

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008
ARTICLE 2
EXEMPTIONS FROM REGISTRATION OF SECURITIES

451.2201 Securities exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.

Sec. 201.

The following securities are exempt from the requirements of sections 301 to 306 and 504:

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

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

(c) A security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by, any of the following:

(i) An international banking institution.

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

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

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

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

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

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

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

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

(g) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the investment company act of 1940, 15 USC 80a-3. With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in this subdivision, the administrator by rule or order may limit the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (ii) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to meet 1 or more of the following:

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

(ii) To file a request for exemption authorization for which a rule under this act may specify the scope of the

exemption; the requirement of an offering statement; the filing of sales and advertising literature; the filing of consent to service of process complying with section 611; and grounds for denial or suspension of the exemption.

(iii) To register under section 304.

(h) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative.

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

History: 2008, Act 551, Eff. Oct. 1, 2009

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2202 Securities exempt from MCL 451.2301 to 451.2306 and MCL 451.2504.

Sec. 202.

(1) The following transactions are exempt from the requirements of sections 301 to 306 and 504:

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

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

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

(ii) The security is sold at a price reasonably related to its current market price.

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

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

(A) A description of the business and operations of the issuer.

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

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

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

(v) Any of the following requirements are met:

(A) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the securities exchange act of 1934, 15 USC 78f, or designated for trading on the national association of securities dealers automated quotation system.

(B) The issuer of the security is a unit investment trust registered under the investment company act of 1940.

(C) The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years.

(D) The issuer of the security has total assets of at least \$2,000,000.00 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet as of a date within 18 months before the date of the transaction, a pro forma balance sheet for the combined entity.

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

(d) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in

an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m or 78o.

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

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

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

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

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

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

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

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

(i) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for 1 or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator at a hearing.

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

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

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

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

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

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

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

(i) An institutional investor.

(ii) A federal covered investment adviser.

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

(n) A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which all of the following are met:

(i) There are not more than 50 purchasers in this state during any 12 consecutive months, other than those designated in subdivision (m).

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

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

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

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

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

(i) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933, 17 CFR 230.165.

(ii) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and may culminate in a

stop order is not known by the offeror to be pending.

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

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

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

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

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

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

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

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

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

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

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

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

(v) A transaction involving any of the following:

(i) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

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

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

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

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

(ii) The security is listed on the foreign jurisdiction's securities exchange that has been designated in subsection (2)(a), or by rule or order under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

(x) Any offer or sale of a security by an issuer under section 202a.

(y) Any offer or sale of a security that meets the requirements for the federal exemption for a regulation A offering under section 3(b) of the securities act of 1933, 15 USC 77c(b), and SEC rule 251, 17 CFR 230.251, if the offer or sale meets all of the following requirements:

(i) The issuer has filed SEC form 1A with the securities and exchange commission with respect to the regulation A offering, in a manner acceptable to the securities and exchange commission, and in that filing the issuer has satisfied all of the requirements of 17 CFR 230.251 to 230.263 inclusively, including the filing of the regulation A offering circular required under 17 CFR 230.253.

(ii) At least 10 days before commencing an offering of securities in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the administrator, in writing or in electronic form as specified by the administrator, that contains all of the following:

(A) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in reliance on a regulation A exemption, accompanied by a nonrefundable filing fee of \$100.00 for filing the exemption notice. The fees paid to the administrator under this sub-subparagraph shall be used to pay the costs incurred in administering and enforcing this act.

(B) A copy of the completed SEC form 1A and all of the accompanying documents filed with the securities and exchange commission, including the final regulation A offering circular to be provided to prospective purchasers in connection with the offering. Before filing SEC form 1A with the administrator, the issuer may advertise its intent to make a regulation A offering within the state and to solicit interest from prospective purchasers under 17 CFR 230.254.

(iii) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the amount set forth in subsection (b) of 17 CFR 230.251, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption.

(iv) The issuer does not accept more than \$10,000.00 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer may rely on confirmation that the purchaser is an accredited investor from a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor. Every fifth year, the administrator shall cumulatively adjust the \$10,000.00 limitation amount described in this subparagraph to reflect the change in the consumer price index for all urban consumers published by the federal bureau of labor statistics, rounding the dollar limitation to the nearest \$100.00.

(z) Any secondary offer, sale, purchase, or trade of securities facilitated by a Michigan investment market, if the Michigan investment market effects that transaction in accordance with article 4A and has made available to any secondary purchaser, within a reasonable period before effecting the transaction, general management and financial information concerning the issuer of the securities, including the issuer's financial documents for the preceding calendar or fiscal year and interim financial information as of the end of the issuer's most recent calendar or fiscal quarter.

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

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

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

(3) An issuer that sells securities in this state in reliance on this exemption described in subsection (1)(y) may advertise the offering in any manner, including advertising on website platforms that may be owned and controlled by nonissuer third parties, if no commissions are paid to either employees of the issuer for the sale of the securities or to third parties that facilitate the sale of the securities, unless those third parties are licensed broker-dealers authorized to conduct transactions described in subsection (1)(y).

History: 2008, Act 551, Eff. Oct. 1, 2009 ;-- Am. 2013, Act 264, Imd. Eff. Dec. 30, 2013 ;-- Am. 2014, Act 355, Imd. Eff. Oct. 21, 2014

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034. Enacting section 1 of Act 355 of 2014 provides: "Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."

451.2202a Offer or sale of security by issuer; exemption from MCL 451.2301 to 451.2306 and 451.2504; requirements; adjustment; report; limitations; rules; filing fee; website; violation; "controlling person" defined; exemption as "Michigan invests locally exemption."

Sec. 202a.

(1) Except as otherwise provided in this act, an offer or sale of a security by an issuer is exempt from the requirements of sections 301 to 306 and 504 if the offer or sale meets all of the following requirements:

(a) The issuer of the security is an entity that is incorporated or organized under the laws of this state, is a resident of this state under SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, and is authorized to do business in this state.

(b) The transaction meets the requirements for the federal exemption for intrastate offerings under 15 USC 77c(a)(11) and SEC rule 147, 17 CFR 230.147, including, but not limited to, the requirements for determining whether an offeree or purchaser is a resident of this state, or the federal exemption for intrastate offerings under 15 USC 77e and SEC rule 147A, 17 CFR 230.147A. All of the following apply concerning these requirements:

(i) Each of the following is prima facie evidence that an individual is a resident of this state:

- (A) A valid operator's license, chauffeur's license, or official personal identification card issued by this state.
- (B) A current Michigan voter registration.
- (C) A signed affidavit as described in section 7cc(2) of the general property tax act, 1893 PA 206, MCL 211.7cc, that indicates that the purchaser owns and occupies property in this state as his or her principal residence.
- (D) Any other record or documents issued by this state that establishes that the purchaser's principal residence is in this state.

(ii) The provisions of SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, as applicable, apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization.

(iii) If a purchaser of a security that is exempt under this section resells that security within 6 months after the closing of the particular offering in which the purchaser obtained that security to a person that is not a resident of this state, the original investment agreement between the issuer and the purchaser is void. If an agreement to purchase, or the purchase of, a security is void under this subparagraph, the issuer may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subparagraph shall not exceed the amount of the person's investment in the security.

(c) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the following amounts:

(i) One million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has not made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(ii) Two million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(d) The issuer has not accepted more than \$10,000.00 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer may rely on confirmation that the purchaser is an accredited investor from a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor.

(e) At least 10 days before an offer of securities is made in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the administrator, in writing or in electronic form as specified by the administrator, that contains all of the following:

(i) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by the filing fee specified in this section.

(ii) A copy of the disclosure statement to be provided to prospective investors in connection with the offering. The disclosure statement must contain all of the following:

(A) A description of the issuer, including its type of entity, the address and telephone number of its principal office, its formation history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

(B) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer.

(C) The identity of the executive officers, directors, and managing members of the issuer, and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

(D) The terms and conditions of the securities being offered and of any outstanding securities of the issuer, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities.

(E) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offering and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this sub-subparagraph, a description of the consideration being paid to that person for that assistance.

(F) A description of any litigation or legal proceedings involving the issuer or its management.

(G) The name and address of any website that the issuer intends to use in connection with the offering, including its uniform resource locator or URL. If the issuer has not engaged a website described in this sub-subparagraph at the time the issuer files the disclosure statement described in this subparagraph with the administrator under this subdivision but subsequently does engage a website for use in connection with the offering, the issuer shall provide the information described in this sub-subparagraph to the administrator by filing a supplemental notice.

(iii) An escrow agreement with a bank or other depository institution located in this state, in which the purchaser funds will be deposited, that provides that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and that all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The bank or other depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached.

(f) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the investment company act of 1940, 15 USC 80a-3, or an entity that would be an investment company but for the exclusions provided in subsection (c) of that section, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m and 78o(d).

(g) The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

"IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), OR SUBSECTION (E) OF SEC RULE 147A, 17 CFR 230.147A(E), AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(h) The issuer requires each purchaser to certify in writing, and to include as part of that certification his or her signature, and his or her initials next to each paragraph of the certification, as follows: "I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, that the securities are subject to possible dilution, that there is no ready market for the sale of those securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Michigan resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Michigan resident, within 6 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void."

(i) If the offer and sale of securities under this section is made through an internet website, all of the following requirements are met:

(i) Before any offer of an investment opportunity to residents of this state through the use of a website, the issuer provides to the website and to the administrator evidence that the issuer is organized under the laws of this state and that it is authorized to do business in this state.

(ii) The issuer obtains from each purchaser of a security under this section evidence that the purchaser is a resident of this state and, if applicable, an accredited investor.

(iii) The website operator files a written notice with the administrator that includes the website operator's name, business address, and contact information and states that it is authorized to do business in this state and is being utilized to offer and sell securities under this exemption. Beginning 12 months after the date of the written notice, a

website operator that has filed a written notice under this subparagraph shall annually notify the administrator in writing of any changes in the information provided to the administrator under this subparagraph.

(iv) The issuer and the website keep and maintain records of the offers and sales of securities made through the website and provide ready access to the records to the administrator on request. The administrator may access, inspect, and review any website described in this subdivision and its records.

(j) All payments for the purchase of securities are directed to and held by the bank or depository institution subject to the provisions of subdivision (e)(iii).

(k) Offers or sales of a security are not made through an internet website unless the website has filed the written notice required under subdivision (i)(iii) with the administrator.

(l) The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he or she is registered as a broker-dealer, investment adviser, or investment adviser representative under article 4. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the registration requirements under article 4 if he or she does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

(m) The issuer provides a copy of the disclosure statement provided to the administrator under subdivision (e)(ii) to each prospective purchaser at the time the offer of securities is made to the prospective purchaser. In addition to the information described in subdivision (e)(ii), the disclosure statement provided to the administrator and to prospective purchasers shall include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(n) The term of the offering does not exceed 12 months after the date of the first offer.

(2) Every fifth year, the administrator shall cumulatively adjust each of the following dollar amounts to reflect the change in the consumer price index for all urban consumers published by the federal bureau of labor statistics:

(a) The dollar limitations provided in subsection (1)(c), rounding each dollar limitation to the nearest \$50,000.00.

(b) The dollar limitation provided in subsection (1)(d) and section 201(1)(y)(iv), rounding that dollar limitation to the nearest \$100.00.

(3) If the offer and sale of a security of an issuer is exempt under this section, the issuer shall provide a quarterly report to the issuer's purchasers until none of the securities issued under this section are outstanding. All of the following apply to the quarterly report described in this subsection:

(a) The issuer shall provide the report free of charge to the purchasers.

(b) An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal quarter and remains available until the next quarterly report is issued.

(c) The issuer shall file each report with the administrator and must provide a written copy of the report to any purchaser on request.

(d) The report must include all of the following:

(i) The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) The exemption provided in this section shall not be used in conjunction with any other exemption under this article, except offers and sales to controlling persons shall not count toward the limitation in subsection (1)(c).

(5) The exemption described in this section does not apply if an issuer or person that is affiliated with the issuer or offering is subject to any disqualification established by the administrator by rule or contained in rule 262 as promulgated under the securities act of 1933, 17 CFR 230.262. However, this subsection does not apply if both of the following are met:

(a) On a showing of good cause and without prejudice to any other action by the administrator, the administrator determines that it is not necessary under the circumstances that an exemption be denied.

(b) The issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(6) The administrator may adopt rules to implement the provisions of this section and to protect purchasers that purchase securities that are exempt from registration under this section.

(7) The administrator shall charge a nonrefundable filing fee of \$100.00 for filing an exemption notice required under subsection (1). The fees paid to the administrator under this subsection shall be used to pay the costs incurred in administering and enforcing this act.

(8) A website through which an offer or sale of securities under this section is made is not subject to the broker-dealer, investment adviser, or investment adviser representative registration requirements under article 4 if the website meets all of the following conditions:

- (a) It does not offer investment advice or recommendations.
 - (b) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the website.
 - (c) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the website.
 - (d) It does not hold, manage, possess, or otherwise handle purchaser funds or securities.
 - (e) It does not engage in any other activities that the administrator by rule determines are inappropriate for an exemption from the registration requirements under article 4.
- (9) Except for section 504, article 5 applies to a violation of this section, including a violation concerning website operation.
- (10) As used in this section, "controlling person" means an officer, director, partner, or trustee, or another individual who has similar status or performs similar functions, of or for the issuer or to a person that owns 10% or more of the outstanding shares of any class or classes of securities of the issuer.
- (11) The exemption described in this section may be referred to as the "Michigan invests locally exemption".

History: Add. 2013, Act 264, Imd. Eff. Dec. 30, 2013 ;-- Am. 2017, Act 141, Imd. Eff. Oct. 30, 2017

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2203 Rule or order; exemptions and waivers.

Sec. 203.

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

History: 2008, Act 551, Eff. Oct. 1, 2009

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.

451.2204 Denial, suspension, revocation, condition, or limitation of exemption.

Sec. 204.

(1) Except with respect to a federal covered security or a transaction involving a federal covered security, an order of the administrator under this act may deny or suspend application of, condition, limit, or revoke an exemption created under section 201(c)(iii), (g), or (h) or 202 or an exemption or waiver created under section 203 with respect to a specific security, transaction, or offer. An order under this section may only be issued pursuant to the procedures in section 306(4) or 604.

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

History: 2008, Act 551, Eff. Oct. 1, 2009

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.