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BILL ANALYSIS



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Senate Bill 1108 (as introduced 9-10-96)
Sponsor: Senator Mike Rogers
Committee: Financial Services

Date Completed: 9-18-96

CONTENT

The bill would amend the Uniform Securities Act to provide for the registration of securities whose aggregate offering price was not more than \$1 million (which currently are exempt from registration under Federal regulations). Securities whose offering price was up to \$5 million could be registered under the bill if a Federal exemption were granted to Michigan under provisions of the Federal Securities Act.

Small Corporate Offering Registration

A registration under the bill would be known as a "small corporate offering registration" (SCOR). An issuer eligible to register a SCOR would have to use a registration form approved by the "administrator" as the disclosure document for the offering. (Under the Act, "administrator" means the Corporation and Securities Bureau of the Department of Consumer and Industry Services.) An application for a SCOR would have to comply with the bill, but the administrator could waive provisions of the bill.

Application and Eligibility

An application for a SCOR would not be available to an investment company subject to the Federal Investment Company Act or issuers subject to the reporting requirements of Title I of the Federal Securities Exchange Act.

Unless the administrator granted written permission based on a showing that adequate disclosure could be made to investors using the SCOR format, a SCOR could not be used by the following issuers and programs:

- Holding companies or companies whose principal purpose was owning stock in, or supervising the management of, other companies.
- Portfolio companies, such as real estate investment trusts.
- Issuers with complex capital structures.
- Commodity pools.
- Equipment leasing programs.
- Real estate programs.

A SCOR would be available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The issuer would have to be a domestic corporation or a foreign corporation organized under the laws of a state, territory, or possession of the United States. The offering could not be a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer could not be specified. The

offering price for common stock; the exercise price, if the securities offered were options, warrants, or rights for common stock; and the conversion price, if the securities were convertible into common stock, would have to be at least \$5 per share.

The aggregate offering price of the securities offered, within or outside of Michigan, could not be more than \$1 million under the exemption set forth in Federal rules, or \$5 million, if a Federal exemption were granted to Michigan pursuant to Section 3(b) of the Securities Act, which allows the Securities and Exchange Commission (SEC) to grant an exemption up to that level (15 U.S.C. 77c).

A SCOR would be available for debt offerings only if the issuer could demonstrate a reasonable ability to service its debt.

A SCOR would not be available if any of the following provisions applied to the issuer or to any of the issuer's officers, directors, 10% stockholders, promoters, or selling agent of the securities to be offered, or to any officer, director, or partner of the selling agent:

- The person had filed a registration statement that was the subject of a currently effective registration stop order entered pursuant to a Federal or state securities law within five years before the SCOR application was filed.
- The person had been convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud, within five years before the SCOR application was filed.
- The person currently was subject to either a state administrative enforcement order or judgment entered by a state securities administrator or the SEC within five years before the SCOR application was filed, or a Federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or failing to state material facts, was found and the order or judgment was entered within five years before the SCOR application was filed.
- The person was subject to a Federal or state administrative enforcement order or judgment that prohibited, denied, or revoked the use of any exemption for registration in connection with the offer, purchase, or sale of securities.
- The person currently was subject to a court order, judgment, or decree, entered within five years before the SCOR application was filed, that either 1) temporarily, preliminarily, or permanently restrained or enjoined him or her from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities, or 2) involved the making of a false filing with any state or with the SEC.

Without prior written approval of the administrator, an applicant who filed a SCOR application in Michigan could not split common stock or declare a stock dividend for any security issued under the bill for two years after the registration was effective.

Filing Requirements

In addition to a properly completed application form, an applicant for a SCOR would have to file all of the following exhibits with the administrator:

- The form of the selling agency agreement.
- The issuer's articles of incorporation or other charter documents and all amendments.
- The issuer's bylaws, as amended.
- Copies of any resolutions by directors setting forth terms and provisions of capital stock to be issued.

- Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.
- A specimen of the security to be offered, including any legend restricting resale.
- Consent to service of process accompanied by an appropriate corporate resolution.
- Copies of all material directed or furnished to investors in the offering.
- The form of escrow agreement for escrow of proceeds.
- Consent to inclusion in the disclosure document of a tax advisor's opinion or a description of tax consequences.
- Consent to inclusion in the disclosure document of an evaluation by a licensed attorney of any pending or anticipated litigation or administrative action.
- The form of any subscription agreement for the purchase of securities in the offering.
- An opinion of a licensed attorney that the securities to be sold in the offering were duly authorized and binding on the issuer in accordance with the terms of the securities.
- A list of the residence street addresses of officers, directors, and principal stockholders.

Information provided to the administrator under these filing requirements would be exempt from disclosure under the Freedom of Information Act.

Fees

An applicant for a SCOR would have to pay a \$1,000 filing fee to the administrator with the application form. If the applicant withdrew the application before the SCOR was effective or before a preeffective stop order was issued, the administrator would retain the entire filing fee if review of the application had commenced. If review of the application had not commenced, the administrator would retain a \$100 fee and refund to the applicant the balance of the filing fee.

The Act currently requires a filing fee of 1/10 of 1% of the maximum aggregate offering price at which a registered security is to be offered, with a minimum fee of \$100 and a maximum fee of \$1,250. The bill specifies that the section of the Act governing those registrations, including the current filing fee, would not apply to a SCOR registered under the bill.

Stop Orders

The bill specifies that the section of the Act regarding stop orders denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement would not apply to a SCOR registered under the bill.

MCL 451.305 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would codify the existing rules for registering securities under the small corporate offering registration category while also including the exemption that has been granted to California, which allows applicants to offer up to \$5,000,000 in securities to the public. The proposed registration process for the applicants would be separate from the existing process and would establish a new filing fee. Those applicants who were eligible for this category would be charged a \$1,000 fee, which would be used to cover the administrative costs associated with processing these applications. Although there is no way to predict the number of applicants, the Department of Consumer and Industry Services estimates that the filing fee would adequately cover these administrative costs.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.