered under the
27 securities laws of the state in which the customer relationship

1 was established and where the customer had maintained a principal
2 place of residence.

3 (B) Within 45 days after the customer's first transaction in
4 this state, the person files an application for registration as a
5 broker-dealer in this state and a further transaction is not
6 effected more than 75 days after the date on which the
7 application is filed, or, if earlier, the date on which the
8 administrator notifies the person that the administrator has
9 denied the application for registration or has stayed the
10 pendency of the application for good cause.

11 (vii) Not more than 3 customers in this state during the
12 previous 12 months, in addition to those specified in
13 subparagraphs (i) to (vi) and under subparagraph (viii), if the
14 broker-dealer is registered under the securities exchange act of
15 1934 or not required to be registered under the securities
16 exchange act of 1934 and is registered under the securities act
17 of the state in which the broker-dealer has its principal place
18 of business.

19 (viii) Any other person exempted by rule or order under this
20 act.

21 (b) A person that deals solely in United States government
22 securities and is supervised as a dealer in government securities
23 by the board of governors of the federal reserve system, the
24 comptroller of the currency, the federal deposit insurance
25 corporation, or the office of thrift supervision.

26 (3) A broker-dealer, or an issuer engaged in offering,
27 offering to purchase, purchasing, or selling securities in this

1 state, shall not directly or indirectly employ or associate with
2 an individual to engage in an activity related to securities
3 transactions in this state if the registration of the individual
4 is suspended or revoked or the individual is barred from
5 employment or association with a broker-dealer, an issuer, an
6 investment adviser, or a federal covered investment adviser by an
7 order of the administrator under this act, the securities and
8 exchange commission, or a self-regulatory organization. A
9 broker-dealer or issuer does not violate this subsection if the
10 broker-dealer or issuer did not know and in the exercise of
11 reasonable care could not have known of the suspension,
12 revocation, or bar. If requested by a broker-dealer or issuer
13 and if good cause is shown, an order under this act may modify or
14 waive, in whole or in part, the application of the prohibitions
15 of this subsection.

16 (4) A rule or order under this act may permit any of the
17 following:

18 (a) A broker-dealer that is registered in Canada or other
19 foreign jurisdiction and that does not have a place of business
20 in this state to effect transactions in securities with or for,
21 or attempt to effect the purchase or sale of any securities by,
22 any of the following:

23 (i) An individual from Canada or other foreign jurisdiction
24 who is temporarily present in this state and with whom the
25 broker-dealer had a bona fide customer relationship before the
26 individual entered the United States.

27 (ii) An individual from Canada or other foreign jurisdiction

1 who is present in this state and whose transactions are in a
2 self-directed tax advantaged retirement plan of which the
3 individual is the holder or contributor in that foreign
4 jurisdiction.

5 (iii) An individual who is present in this state, with whom
6 the broker-dealer customer relationship arose while the
7 individual was temporarily or permanently resident in Canada or
8 the other foreign jurisdiction.

9 (b) An agent who represents a broker-dealer that is exempt
10 under this subsection to effect transactions in securities or
11 attempt to effect the purchase or sale of any securities in this
12 state as permitted for a broker-dealer described in subsection
13 (4)(a).

14 Sec. 402. (1) An individual shall not transact business in
15 this state as an agent unless the individual is registered under
16 this act as an agent or is exempt from registration as an agent
17 under subsection (2).

18 (2) Each of the following individuals is exempt from the
19 registration requirement of subsection (1):

20 (a) An individual who represents a broker-dealer in effecting
21 transactions in this state limited to those described in section
22 15(h)(2) of the securities exchange act of 1934, 15 USC 78o.

23 (b) An individual who represents a broker-dealer that is
24 exempt under section 401(2) or (4).

25 (c) An individual who represents an issuer with respect to an
26 offer or sale of the issuer's own securities or those of the
27 issuer's parent or any of the issuer's subsidiaries, and who is

1 not compensated in connection with the individual's participation
2 by the payment of commissions or other remuneration based,
3 directly or indirectly, on transactions in those securities.

4 (d) An individual who represents an issuer and who effects
5 transactions in the issuer's securities exempted by section 202,
6 other than section 202(1)(k) or (n).

7 (e) An individual who represents an issuer who effects
8 transactions solely in federal covered securities of the issuer,
9 but an individual who effects transactions in a federal covered
10 security under section 18(b)(3) or 18(b)(4)(D) of the securities
11 act of 1933, 15 USC 77r, is not exempt if the individual is
12 compensated in connection with the agent's participation by the
13 payment of commissions or other remuneration based, directly or
14 indirectly, on transactions in those securities.

15 (f) An individual who represents a broker-dealer registered
16 in this state under section 401(1) or exempt from registration
17 under section 401(2) in the offer and sale of securities for an
18 account of a nonaffiliated federal covered investment adviser
19 with investments under management in excess of \$100,000,000.00
20 acting for the account of others pursuant to discretionary
21 authority in a signed record.

22 (g) An individual who represents an issuer in connection with
23 the purchase of the issuer's own securities.

24 (h) An individual who represents an issuer and who restricts
25 participation to performing clerical or ministerial acts.

26 (i) Any other individual exempted by rule or order under this
27 act.

1 (3) The registration of an agent is effective only while the
2 agent is employed by or associated with a broker-dealer
3 registered under this act or an issuer that is offering, selling,
4 or purchasing its securities in this state.

5 (4) A broker-dealer, or an issuer engaged in offering,
6 selling, or purchasing securities in this state, shall not employ
7 or associate with an agent who transacts business in this state
8 on behalf of broker-dealers or issuers unless the agent is
9 registered under subsection (1) or exempt from registration under
10 subsection (2).

11 (5) An individual shall not act as an agent for more than 1
12 broker-dealer or more than 1 issuer at a time, unless the
13 broker-dealers or the issuers for which the agent acts are
14 affiliated by direct or indirect common control or are authorized
15 by rule or order under this act.

16 Sec. 403. (1) A person shall not transact business in this
17 state as an investment adviser unless the person is registered
18 under this act as an investment adviser or is exempt from
19 registration as an investment adviser under subsection (2).

20 (2) The following persons are exempt from the registration
21 requirement of subsection (1):

22 (a) A person that does not have a place of business in this
23 state and that is registered under the securities act of the
24 state in which the person has its principal place of business, if
25 its only clients in this state are any of the following:

26 (i) Federal covered investment advisers, investment advisers
27 registered under this act, or broker-dealers registered under

1 this act.

2 (ii) Institutional investors.

3 (iii) Bona fide preexisting clients whose principal places of
4 residence are not in this state, if the investment adviser is
5 registered under the securities act of the state in which the
6 clients maintain principal places of residence.

7 (iv) Any other client exempted by rule or order under this
8 act.

9 (b) A person that does not have a place of business in this
10 state if the person has had, during the preceding 12 months, not
11 more than 5 clients that are residents of this state in addition
12 to those specified under subdivision (a).

13 (c) The person is an investment adviser who is not required
14 to be registered as an investment adviser under the investment
15 advisers act of 1940 if the investment adviser's only clients in
16 this state are other investment advisers, federal covered
17 advisers, broker-dealers, or institutional investors.

18 (d) Any other person exempted by rule or order under this
19 act.

20 (3) An investment adviser shall not, directly or indirectly,
21 employ or associate with an individual to engage in an activity
22 related to investment advice in this state if the registration of
23 the individual is suspended or revoked, or the individual is
24 barred from employment or association with an investment adviser,
25 federal covered investment adviser, or broker-dealer by an order
26 under this act, the securities and exchange commission, or a
27 self-regulatory organization, unless the investment adviser did

1 not know, and in the exercise of reasonable care could not have
2 known, of the suspension, revocation, or bar. If the investment
3 adviser request and good cause is shown, the administrator, by
4 order, may waive, in whole or in part, the application of the
5 prohibitions of this subsection.

6 (4) An investment adviser shall not employ or associate with
7 an individual required to be registered under this act as an
8 investment adviser representative who transacts business in this
9 state on behalf of the investment adviser unless the individual
10 is registered under section 404(1) or is exempt from registration
11 under section 404(2).

12 Sec. 404. (1) An individual shall not transact business in
13 this state as an investment adviser representative unless the
14 individual is registered under this act as an investment adviser
15 representative or is exempt from registration as an investment
16 adviser under subsection (2).

17 (2) Each of the following individuals is exempt from the
18 registration requirement of subsection (1):

19 (a) An individual who is employed by or associated with an
20 investment adviser that is exempt from registration under section
21 403(2) or a federal covered investment adviser that is excluded
22 from the notice filing requirements of section 405.

23 (b) Any other individual exempted by rule or order under this
24 act.

25 (3) The registration of an investment adviser representative
26 is not effective while the investment adviser representative is
27 not employed by or associated with an investment adviser

1 registered under this act or a federal covered investment adviser
2 that has made or is required to make a notice filing under
3 section 405.

4 (4) An individual may transact business as an investment
5 adviser representative for more than 1 investment adviser or
6 federal covered investment adviser unless a rule or order under
7 this act prohibits or limits an individual from acting as an
8 investment adviser representative for more than 1 investment
9 adviser or federal covered investment adviser.

10 (5) An individual acting as an investment adviser
11 representative shall not, directly or indirectly, conduct
12 business in this state on behalf of an investment adviser or a
13 federal covered investment adviser if the registration of the
14 individual as an investment adviser representative is suspended
15 or revoked or the individual is barred from employment or
16 association with an investment adviser or a federal covered
17 investment adviser by an order under this act, the securities and
18 exchange commission, or a self-regulatory organization. If a
19 federal covered investment adviser requests and good cause is
20 shown, the administrator, by order, may waive, in whole or in
21 part, the application of the requirements of this subsection.

22 (6) An investment adviser registered under this act, a
23 federal covered investment adviser that has filed a notice under
24 section 405, or a broker-dealer registered under this act is not
25 required to employ or associate with an individual as an
26 investment adviser representative if the only compensation paid
27 to the individual for a referral of investment advisory clients

1 is paid to an investment adviser registered under this act, a
2 federal covered investment adviser who has filed a notice under
3 section 405, or a broker-dealer registered under this act with
4 which the individual is employed or associated as an investment
5 adviser representative.

6 Sec. 405. (1) Except with respect to a federal covered
7 investment adviser described in subsection (2), a federal covered
8 investment adviser shall not transact business in this state as a
9 federal covered investment adviser unless the federal covered
10 investment adviser complies with subsection (3).

11 (2) The following federal covered investment advisers are not
12 required to comply with subsection (3):

13 (a) A federal covered investment adviser without a place of
14 business in this state if its only clients in this state are any
15 of the following:

16 (i) Federal covered investment advisers, investment advisers
17 registered under this act, and broker-dealers registered under
18 this act.

19 (ii) Institutional investors.

20 (iii) Bona fide preexisting clients whose principal places of
21 residence are not in this state.

22 (iv) Other clients specified by rule or order under this
23 act.

24 (b) A federal covered investment adviser that does not have a
25 place of business in this state if the federal covered investment
26 adviser has had, during the preceding 12 months, not more than 5
27 clients that are residents of this state in addition to those

1 specified under subdivision (a).

2 (c) Any other person excluded by rule or order under this
3 act.

4 (3) A person acting as a federal covered investment adviser,
5 not excluded under subsection (2), shall file a notice, a consent
6 to service of process complying with section 611, and those
7 records that have been filed with the securities and exchange
8 commission under the investment advisers act of 1940 that are
9 required by rule or order under this act and pay the fees
10 specified in section 410(5).

11 (4) A notice under subsection (3) is effective on filing.

12 Sec. 406. (1) A person shall register as a broker-dealer,
13 agent, investment adviser, or investment adviser representative
14 by filing an application and a consent to service of process
15 complying with section 611 and paying the fee specified in
16 section 410 and any reasonable fees charged by the designee of
17 the administrator for processing the filing. Each application
18 must contain both of the following:

19 (a) The information or record required for the filing of a
20 uniform application.

21 (b) If requested by the administrator, any other financial or
22 other information or record that the administrator determines is
23 appropriate.

24 (2) If the information or record contained in an application
25 that is filed under subsection (1) is or becomes inaccurate or
26 incomplete in any material respect, the registrant shall promptly
27 file a correcting amendment.

1 (3) If an order is not in effect and no proceeding is pending
2 under section 412, registration becomes effective at 12 noon on
3 the forty-fifth day after a completed application is filed unless
4 the registration is denied. A rule or order under this act may
5 set an earlier effective date or may defer the effective date
6 until 12 noon on the forty-fifth day after the filing of any
7 amendment completing the application.

8 (4) A registration is effective until 12 midnight on December
9 31 of the year for which the application for registration is
10 filed. Unless an order is in effect under section 412, a
11 registration may be automatically renewed each year by filing the
12 records required by rule or order under this act and paying the
13 fee specified in section 410 and the costs charged by the
14 designee of the administrator for processing the filings.

15 (5) A rule or order under this act may impose other
16 conditions not inconsistent with the national securities markets
17 improvement act of 1996, Public Law 104-290, 110 Stat. 3416, or
18 an order under this act may waive, in whole or in part, specific
19 requirements in connection with registration if the imposition or
20 waiver is appropriate in the public interest and for the
21 protection of investors.

22 Sec. 407. (1) A broker-dealer or investment adviser may
23 succeed to the current registration of another broker-dealer or
24 investment adviser or a notice filing of a federal covered
25 investment adviser, and a federal covered investment adviser may
26 succeed to the current registration of an investment adviser or
27 notice filing of another federal covered investment adviser, by

1 filing as a successor an application for registration under
2 section 401 or 403, or a notice under section 405, for the
3 unexpired portion of the current registration or notice filing.

4 (2) A broker-dealer or investment adviser that changes its
5 form of organization or state of incorporation or organization
6 may continue its registration by filing an amendment to its
7 registration if the change does not involve a material change in
8 its financial condition or management. The amendment is
9 effective when filed or on a date designated by the registrant in
10 the filing. The new organization is a successor to the original
11 registrant for the purposes of this act. If there is a material
12 change in financial condition or management, the broker-dealer or
13 investment adviser shall file a new application for
14 registration. Any predecessor registered under this act shall
15 stop conducting its securities business other than winding down
16 transactions and shall file for withdrawal of broker-dealer or
17 investment adviser registration within 45 days after filing its
18 amendment to effect succession.

19 (3) A broker-dealer or investment adviser that changes its
20 name may continue its registration by filing an amendment to its
21 registration. The amendment is effective when filed or on a date
22 designated by the registrant.

23 (4) A change of control of a broker-dealer or investment
24 adviser may be made in accordance with a rule or order under this
25 act.

26 Sec. 408. (1) If an agent registered under this act
27 terminates employment by or association with a broker-dealer or

1 issuer, or if an investment adviser representative registered
2 under this act terminates employment by or association with an
3 investment adviser or federal covered investment adviser, or if
4 either registrant terminates activities that require registration
5 as an agent or investment adviser representative, the
6 broker-dealer, investment adviser, or federal covered investment
7 adviser shall promptly file a notice of termination. If the
8 registrant learns that the broker-dealer, issuer, investment
9 adviser, or federal covered investment adviser has not filed the
10 notice, the registrant may file the notice.

11 (2) If an agent registered under this act terminates
12 employment by or association with a broker-dealer registered
13 under this act and begins employment by or association with
14 another broker-dealer registered under this act; or if an
15 investment adviser representative registered under this act
16 terminates employment by or association with an investment
17 adviser registered under this act; or if a federal covered
18 investment adviser that has filed a notice under section 405
19 begins employment by or association with another investment
20 adviser registered under this act; or if a federal covered
21 investment adviser, who has filed a notice under section 405,
22 files an application for registration that complies with the
23 requirement of section 406(1) and the filing fee required under
24 section 410 is paid by or on behalf of the registrant within 30
25 days after the termination, 1 of the following applies to the
26 registration of the agent or investment adviser representative:

27 (a) If the agent's central registration depository record or

1 successor record or the investment adviser representative's
2 investment adviser registration depository record or successor
3 record does not contain a new or amended disciplinary disclosure
4 within the previous 12 months, the registration is immediately
5 effective as of the date of the completed filing.

6 (b) If the agent's central registration depository record or
7 the investment adviser representative's investment adviser
8 registration depository record contains a new or amended
9 disciplinary disclosure within the preceding 12 months, the
10 registration is temporarily effective as of the date of the
11 completed filing.

12 (3) If there are or were grounds for discipline under section
13 412, the administrator may withdraw a temporary registration
14 within 30 days after the application is filed. If the
15 administrator does not withdraw the temporary registration within
16 the 30-day period, registration becomes automatically effective
17 on the thirty-first day after filing.

18 (4) The administrator may prevent the effectiveness of a
19 transfer of an agent or investment adviser representative under
20 subsection (2)(a) or (b) based on the public interest and the
21 protection of investors.

22 (5) If the administrator determines that a registrant or
23 applicant for registration is no longer in existence, has ceased
24 to act as a broker-dealer, agent, investment adviser, or
25 investment adviser representative, is the subject of an
26 adjudication of incapacity, is subject to the control of a
27 committee, conservator, or guardian, or cannot reasonably be

1 located, a rule or order under this act may require the
2 registration be canceled or terminated or the application
3 denied. The administrator may reinstate a canceled or terminated
4 registration, with or without hearing, and may make the
5 registration retroactive.

6 Sec. 409. Withdrawal of registration by a broker-dealer,
7 agent, investment adviser, or investment adviser representative
8 is effective 60 days after an application to withdraw is filed or
9 within a shorter period as provided by rule or order under this
10 act, unless a revocation or suspension proceeding is pending when
11 the application is filed. If a proceeding is pending, withdrawal
12 is effective when and on conditions required by rule or order
13 under this act. The administrator may institute a revocation or
14 suspension proceeding under section 412 within 1 year after the
15 withdrawal became effective automatically and issue a revocation
16 or suspension order as of the last date on which registration was
17 effective if a proceeding is not pending.

18 Sec. 410. (1) A person shall pay a fee of \$250.00 when
19 initially filing an application for registration as a
20 broker-dealer and a fee of \$250.00 when filing a renewal of
21 registration as a broker-dealer. If the filing results in a
22 denial or withdrawal, the administrator shall retain all of the
23 filing fee.

24 (2) An individual shall pay a fee of \$30.00 when filing an
25 application for registration as an agent, a fee of \$30.00 when
26 filing a renewal of registration as an agent, and a fee of \$30.00
27 when filing for a change of registration as an agent. If the

1 filing results in a denial or withdrawal, the administrator shall
2 retain all of the filing fee.

3 (3) A person shall pay a fee of \$150.00 when filing an
4 application for registration as an investment adviser and a fee
5 of \$150.00 when filing a renewal of registration as an investment
6 adviser. If the filing results in a denial or withdrawal, the
7 administrator shall retain all of the filing fee.

8 (4) An individual shall pay a fee of \$30.00 when filing an
9 application for registration as an investment adviser
10 representative, a fee of \$30.00 when filing a renewal of
11 registration as an investment adviser representative, and a fee
12 of \$30.00 when filing a change of registration as an investment
13 adviser representative. If the filing results in a denial or
14 withdrawal, the administrator shall retain all of the filing
15 fee.

16 (5) A federal covered investment adviser required to file a
17 notice under section 405 shall pay an initial and annual notice
18 fee of \$150.00.

19 (6) A person required to pay a filing or notice fee under
20 this section may transmit the fee through or to a designee as a
21 rule or order requires under this act.

22 (7) An investment adviser representative who is registered as
23 an agent under section 402 and who represents a person that is
24 both registered as a broker-dealer under section 401 and
25 registered as an investment adviser under section 403 or required
26 as a federal covered investment adviser to make a notice filing
27 under section 405 is not required to pay an initial or annual

1 registration fee for registration as an investment adviser
2 representative.

3 Sec. 411. (1) Subject to section 15(h) of the securities
4 act of 1934, 15 USC 78o, or section 222 of the investment
5 advisers act of 1940, 15 USC 80b-18a, a rule or order under this
6 act may establish minimum financial requirements for
7 broker-dealers registered or required to be registered under this
8 act and investment advisers registered or required to be
9 registered under this act.

10 (2) Subject to section 15(h) of the securities exchange act
11 of 1934, 15 USC 78o, or section 222(b) of the investment advisers
12 act of 1940, 15 USC 80b-18a, a broker-dealer registered or
13 required to be registered under this act and an investment
14 adviser registered or required to be registered under this act
15 shall file financial reports required by rule or order under this
16 act. If the information contained in a record filed under this
17 subsection is or becomes inaccurate or incomplete in any material
18 respect, the registrant shall promptly file a correcting
19 amendment.

20 (3) Subject to section 15(h) of the securities exchange act
21 of 1934, 15 USC 78o, or section 222 of the investment advisers
22 act of 1940, 15 USC 80b-18a, a broker-dealer registered or
23 required to be registered under this act and an investment
24 adviser registered or required to be registered under this act
25 shall make and maintain the accounts, correspondence, memoranda,
26 papers, books, and other records required by rule or order of the
27 administrator. The records required to be maintained under this

1 subsection shall be maintained as follows:

2 (a) Broker-dealer records may be maintained in any form of
3 data storage acceptable under section 17(a) of the securities
4 exchange act of 1934, 15 USC 78q, if they are readily accessible
5 to the administrator.

6 (b) Investment adviser records may be maintained in any form
7 of data storage required by rule or order under this act.

8 (4) The records of a broker-dealer registered or required to
9 be registered under this act and of an investment adviser
10 registered or required to be registered under this act are
11 subject to reasonable periodic, special, or other audits or
12 inspections by a representative of the administrator, in or
13 outside of this state, as the administrator considers necessary
14 or appropriate in the public interest and for the protection of
15 investors. An audit or inspection may be made at any time and
16 without prior notice. The administrator may copy and remove for
17 audit or inspection copies of all records the administrator
18 reasonably considers necessary or appropriate to conduct the
19 audit or inspection. The administrator may assess a reasonable
20 charge for conducting an audit or inspection under this
21 subsection.

22 (5) Subject to section 15(h) of the securities exchange act
23 of 1934, 15 USC 78o, or section 222 of the investment advisers
24 act of 1940, 15 USC 80b-18a, a rule or order under this act may
25 require a broker-dealer and investment adviser that has custody
26 of or discretionary authority over funds or securities of a
27 client to obtain insurance or post a bond or other satisfactory

1 form of security in an amount established by the administrator by
2 rule or order. The administrator may determine the requirements
3 of the insurance, bond, or other satisfactory form of security.
4 Insurance or a bond or other satisfactory form of security shall
5 not be required of a broker-dealer registered under this act
6 whose net capital exceeds, or of an investment adviser registered
7 under this act whose minimum financial requirements exceed, the
8 amounts required by rule or order under this act. The insurance,
9 bond, or other satisfactory form of security must permit an
10 action by a person to enforce any liability on the insurance,
11 bond, or other satisfactory form of security if commenced within
12 the time limitations in section 509(10)(b).

13 (6) Subject to section 15(h) of the securities exchange act
14 of 1934, 15 USC 78o, or section 222 of the investment advisers
15 act of 1940, 15 USC 80b-18a, an agent shall not have custody of
16 funds or securities of a customer except under the supervision of
17 a broker-dealer and an investment adviser representative shall
18 not have custody of funds or securities of a client except under
19 the supervision of an investment adviser or federal covered
20 investment adviser. A rule or order under this act may prohibit,
21 limit, or impose conditions on the custody of funds or securities
22 of a customer by a broker-dealer and on the custody of securities
23 or funds of a client by an investment adviser.

24 (7) With respect to an investment adviser registered or
25 required to be registered under this act, a rule or order under
26 this act may require that information or other record be
27 furnished or disseminated to clients or prospective clients in

1 this state as necessary or appropriate in the public interest and
2 for the protection of investors and advisory clients.

3 (8) A rule or order under this act may require an individual
4 registered under section 402 or 404 to participate in a
5 continuing education program approved by the securities and
6 exchange commission and administered by a self-regulatory
7 organization or, in the absence of such a program, a rule or
8 order under this act may require continuing education for an
9 individual registered under section 404.

10 Sec. 412. (1) If the administrator finds that the order is
11 in the public interest and subsection (4) authorizes the action,
12 an order under this act may deny an application or condition or
13 limit registration of an applicant to be a broker-dealer, agent,
14 investment adviser, or investment adviser representative and, if
15 the applicant is a broker-dealer or investment adviser, of any
16 partner, officer, or director, any person having a similar status
17 or performing similar functions, or any person directly or
18 indirectly controlling the broker-dealer or investment adviser.

19 (2) If the administrator finds that the order is in the
20 public interest and subsection (4) authorizes the action, an
21 order under this act may revoke, suspend, condition, or limit the
22 registration of a registrant and if the registrant is a
23 broker-dealer or investment adviser, of any partner, officer, or
24 director, any person having a similar status or performing
25 similar functions, or any person directly or indirectly
26 controlling the broker-dealer or investment adviser. Both of the
27 following conditions apply, however, to actions by the

1 administrator under this subsection:

2 (a) The administrator shall not institute a revocation or
3 suspension proceeding under this subsection based on an order
4 issued by another state that is reported to the administrator or
5 designee later than 1 year after the date of the order on which
6 it is based.

7 (b) Under subsection (4)(e)(i) and (ii), the administrator
8 shall not issue an order on the basis of an order under the state
9 securities act of another state unless the other order was based
10 on conduct for which subsection (4) would authorize the action
11 had the conduct occurred in this state.

12 (3) If the administrator finds that the order is in the
13 public interest and subsection (4)(a) to (f), (i) to (j), or (l)
14 to (n) authorizes the action, an order under this act may
15 censure, impose a bar, or impose a civil penalty in an amount not
16 to exceed a maximum of \$10,000.00 for a single violation or
17 \$500,000.00 for multiple violations on a registrant and, if the
18 registrant is a broker-dealer or investment adviser, on any
19 partner, officer, or director, any person having a similar
20 function, or any person directly or indirectly controlling the
21 broker-dealer or investment adviser.

22 (4) A person may be disciplined under subsections (1) to (3)
23 if any of the following apply to the person:

24 (a) The person filed an application for registration in this
25 state under this act or the predecessor act within the previous
26 10 years, which, as of the effective date of registration or as
27 of any date after filing in the case of an order denying

1 effectiveness, was incomplete in any material respect or
2 contained a statement that, in light of the circumstances under
3 which it was made, was false or misleading with respect to a
4 material fact.

5 (b) The person willfully violated or willfully failed to
6 comply with this act or the predecessor act or a rule adopted or
7 order issued under this act or the predecessor act within the
8 previous 10 years.

9 (c) The person was convicted of any felony or within the
10 previous 10 years was convicted of a misdemeanor involving a
11 security, a commodity futures or option contract, or an aspect of
12 a business involving securities, commodities, investments,
13 franchises, insurance, banking, or finance.

14 (d) The person is enjoined or restrained by a court of
15 competent jurisdiction in an action instituted by the
16 administrator under this act or the predecessor act, a state, the
17 securities and exchange commission, or the United States from
18 engaging in or continuing an act, practice, or course of business
19 involving an aspect of a business involving securities,
20 commodities, investments, franchises, insurance, banking, or
21 finance.

22 (e) The person is the subject of an order, issued after
23 notice and opportunity for hearing by any of the following:

24 (i) The securities, depository institution, insurance, or
25 other financial services regulator of a state, or by the
26 securities and exchange commission or other federal agency
27 denying, revoking, barring, or suspending registration as a

1 broker-dealer, agent, investment adviser, federal covered
2 investment adviser, or investment adviser representative.

3 (ii) The securities regulator of a state or by the securities
4 and exchange commission against a broker-dealer, agent,
5 investment adviser, investment adviser representative, or federal
6 covered investment adviser.

7 (iii) The securities and exchange commission or by a
8 self-regulatory organization suspending or expelling the
9 registrant from membership in a self-regulatory organization.

10 (iv) A court adjudicating a United States postal service
11 fraud.

12 (v) The insurance regulator of a state denying, suspending,
13 or revoking the license or registration of an insurance agent.

14 (vi) A depository institution regulator suspending or barring
15 a person from the banking or depository institution business.

16 (f) The person is the subject of an adjudication or
17 determination, after notice and opportunity for hearing, by the
18 securities and exchange commission, the commodity futures trading
19 commission, the federal trade commission, a federal depository
20 institution regulator, or a depository institution, insurance, or
21 other financial services regulator of a state that the person
22 willfully violated the securities act of 1933, the securities
23 exchange act of 1934, the investment advisers act of 1940, the
24 investment company act of 1940, or the commodity exchange act,
25 the securities or commodities law of a state, or a federal or
26 state law under which a business involving investments,
27 franchises, insurance, banking, or finance is regulated.

1 (g) The person is insolvent, either because the person's
2 liabilities exceed the person's assets or because the person
3 cannot meet the person's obligations as they mature. The
4 administrator shall not enter an order against an applicant or
5 registrant under this subdivision without a finding of insolvency
6 as to the applicant or registrant.

7 (h) The person refuses to allow or otherwise impedes the
8 administrator from conducting an audit or inspection under
9 section 411(4) or refuses access to a registrant's office to
10 conduct an audit or inspection under section 411(4).

11 (i) The person has failed to reasonably supervise an agent,
12 investment adviser representative, or other individual, if the
13 agent, investment adviser representative, or other individual was
14 subject to the person's supervision and committed a violation of
15 this act or the predecessor act or a rule adopted or order issued
16 under this act or the predecessor act within the previous 10
17 years.

18 (j) The person has not paid the proper filing fee within 30
19 days after having been notified by the administrator of a
20 deficiency. The administrator shall vacate an order under this
21 paragraph when the deficiency is corrected.

22 (k) After notice and opportunity for a hearing, 1 or more of
23 the following have occurred within the previous 10 years:

24 (i) A court of competent jurisdiction has found the person to
25 have willfully violated the laws of a foreign jurisdiction under
26 which the business of securities, commodities, investment,
27 franchises, insurance, banking, or finance is regulated.

1 (ii) The person was found to have been the subject of an
2 order of a securities regulator of a foreign jurisdiction
3 denying, revoking, or suspending the right to engage in the
4 business of securities as a broker-dealer, agent, investment
5 adviser, investment adviser representative, or similar person.

6 (iii) The person was found to have been suspended or expelled
7 from membership by or participation in a securities exchange or
8 securities association operating under the securities laws of a
9 foreign jurisdiction.

10 (l) The person is the subject of a cease and desist order
11 issued by the securities and exchange commission or issued under
12 the securities, commodities, investment, franchise, banking,
13 finance, or insurance laws of a state.

14 (m) The person has engaged in dishonest or unethical
15 practices in the securities, commodities, investment, franchise,
16 banking, finance, or insurance business within the previous 10
17 years.

18 (n) The person is not qualified on the basis of factors such
19 as training, experience, and knowledge of the securities
20 business. If an application is made by an agent for a
21 broker-dealer that is a member of a self-regulatory organization
22 or by an individual for registration as an investment adviser
23 representative, a denial order shall not be based on this
24 subdivision if the individual has successfully completed all
25 examinations required by subsection (5). The administrator may
26 require an applicant for registration under section 402 or 404
27 who has not been registered in a state within the 2 years

1 preceding the filing of an application in this state to
2 successfully complete an examination.

3 (5) A rule or order under this act may require that an
4 examination, including an examination developed or approved by an
5 organization of securities regulators, be successfully completed
6 by a class of individuals or all individuals. An order under
7 this act may waive an examination as to an individual and a rule
8 under this act may waive an examination as to a class of
9 individuals if the administrator determines that the examination
10 is not necessary or appropriate in the public interest and for
11 the protection of investors.

12 (6) The administrator may suspend or deny an application
13 summarily, restrict, condition, limit, or suspend a registration,
14 or censure, bar, or impose a civil penalty on a registrant
15 pending final determination of an administrative proceeding. On
16 the issuance of the order, the administrator shall promptly
17 notify each person subject to the order that the order has been
18 issued, the reasons for the action, and that, within 15 days
19 after the receipt of a request in a record from the person, the
20 matter will be scheduled for a hearing. If a hearing is not
21 requested by a person subject to the order or is not ordered by
22 the administrator within 30 days after the date of service of the
23 order, the order is final. If a hearing is requested or ordered,
24 the administrator, after notice of and opportunity for hearing to
25 each person subject to the order, may modify or vacate the order
26 or extend the order until final determination.

27 (7) Except under subsection (6), an order shall not be issued

1 under this section unless all of the following have occurred:

2 (a) Appropriate notice has been given to the applicant or
3 registrant.

4 (b) Opportunity for hearing has been given to the applicant
5 or registrant.

6 (c) Findings of fact and conclusions of law have been made on
7 the record pursuant to the administrative procedures act of 1969,
8 1969 PA 306, MCL 24.201 to 24.328.

9 (8) A person who controls, directly or indirectly, a person
10 not in compliance with this section may be disciplined by order
11 of the administrator under subsections (1) to (3) to the same
12 extent as the noncomplying person, unless the controlling person
13 did not know, and in the exercise of reasonable care could not
14 have known, of the existence of conduct that is a basis for
15 discipline under this section.

16 (9) The administrator shall not institute a proceeding under
17 subsection (1), (2), or (3) solely based on material facts
18 actually known by the administrator unless an investigation or
19 the proceeding is instituted within 1 year after the
20 administrator actually knew the material facts.

21 Sec. 413. A broker-dealer acting as a finder shall not do
22 any of the following:

23 (a) Take possession of funds or securities in connection
24 with the transaction for which payment is made for services as a
25 finder.

26 (b) Fail to disclose clearly and conspicuously in writing to
27 all persons involved in the transaction as a result of the

1 broker-dealer's finding activities before the sale or purchase
2 that the person is acting as a finder, any payment for services
3 as a finder, the method and amount of payment, and any beneficial
4 interest, direct or indirect, of the broker-dealer, or a member
5 of the broker-dealer's immediate family if the broker-dealer is
6 an individual, in the issue of the securities that are the
7 subject of services as a finder.

8 (c) Participate in the offer, purchase, or sale of a
9 security in violation of section 301. However, if the
10 broker-dealer makes a reasonable effort to ascertain if a
11 registration has been effected or an exemption order granted in
12 this state or to ascertain the basis for an exemption claim and
13 does not have knowledge that the proposed transaction would
14 violate section 301, the broker-dealer's activities as a finder
15 do not violate section 301.

16 (d) Participate in the offer, purchase, or sale of a
17 security without obtaining information relative to the risks of
18 the transaction, the direct or indirect compensation to be
19 received by promoters, partners, officers, directors, or their
20 affiliates, the financial condition of the issuer, and the use of
21 proceeds to be received from investors, or fail to read any
22 offering materials obtained. This section does not require
23 independent investigation or alteration of offering materials
24 furnished to the broker-dealer.

25 (e) Fail to inform or otherwise ensure disclosure to all
26 persons involved in the transaction as a result of the
27 broker-dealer's finding activities of any material information

1 which the broker-dealer knows, or in the exercise of reasonable
2 care should know based on the information furnished to the
3 broker-dealer, is material in making an investment decision,
4 until conclusion of the transaction.

5 (f) Locate, introduce, or refer persons that the
6 broker-dealer knows, or after a reasonable inquiry should know,
7 are not suitable investors by reason of their financial
8 condition, age, experience, or need to diversify investments.

9 ARTICLE 5

10 FRAUD AND LIABILITIES

11 Sec. 501. It is unlawful for a person, in connection with
12 the offer, sale, or purchase of a security, to directly or
13 indirectly do any of the following:

14 (a) Employ a device, scheme, or artifice to defraud.

15 (b) Make an untrue statement of a material fact or omit to
16 state a material fact necessary in order to make the statement
17 made, in the light of the circumstances under which it is made,
18 not misleading.

19 (c) Engage in an act, practice, or course of business that
20 operates or would operate as a fraud or deceit on another
21 person.

22 Sec. 502. (1) It is unlawful for a person that advises
23 others for compensation, either directly or indirectly or through
24 publications or writings, as to the value of securities or the
25 advisability of investing in, purchasing, or selling securities,
26 or that, for compensation and as part of a regular business,
27 issues or promulgates analyses or reports relating to securities,

1 to do any of the following:

2 (a) Employ a device, scheme, or artifice to defraud another
3 person.

4 (b) Engage in an act, practice, or course of business that
5 operates or would operate as a fraud or deceit upon another
6 person.

7 (2) An investment adviser acting as a finder shall not do any
8 of the following:

9 (a) Take possession of funds or securities in connection with
10 the transaction for which payment is made for services as a
11 finder.

12 (b) Fail to disclose clearly and conspicuously in writing to
13 all persons involved in the transaction as a result of his or her
14 finding activities before the sale or purchase that the person is
15 acting as a finder, any payment for services as a finder, the
16 method and amount of payment, as well as any beneficial interest,
17 direct or indirect, of the finder or a member of the finder's
18 immediate family in the issue of the securities that are the
19 subject of services as a finder.

20 (c) Participate in the offer, purchase, or sale of a security
21 in violation of section 301. However, if the investment adviser
22 makes a reasonable effort to ascertain if a registration has been
23 effected or an exemption order granted in this state or to
24 ascertain the basis for an exemption claim and does not have
25 knowledge that the proposed transaction would violate section
26 301, his or her activities as a finder do not violate section
27 301.

1 (d) Participate in the offer, purchase, or sale of a security
2 without obtaining information relative to the risks of the
3 transaction, the direct or indirect compensation to be received
4 by promoters, partners, officers, directors, or their affiliates,
5 the financial condition of the issuer, and the use of proceeds to
6 be received from investors, or fail to read any offering
7 materials obtained. This subdivision does not require
8 independent investigation or alteration of offering materials
9 furnished to the finder.

10 (e) Fail to inform or otherwise ensure disclosure to all
11 persons involved in the transaction as a result of his or her
12 finding activities of any material information which the finder
13 knows, or in the exercise of reasonable care should know based on
14 the information furnished to him or her, is material in making an
15 investment decision, until conclusion of the transaction. This
16 subdivision does not require the finder to independently generate
17 information.

18 (f) Locate, introduce, or refer persons that the finder
19 knows, or after a reasonable inquiry should know, are not
20 suitable investors by reason of their financial condition, age,
21 experience, or need to diversify investments.

22 (3) A rule under this act may do any of the following:

23 (a) Define an act, practice, or course of business of an
24 investment adviser or an investment adviser representative, other
25 than a supervised person of a federal covered investment adviser,
26 as fraudulent, deceptive, or manipulative, and prescribe means
27 reasonably designed to prevent investment advisers and investment

1 adviser representatives, other than supervised persons of a
2 federal covered investment adviser, from engaging in acts,
3 practices, and courses of business defined as fraudulent,
4 deceptive, or manipulative.

5 (b) Specify the contents of an investment advisory contract
6 entered into, extended, or renewed by an investment adviser.

7 Sec. 503. (1) In a civil action or administrative
8 proceeding under this act, a person claiming an exemption,
9 exception, preemption, or exclusion has the burden to prove the
10 applicability of the exemption, exception, preemption, or
11 exclusion.

12 (2) In a criminal proceeding under this act, a person
13 claiming an exemption, exception, preemption, or exclusion has
14 the burden of going forward with evidence of the claim.

15 Sec. 504. (1) Subject to subsection (2), a rule or order
16 under this act may require the filing of a prospectus, pamphlet,
17 circular, form letter, advertisement, sales literature, or other
18 advertising record relating to a security or investment advice
19 addressed or intended for distribution to prospective investors,
20 including clients or prospective clients of a person registered
21 or required to be registered as an investment adviser under this
22 act.

23 (2) This section does not apply to sales and advertising
24 literature specified in subsection (1) relating to a federal
25 covered security, a federal covered investment adviser, or a
26 security or transaction exempted by section 201, 202, or 203
27 except as required under section 201(g).

1 Sec. 505. A person shall not make or cause to be made, in a
2 record that is used in an action or proceeding or filed under
3 this act, a statement that, at the time and in the light of the
4 circumstances under which it is made, is false or misleading in a
5 material respect, or, in connection with the statement, omit to
6 state a material fact necessary to make the statement made, in
7 the light of the circumstances under which it was made, not false
8 or misleading.

9 Sec. 506. The filing of an application for registration, a
10 registration statement, a notice filing under this act, or the
11 registration of a person, the notice filing by a person, or the
12 registration of a security under this act does not constitute a
13 finding by the administrator that a record filed under this act
14 is true, complete, and not misleading. The filing or
15 registration or the availability of an exemption, exception,
16 preemption, or exclusion for a security or a transaction does not
17 mean that the administrator has passed upon the merits or
18 qualifications of, or recommended or given approval to, a person,
19 security, or transaction. A person shall not make or cause to be
20 made to a purchaser, customer, client, or prospective customer or
21 client a representation inconsistent with this section.

22 Sec. 507. A broker-dealer, agent, investment adviser,
23 federal covered investment adviser, or investment adviser
24 representative is not liable to another broker-dealer, agent,
25 investment adviser, federal covered investment adviser, or
26 investment adviser representative for defamation relating to a
27 statement that is contained in a record required by the

1 administrator, or designee of the administrator, the securities
2 and exchange commission, or a self-regulatory organization,
3 unless the person knew, or should have known at the time that the
4 statement was made, that it was false in a material respect or
5 the person acted in reckless disregard of the statement's truth
6 or falsity.

7 Sec. 508. (1) A person that willfully violates this act or
8 a rule adopted or order issued under this act, except section 504
9 or the notice filing requirements of section 302 or 405, or that
10 willfully violates section 505 knowing the statement made to be
11 false or misleading in a material respect, is guilty of a felony
12 punishable by imprisonment for not more than 10 years or a fine
13 of not more than \$500,000.00 for each violation, or both. An
14 individual convicted of violating a rule or order under this act
15 may be fined, but shall not be imprisoned, if the individual did
16 not have knowledge of the rule or order.

17 (2) The attorney general or the proper prosecuting attorney
18 may institute appropriate criminal proceedings under this act
19 with or without a reference from the administrator.

20 (3) This act does not limit the power of this state to punish
21 a person for conduct that constitutes a crime under other laws of
22 this state.

23 Sec. 509. (1) Enforcement of civil liability under this
24 section is subject to the securities litigation uniform standards
25 act of 1998.

26 (2) A person is liable to the purchaser if the person sells a
27 security in violation of section 301, or by means of an untrue

1 statement of a material fact or an omission to state a material
2 fact necessary in order to make the statement made, in light of
3 the circumstances under which it is made, not misleading, the
4 purchaser not knowing the untruth or omission, and the seller not
5 sustaining the burden of proof that the seller did not know and,
6 in the exercise of reasonable care, could not have known of the
7 untruth or omission. All of the following apply to an action
8 under this subsection:

9 (a) The purchaser may maintain an action to recover the
10 consideration paid for the security, less the amount of any
11 income received on the security, and interest at 6% per year from
12 the date of the purchase, costs, and reasonable attorney fees
13 determined by the court, upon the tender of the security, or for
14 actual damages as provided in subdivision (c).

15 (b) The tender referred to in subdivision (a) may be made any
16 time before entry of judgment. Tender requires only notice in a
17 record of ownership of the security and willingness to exchange
18 the security for the amount specified. A purchaser that no
19 longer owns the security may recover actual damages as provided
20 in subdivision (c).

21 (c) Actual damages in an action arising under this subsection
22 are the amount that would be recoverable upon a tender less the
23 value of the security when the purchaser disposed of it and
24 interest at 6% from the date of purchase, costs, and reasonable
25 attorney fees determined by the court.

26 (3) A person is liable to the seller if the person buys a
27 security by means of an untrue statement of a material fact or

1 omission to state a material fact necessary in order to make the
2 statement made, in light of the circumstances under which it is
3 made, not misleading, if the seller did not know of the untruth
4 or omission and the purchaser does not sustain the burden of
5 proving that the purchaser did not know, and in the exercise of
6 reasonable care could not have known, of the untruth or
7 omission. All of the following apply to an action under this
8 subsection:

9 (a) The seller may maintain an action to recover the
10 security, any income received on the security, costs, and
11 reasonable attorney fees determined by the court, on the tender
12 of the purchase price, or for actual damages as provided in
13 subdivision (c).

14 (b) The tender referred to in subdivision (a) may be made any
15 time before entry of judgment. Tender requires only notice in a
16 record of the present ability to pay the amount tendered and
17 willingness to take delivery of the security for the amount
18 specified. If the purchaser no longer owns the security, the
19 seller may recover actual damages as provided in subdivision
20 (c).

21 (c) Actual damages in an action arising under this subsection
22 are the difference between the price at which the security was
23 sold and the value the security would have had at the time of the
24 sale in the absence of the purchaser's conduct causing liability,
25 interest at 6% from the date of sale of the security, costs, and
26 reasonable attorney fees determined by the court.

27 (4) A person acting as a broker-dealer or agent that sells or

1 buys a security in violation of section 401(1), 402(1), or 506 is
2 liable to the customer. The customer, if a purchaser, may
3 maintain an action for recovery of actual damages as specified in
4 subsection (2) or, if a seller, a remedy as specified in
5 subsection (3).

6 (5) A person acting as an investment adviser or investment
7 adviser representative that provides investment advice for
8 compensation in violation of section 403(1), 404(1), or 506 is
9 liable to the client. The client may maintain an action at law
10 or in equity to recover the consideration paid for the advice,
11 interest at 6% from the date of payment, costs, and reasonable
12 attorney fees determined by the court.

13 (6) A person that receives, directly or indirectly, any
14 consideration for providing investment advice to another person
15 and that employs a device, scheme, or artifice to defraud the
16 other person or engages in an act, practice, or course of
17 business that operates or would operate as a fraud or deceit on
18 the other person is liable to the other person. The person
19 defrauded may maintain an action to recover the consideration
20 paid for the advice and the amount of any actual damages caused
21 by the fraudulent conduct that gives rise to liability under this
22 subsection, interest at 6% from the date of the fraudulent
23 conduct, costs, and reasonable attorney fees determined by the
24 court, less the amount of any income received as a result of the
25 fraudulent conduct. This subsection does not apply to a
26 broker-dealer or its agents if the investment advice provided is
27 solely incidental to transacting business as a broker-dealer and

1 no special compensation is received for the investment advice.

2 (7) The following persons are liable jointly and severally
3 with and to the same extent as persons liable under subsections
4 (2) to (6):

5 (a) A person that directly or indirectly controls a person
6 liable under subsections (2) to (6), unless the controlling
7 person sustains the burden of proving that the controlling person
8 did not know, and in the exercise of reasonable care could not
9 have known, of the existence of the conduct by reason of which
10 the liability is alleged to exist.

11 (b) An individual who is a managing partner, executive
12 officer, or director of a person liable under subsections (2) to
13 (6), including each individual having a similar status or
14 performing similar functions, unless the individual sustains the
15 burden of proving that the individual did not know and, in the
16 exercise of reasonable care could not have known, of the
17 existence of the conduct by reason of which the liability is
18 alleged to exist.

19 (c) An individual who is an employee of or associated with a
20 person liable under subsections (2) to (6) and who materially
21 aids the conduct giving rise to the liability, unless the
22 individual sustains the burden of proving that the individual did
23 not know and, in the exercise of reasonable care could not have
24 known, of the existence of the conduct by reason of which the
25 liability is alleged to exist.

26 (d) A person that is a broker-dealer, agent, investment
27 adviser, or investment adviser representative that materially

1 aids the conduct giving rise to the liability under subsections
2 (2) to (6), unless the person sustains the burden of proving that
3 the person did not know and, in the exercise of reasonable care
4 could not have known, of the existence of the conduct by reason
5 of which liability is alleged to exist.

6 (8) A person liable under this section has a right of
7 contribution as in cases of contract against any other person
8 liable under this section for the same conduct.

9 (9) A cause of action under this section survives the death
10 of an individual who might have been a plaintiff or defendant.

11 (10) A person may not obtain relief if an action is not
12 commenced within 1 of the following time limits, as applicable:

13 (a) Under subsection (2) for violation of section 301, or
14 under subsection (4) or (5), unless the action is commenced
15 within 2 years after the violation occurred.

16 (b) Under subsection (2), other than for violation of section
17 301, or under subsection (3) or (6), unless the action is
18 commenced within the earlier of 2 years after discovery of the
19 facts constituting the violation or 5 years after the violation
20 occurred.

21 (11) A person that has made or engaged in the performance of
22 a contract in violation of this act or a rule adopted or order
23 issued under this act, or that has acquired a purported right
24 under the contract with knowledge of the facts by reason of which
25 its making or performance was in violation of this act, may not
26 base an action on the contract.

27 (12) A condition, stipulation, or provision binding a person

1 purchasing or selling a security or receiving investment advice
2 to waive compliance with this act or a rule adopted or order
3 issued under this act is void.

4 (13) The rights and remedies provided by this act are in
5 addition to any other rights or remedies that may exist, but this
6 act does not create a cause of action not specified in this
7 section or section 411(5).

8 Sec. 510. A purchaser, seller, or recipient of investment
9 advice may not maintain an action under section 509 if all of the
10 following are met:

11 (a) The purchaser, seller, or recipient of investment advice
12 receives in a record, before the action is commenced, an offer
13 that does all of the following:

14 (i) States the respect in which liability under section 509
15 may have arisen and fairly advises the purchaser, seller, or
16 recipient of investment advice of that person's rights in
17 connection with the offer, including financial or other
18 information necessary to correct all material misstatements or
19 omissions in the information that was required by this act to be
20 furnished to that person at the time of the purchase, sale, or
21 investment advice.

22 (ii) If the basis for relief under this section may have been
23 a violation of section 509(2), offers to repurchase the security
24 for cash, payable on delivery of the security, equal to the
25 consideration paid, and interest at 6% per year from the date of
26 purchase, less the amount of any income received on the security,
27 or, if the purchaser no longer owns the security, offers to pay

1 the purchaser upon acceptance of the offer damages in an amount
2 that would be recoverable upon a tender, less the value of the
3 security when the purchaser disposed of it, and interest at 6%
4 from the date of purchase in cash equal to the damages computed
5 in the manner provided in this subsection.

6 (iii) If the basis for relief under this section may have
7 been a violation of section 509(3), offers to tender the
8 security, on payment by the seller of an amount equal to the
9 purchase price paid, less income received on the security by the
10 purchaser and interest at 6% from the date of the sale, or if the
11 purchaser no longer owns the security, offers to pay the seller
12 upon acceptance of the offer, in cash, damages in the amount of
13 the difference between the price at which the security was
14 purchased and the value the security would have had at the time
15 of the purchase in the absence of the purchaser's conduct that
16 may have caused liability and interest at 6% from the date of the
17 sale.

18 (iv) If the basis for relief under this section may have been
19 a violation of section 509(4), and if the customer is a
20 purchaser, offers to pay as specified in subdivision (a)(ii) or,
21 if the customer is a seller, offers to tender or to pay as
22 specified in subdivision (a)(iii).

23 (v) If the basis for relief under this section may have been
24 a violation of section 509(5), offers to reimburse in cash the
25 consideration paid for the advice and interest at 6% from the
26 date of payment.

27 (vi) If the basis for relief under this section may have been

1 a violation of section 509(6), offers to reimburse in cash the
2 consideration paid for the advice and the amount of any actual
3 damages that may have been caused by the conduct, and interest at
4 6% from the date of the violation causing the loss.

5 (vii) States that the offer must be accepted by the
6 purchaser, seller, or recipient of investment advice within 30
7 days after the date of its receipt by the purchaser, seller, or
8 recipient of investment advice or within a shorter period of not
9 less than 3 days that the administrator, by order, specifies.

10 (b) The offeror has the present ability to pay the amount
11 offered or to tender the security under subdivision (a).

12 (c) The offer under subdivision (a) is delivered to the
13 purchaser, seller, or recipient of investment advice or sent in a
14 manner that ensures receipt by the purchaser, seller, or
15 recipient of investment advice.

16 (d) The purchaser, seller, or recipient of investment advice
17 that accepts the offer under subdivision (a) in a record within
18 the period specified under subdivision (a)(vii) is paid in
19 accordance with the terms of the offer.

20 ARTICLE 6

21 ADMINISTRATION AND JUDICIAL REVIEW

22 Sec. 601. (1) The administrator shall administer this act.

23 (2) The administrator or officer, employee, or designee of
24 the administrator shall not use for personal benefit or the
25 benefit of others records or other information obtained by or
26 filed with the administrator that are not public under section
27 607(2). This act does not authorize the administrator or an

1 officer, employee, or designee of the administrator to disclose
2 the record or information, except in accordance with section 602,
3 607(3), or 608.

4 (3) This act does not create or diminish any privilege or
5 exemption that exists at common law, by statute, by rule, or
6 otherwise.

7 (4) The administrator may develop and implement investor
8 education initiatives to inform the public about investing in
9 securities, with particular emphasis on the prevention and
10 detection of securities fraud. In developing and implementing
11 these initiatives, the administrator may collaborate with public
12 and nonprofit organizations with an interest in investor
13 education. The administrator may accept grants or donations from
14 a person that is not affiliated with the securities industry or
15 from a nonprofit organization, regardless of whether or not the
16 organization is affiliated with the securities industry, to
17 develop and implement investor education initiatives. This
18 subsection does not authorize the administrator to require
19 participation or monetary contributions of a registrant in an
20 investor education program.

21 (5) The securities investigation, enforcement, and education
22 fund is created as a revolving fund in the state treasury. All
23 of the following apply to the revolving fund:

24 (a) The state treasurer shall deposit all fees and civil
25 fines received by the administrator under this act in the
26 revolving fund.

27 (b) Money appropriated to the revolving fund shall not revert

1 to the general fund at the close of the fiscal year but shall
2 remain in the revolving fund.

3 (c) Upon appropriation, the administrator shall spend money
4 in the revolving fund only for the purposes and in the manner
5 provided in subdivision (d).

6 (d) The administrator shall use the money in the revolving
7 fund to pay expenses, or provide an advance on expenses,
8 connected with any of the following:

9 (i) Investigations of the office of financial and insurance
10 services involving securities.

11 (ii) Actions to enforce this act.

12 (iii) Providing educational programs for the public that are
13 related to the operations of the office of financial and
14 insurance services as provided in subsection (4).

15 Sec. 602. (1) The administrator may do any of the
16 following:

17 (a) Conduct public or private investigations in or out of
18 this state that the administrator considers necessary or
19 appropriate to determine whether any person has violated, is
20 violating, or is about to violate this act or a rule adopted or
21 order issued under this act, or to aid in the enforcement of this
22 act or the adoption of rules and forms under this act.

23 (b) Require or permit a person to testify, file a statement,
24 or produce a record, under oath or otherwise as the administrator
25 determines, as to all the facts and circumstances concerning a
26 matter to be investigated or about which an action or proceeding
27 is to be commenced.

1 (c) Publish a record concerning an action, proceeding, or
2 investigation under, or a violation of, this act or a rule
3 adopted or order issued under this act if the administrator
4 determines it is necessary or appropriate in the public interest
5 and for the protection of investors.

6 (2) For the purpose of an investigation under this act, the
7 administrator or a designated officer may administer oaths and
8 affirmations, subpoena witnesses, seek compulsion of attendance,
9 take evidence, require the filing of statements, and require the
10 production of any records that the administrator considers
11 relevant or material to the investigation.

12 (3) If a person fails to appear or refuses to testify, file a
13 statement, produce records, or otherwise fails to obey a subpoena
14 as required by the administrator under this act, the
15 administrator may refer the matter to the attorney general or the
16 proper prosecuting attorney, who may apply to the circuit court
17 of Ingham county or a court of another state to enforce
18 compliance. The court may do any of the following:

19 (a) Hold the person in contempt.

20 (b) Order the person to appear before the administrator.

21 (c) Order the person to testify about the matter under
22 investigation or in question.

23 (d) Order the production of records.

24 (e) Grant injunctive relief, including restricting or
25 prohibiting the offer or sale of securities or the providing of
26 investment advice.

27 (f) Order a civil fine of not less than \$10,000.00 and not

1 more than \$500,000.00 for each violation.

2 (g) Grant any other necessary or appropriate relief.

3 (4) This section does not preclude a person from applying to
4 the circuit court of Ingham county or a court of another state
5 for appropriate relief from a request to appear, testify, file a
6 statement, produce records, or obey a subpoena.

7 (5) An individual is not excused from attending, testifying,
8 filing a statement, producing a record or other evidence, or
9 obeying a subpoena of the administrator under this act or in an
10 action commenced or proceeding instituted by the administrator
11 under this act on the ground that the required testimony,
12 statement, record, or other evidence, directly or indirectly, may
13 tend to incriminate the individual or subject the individual to a
14 criminal fine, penalty, or forfeiture. If the individual refuses
15 to testify, file a statement, or produce a record or other
16 evidence on the basis of the individual's privilege against
17 self-incrimination, the administrator may apply to the circuit
18 court to compel the testimony, the filing of the statement, the
19 production of the record, or the giving of other evidence. The
20 testimony, record, or other information compelled under a court
21 order obtained under this subsection shall not be used, directly
22 or indirectly, against the individual in a criminal case, except
23 in a prosecution for perjury, contempt, or otherwise failing to
24 comply with the order.

25 (6) At the request of the securities regulator of another
26 state or a foreign jurisdiction, the administrator may provide
27 assistance if the requesting regulator states that it is

1 conducting an investigation to determine whether a person has
2 violated, is violating, or is about to violate a law or rule of
3 the other state or foreign jurisdiction relating to securities
4 matters which the requesting regulator administers or enforces.
5 The administrator may provide the assistance by using the
6 authority to investigate and the powers conferred by this section
7 as the administrator determines is necessary or appropriate. The
8 assistance may be provided without regard to whether the conduct
9 described in the request would also constitute a violation of
10 this act or other law of this state if occurring in this state.
11 In deciding whether to provide the assistance, the administrator
12 may consider whether the requesting regulator is permitted and
13 has agreed to provide assistance reciprocally within its state or
14 foreign jurisdiction to the administrator on securities matters
15 when requested, whether compliance with the request would violate
16 or prejudice the public policy of this state, and the
17 availability of resources and employees of the administrator to
18 carry out the request for assistance.

19 Sec. 603. (1) If it appears to the administrator that a
20 person has engaged, is engaging, or is about to engage in an act,
21 practice, or course of business constituting a violation of this
22 act or a rule adopted or order issued under this act, or that a
23 person has, is, or is about to engage in an act, practice, or
24 course of business that materially aids a violation of this act
25 or a rule adopted or order issued under this act, the
26 administrator may maintain an action in the circuit court to
27 enjoin the act, practice, or course of business and to enforce

1 compliance with this act or a rule adopted or order issued under
2 this act.

3 (2) In an action under this section and upon a proper
4 showing, the court may do any of the following:

5 (a) Issue a permanent or temporary injunction, restraining
6 order, or a declaratory judgment.

7 (b) Issue an order for other appropriate or ancillary relief,
8 including any of the following:

9 (i) An asset freeze, accounting, writ of attachment, writ of
10 general or specific execution, and an appointment of a receiver
11 or conservator, which may be the administrator, for the defendant
12 or the defendant's assets.

13 (ii) An order to the administrator to take charge and control
14 of a defendant's property, including investment accounts and
15 accounts in a depository institution, rents, and profits, to
16 collect debts, and to acquire and dispose of property.

17 (iii) The imposition of a civil fine of not more than
18 \$10,000.00 for a single violation or \$500,000.00 for multiple
19 violations.

20 (iv) An order of rescission, restitution, or disgorgement
21 directed to a person that has engaged in an act, practice, or
22 course of business constituting a violation of this act or the
23 predecessor act or a rule adopted or order issued under this act
24 or the predecessor act.

25 (v) An order for the payment of prejudgment and postjudgment
26 interest.

27 (c) Granting other relief that the court considers

1 appropriate.

2 (3) The administrator shall not be required to post a bond in
3 an action under this section.

4 Sec. 604. (1) If the administrator determines that a person
5 has engaged, is engaging, or is about to engage in an act,
6 practice, or course of business constituting a violation of this
7 act or a rule adopted or order issued under this act, or that a
8 person has materially aided, is materially aiding, or is about to
9 materially aid an act, practice, or course of business
10 constituting a violation of this act or a rule adopted or order
11 issued under this act, the administrator may do 1 or more of the
12 following:

13 (a) Issue an order directing the person to cease and desist
14 from engaging in the act, practice, or course of business or to
15 take other action necessary or appropriate to comply with this
16 act.

17 (b) Issue an order denying, suspending, revoking, or
18 conditioning the exemptions for a broker-dealer under section
19 401(2)(a)(iv) or (vi) or an investment adviser under section
20 403(2)(a)(iii).

21 (c) Issue an order under section 204.

22 (2) An order under subsection (1) is effective on the date of
23 issuance. Upon issuance of the order, the administrator shall
24 promptly serve each person subject to the order with a copy of
25 the order and a notice that the order has been entered. The
26 order shall include a statement whether the administrator will
27 seek a civil penalty or costs of the investigation, a statement

1 of the reasons for the order, and notice that the matter will be
2 scheduled for a hearing within 15 days after receipt of a request
3 in a record from the person. If a person subject to the order
4 does not request a hearing and none is ordered by the
5 administrator within 30 days after the date of service of the
6 order, the order becomes final as to that person. If a hearing
7 is requested or ordered, the administrator, after notice of and
8 opportunity for hearing to each person subject to the order, may
9 modify or vacate the order or extend it until final
10 determination.

11 (3) If a hearing is requested or ordered pursuant to
12 subsection (2), the hearing shall be held pursuant to the
13 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
14 24.328. A final order shall not be issued unless the
15 administrator makes findings of fact and conclusions of law on
16 the record pursuant to the administrative procedures act of 1969,
17 1969 PA 306, MCL 24.201 to 24.328. The final order may make
18 final, vacate, or modify the order issued under subsection (1).

19 (4) In a final order, the administrator may impose a civil
20 fine of not more than \$10,000.00 for a single violation or
21 \$500,000.00 for multiple violations.

22 (5) In a final order, the administrator may charge the actual
23 cost of an investigation or proceeding for a violation of this
24 act or a rule adopted or order issued under this act.

25 (6) If a petition for judicial review of a final order is not
26 filed in accordance with section 609, the administrator may file
27 a certified copy of the final order with the clerk of a court of

1 competent jurisdiction. The filed order shall have the same
2 effect as a judgment of the court and may be recorded, enforced,
3 or satisfied in the same manner as a judgment of the court.

4 (7) If a person fails to comply with an order under this
5 section, the administrator may petition a court of competent
6 jurisdiction to enforce the order. The court shall not require
7 the administrator to post a bond. If the court finds, after
8 service and opportunity for hearing, that the person is not in
9 compliance with the order, the court may adjudge the person in
10 civil contempt of the order. The court may impose an additional
11 civil penalty against the person for contempt in an amount not
12 less than \$10,000.00 or more than \$500,000.00 for each violation
13 and may grant any other relief the court determines is just and
14 proper in the circumstances.

15 Sec. 605. (1) The administrator may do any of the
16 following:

17 (a) Issue forms and orders and, after notice and comment, may
18 adopt and amend rules necessary or appropriate to carry out this
19 act, and may repeal rules, including rules and forms governing
20 registration statements, applications, notice filings, reports,
21 and other records.

22 (b) By rule, define terms, whether or not used in this act,
23 if the definitions are not inconsistent with this act.

24 (c) By rule, classify securities, persons, and transactions
25 and adopt different requirements for different classes.

26 (2) A rule or form shall not be adopted or amended or an
27 order issued or amended under this act unless the administrator

1 finds that the rule, form, order, or amendment is necessary or
2 appropriate in the public interest or for the protection of
3 investors and is consistent with the purposes intended by this
4 act. In adopting, amending, and repealing rules and forms,
5 section 608 applies in order to achieve uniformity among the
6 states and coordination with federal laws in the form and content
7 of registration statements, applications, reports, and other
8 records, including in the adoption of uniform rules, forms, and
9 procedures.

10 (3) Subject to section 15(h) of the securities exchange act
11 of 1934, 15 USC 78o, and section 222 of the investment advisers
12 act of 1940, 15 USC 80b-18a, the administrator may require that a
13 financial statement filed under this act be prepared in
14 accordance with generally accepted accounting principles in the
15 United States and comply with other requirements specified by
16 rule or order under this act. A rule or order under this act may
17 establish any of the following:

18 (a) Subject to section 15(h) of the securities exchange act
19 of 1934, 15 USC 78o, and section 222 of the investment advisers
20 act of 1940, 15 USC 80b-18a, the form and content of financial
21 statements required under this act.

22 (b) Whether unconsolidated financial statements must be
23 filed.

24 (c) Whether required financial statements must be audited by
25 an independent certified public accountant.

26 (4) The administrator may provide interpretative opinions or
27 issue determinations that the administrator will not institute a

1 proceeding or an action under this act against a specified person
2 for engaging in a specified act, practice, or course of business
3 if the determination is consistent with this act. A rule or
4 order under this act may charge a reasonable fee for
5 interpretative opinions or determinations that the administrator
6 will not institute an action or a proceeding under this act.

7 (5) A penalty under this act shall not be imposed and
8 liability does not arise for conduct that is engaged in or
9 omitted in good faith conformity with a rule, form, or order of
10 the administrator under this act.

11 (6) A hearing in an administrative proceeding under this act
12 shall be conducted in public unless the administrator for good
13 cause consistent with the purposes intended by this act
14 determines that the hearing not be public.

15 Sec. 606. (1) The administrator shall maintain, or
16 designate a person to maintain, a register of all applications
17 for registration of securities; registration statements; notice
18 filings, applications for registration of broker-dealers, agents,
19 investment advisers, and investment adviser representatives;
20 notice filings by federal covered investment advisers that are or
21 have been effective under this act or the predecessor act;
22 notices of claims of exemption from registration or notice filing
23 requirements contained in a record; orders issued under this act
24 or the predecessor act; and interpretative opinions or no-action
25 determinations issued under this act.

26 (2) The administrator shall make all rules, forms,
27 interpretative opinions, and orders available to the public.

1 (3) Upon request, the administrator shall furnish to a person
2 a copy of a record that is a public record or a certification
3 that the public record does not exist. A rule under this act may
4 establish a reasonable charge for furnishing the record. A copy
5 of the record certified or a certificate of its nonexistence by
6 the administrator is prima facie evidence of a record or its
7 nonexistence.

8 Sec. 607. (1) Subject to subsection (2), records obtained
9 by the administrator or filed under this act, including a record
10 contained in or filed with any registration statement,
11 application, notice filing, or report, are public records and are
12 available for public examination.

13 (2) The following records are not public records and are not
14 available for public examination under subsection (1):

15 (a) A record obtained by the administrator in connection with
16 an audit or inspection under section 411(4) or an investigation
17 under section 602.

18 (b) A part of a record filed in connection with a
19 registration statement under sections 301 and 303 through 305, or
20 a record under section 411(4), that contains trade secrets or
21 confidential information when the person filing the registration
22 statement or report has asserted a claim of confidentiality or
23 privilege that is authorized by law.

24 (c) A record that is not required to be provided to the
25 administrator or filed under this act and is provided to the
26 administrator only on the condition that the record will not be
27 subject to public examination or disclosure.

1 (d) A nonpublic record received from a person specified in
2 section 608.

3 (e) Any social security number, residential address, and
4 residential telephone number contained in a record that is
5 filed.

6 (f) A record obtained by the administrator through a designee
7 of the administrator that is determined by a rule or order under
8 this act to have been either of the following:

9 (i) Appropriately expunged from the administrator's records
10 by that designee.

11 (ii) Appropriately determined to be nonpublic or
12 nondisclosable by that designee if the administrator finds that
13 this is in the public interest and for the protection of
14 investors.

15 (3) The administrator may disclose a record obtained in
16 connection with an audit or inspection under section 411(4) or a
17 record obtained in connection with an investigation under section
18 602 if disclosure is for the purpose of a civil, administrative,
19 or criminal investigation, action, or proceeding or to a person
20 specified in section 608(1).

21 Sec. 608. (1) The administrator shall, in its discretion,
22 cooperate, coordinate, consult, and, subject to section 607,
23 share records and information with the securities regulators of 1
24 or more states, Canada or 1 or more of its provinces or
25 territories, 1 or more foreign jurisdictions, the securities and
26 exchange commission, the United States department of justice, the
27 commodity futures trading commission, the federal trade

1 commission, the securities investor protection corporation, a
2 self-regulatory organization, a national or international
3 organization of securities regulators, federal or state banking
4 and insurance regulators, and any governmental law enforcement
5 agency, in order to effectuate greater uniformity in securities
6 matters among the federal government, self-regulatory
7 organizations, and state and foreign governments.

8 (2) In cooperating, coordinating, consulting, and sharing
9 records and information under this section and in acting by rule,
10 order, or waiver under this act, the administrator shall, in the
11 discretion of the administrator, take into consideration in
12 carrying out the public interest the following general policies:

13 (a) Maximizing effectiveness of regulation for the protection
14 of investors.

15 (b) Maximizing uniformity in federal and state regulatory
16 standards.

17 (c) Minimizing burdens on the business of capital formation,
18 without adversely affecting essentials of investor protection.

19 (3) The cooperation, coordination, consultation, and sharing
20 of records and information authorized by this section includes:

21 (a) Establishing or employing 1 or more designees as a
22 central depository for registration and notice filings under this
23 act and for records required or allowed to be maintained under
24 this act.

25 (b) Developing and maintaining uniform forms.

26 (c) Conducting a joint examination or investigation.

27 (d) Holding a joint administrative hearing.

1 (e) Instituting and prosecuting a joint civil or
2 administrative proceeding.

3 (f) Sharing and exchanging personnel.

4 (g) Coordinating registrations under sections 301 and 401
5 through 404 and exemptions under section 203.

6 (h) Sharing and exchanging records.

7 (i) Formulating rules, statements of policy, guidelines,
8 forms, and interpretative opinions and releases.

9 (j) Formulating common systems and procedures.

10 (k) Notifying the public of proposed rules, forms, statements
11 of policy, and guidelines.

12 (l) Attending conferences and other meetings among securities
13 regulators, which may include representatives of governmental and
14 private organizations involved in capital formation, considered
15 to be necessary or appropriate to promote or achieve uniformity.

16 (m) Developing and maintaining a uniform exemption from
17 registration for small issuers and taking other steps to reduce
18 the burden of raising investment capital by small businesses.

19 Sec. 609. (1) Final orders issued by the administrator
20 under this act are subject to judicial review pursuant to the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328.

23 (2) Rules adopted under this act are subject to judicial
24 review pursuant to the administrative procedures act of 1969,
25 1969 PA 306, MCL 24.201 to 24.328.

26 Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1),
27 404(1), 501, 506, 509, and 510 apply to a person that sells or

1 offers to sell a security if the offer to sell or the sale is
2 made in this state or the offer to purchase or the purchase is
3 made and accepted in this state.

4 (2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509,
5 and 510 apply to a person that purchases or offers to purchase a
6 security if the offer to purchase or the purchase is made in this
7 state or the offer to sell or the sale is made and accepted in
8 this state.

9 (3) For the purpose of this section, an offer to sell or to
10 purchase a security is made in this state, whether or not either
11 party is then present in this state, if either of the following
12 apply to the offer:

13 (a) It originates from this state.

14 (b) It is directed by the offeror to a place in this state
15 and received at the place to which it is directed.

16 (4) For purposes of this section, an offer to purchase or to
17 sell is accepted in this state whether or not either party is
18 then present in this state, if both of the following apply to the
19 acceptance:

20 (a) It is communicated to the offeror in this state, the
21 offeree reasonably believes the offeror to be present in this
22 state, and the acceptance is received at the place in this state
23 to which it is directed.

24 (b) It has not previously been communicated to the offeror,
25 orally or in a record, outside this state.

26 (5) An offer to sell or to purchase is not made in this state
27 when a publisher circulates or there is circulated on the

1 publisher's behalf in this state a bona fide newspaper or other
2 publication of general, regular, and paid circulation that is not
3 published in this state, or that is published in this state but
4 has had more than 2/3 of its circulation outside this state
5 during the previous 12 months, or when a radio or television
6 program or other electronic communication originating outside
7 this state is received in this state. A radio, television
8 program, or other electronic communication is considered as
9 having originated in this state if either the broadcast studio or
10 the originating source of transmission is located in this state,
11 unless any of the following are met:

12 (a) The program or communication is syndicated and
13 distributed from outside this state for redistribution to the
14 general public in this state.

15 (b) The program or communication is supplied by a radio,
16 television, or other electronic network with the electronic
17 signal originating from outside this state for redistribution to
18 the general public in this state.

19 (c) The program or communication is an electronic
20 communication that originates outside this state and is captured
21 for redistribution to the general public in this state by a
22 community antenna or cable, radio, cable television, or other
23 electronic system.

24 (d) The program or communication consists of an electronic
25 communication that originates in this state, but which is not
26 intended for distribution to the general public in this state.

27 (6) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply

1 to a person if the person engages in an act, practice, or course
2 of business instrumental in effecting prohibited or actionable
3 conduct in this state, whether or not either party is then
4 present in this state.

5 Sec. 611. (1) A consent to service of process required by
6 this act shall be signed and filed in the form required by the
7 administrator. A consent appointing the administrator the
8 person's agent for service of process in a noncriminal action or
9 proceeding against the person, or the person's successor, or
10 personal representative under this act or a rule adopted or order
11 issued by the administrator under this act after the consent is
12 filed, has the same force and validity as if the service were
13 made personally on the person filing the consent. A person that
14 has filed a consent complying with this subsection in connection
15 with a previous application for registration or notice filing
16 need not file an additional consent.

17 (2) If a person, including a nonresident of this state,
18 engages in an act, practice, or course of business prohibited or
19 made actionable by this act or a rule adopted or order issued by
20 the administrator under this act and the person has not filed a
21 consent to service of process under subsection (1), that act,
22 practice, or course of business constitutes the appointment of
23 the administrator as the person's agent for service of process in
24 a noncriminal action or proceeding against the person, the
25 person's successor, or personal representative.

26 (3) Service under subsection (1) or (2) may be made by
27 providing a copy of the process to the office of the

1 administrator, but it is not effective unless both of the
2 following are met:

3 (a) The plaintiff, which may be the administrator, promptly
4 sends notice of the service and a copy of the process, return
5 receipt requested, to the defendant or respondent at the address
6 given in the consent to service of process or, if a consent to
7 service of process has not been filed, at the last known address,
8 or takes other reasonable steps to give notice.

9 (b) The plaintiff files an affidavit of compliance with this
10 subsection in the action or proceeding on or before the return
11 day of the process, if any, or within the time that the court or
12 the administrator in a proceeding before the administrator
13 allows.

14 (4) Service as provided in subsection (3) may be used in a
15 proceeding before the administrator or by the administrator in a
16 civil action in which the administrator is the moving party.

17 (5) If the process is served under subsection (3), the court
18 or the administrator in a proceeding before the administrator
19 shall order continuances as are necessary or appropriate to
20 afford the defendant or respondent reasonable opportunity to
21 defend.

22 Sec. 612. If any provision of this act or its application
23 to any person or circumstances is held invalid, the invalidity
24 does not affect other provisions or applications of this act that
25 can be given effect without the invalid provision or application,
26 and to this end, the provisions of this act are severable.

27 ARTICLE 7

TRANSITION

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Sec. 701. This act takes effect 180 days after the date this act is enacted.

Sec. 702. The uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, is repealed.

Sec. 703. (1) The predecessor act exclusively governs all actions, prosecutions, or proceedings that are pending or may be maintained or instituted on the basis of facts or circumstances occurring before the effective date of this act, but a civil action shall not be maintained to enforce any liability under the predecessor act unless commenced within any period of limitation that applied when the cause of action accrued or within 3 years after the effective date of this act, whichever is earlier.

(2) All effective registrations under the predecessor act, all administrative orders relating to the registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and all conditions imposed upon the registrations under the predecessor act remain in effect for the same time period they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(3) The predecessor act exclusively governs any offer or sale made within 1 year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.