



# HOUSE BILL No. 5763

May 10, 2000, Introduced by Reps. Richner, Bishop, Shulman, Hart, Baird and Koetje and referred to the Committee on Family and Civil Law.

A bill to amend 1964 PA 265, entitled "Uniform securities act," by amending the title and sections 101, 102, 103, 201, 202, 203, 204, 301, 304a, 305, 401, 402, 403, 405, 406, 409, 410, 412, 413, 414, and 417 (MCL 451.501, 451.502, 451.503, 451.601, 451.602, 451.603, 451.604, 451.701, 451.704a, 451.705, 451.801, 451.802, 451.803, 451.805, 451.806, 451.809, 451.810, 451.812, 451.813, 451.814, and 451.817), section 201 as amended by 1996 PA 349, sections 202, 203, 402, and 410 as amended by 1990 PA 150, section 304a as added and section 305 as amended by 1996 PA 529, sections 401 and 409 as amended by 1988 PA 408, and section 413 as amended by 1992 PA 207, and by adding sections 202a and 308.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

## TITLE

1

2 An act to enact the uniform securities act relating to the  
 3 issuance, offer, sale, or purchase of securities; ~~and commodity~~  
 4 ~~contracts;~~ to prohibit fraudulent practices in relation  
 5 ~~thereto~~ TO SECURITIES; to establish civil and criminal  
 6 ~~penalties~~ SANCTIONS for violations of the act and civil  
 7 ~~penalties~~ SANCTIONS for violation of the rules promulgated pur-  
 8 suant to the act; to require the registration of broker-dealers,  
 9 ~~and their principals,~~ agents, investment advisers, ~~commodity~~  
 10 ~~issuers,~~ and securities; to make uniform the law with reference  
 11 ~~thereto~~ TO SECURITIES; and to repeal ~~certain~~ acts and parts  
 12 of acts.

13 Sec. 101. It is unlawful for any person, in connection with  
 14 the offer, sale, or purchase of any security, ~~or commodity~~  
 15 ~~contract,~~ directly or indirectly:

16 (1) To employ any device, scheme, or artifice to defraud.

17 (2) To make any untrue statement of a material fact or to  
 18 omit to state a material fact necessary in order to make the  
 19 statements made, in the light of the circumstances under which  
 20 they are made, not misleading.

21 (3) To engage in any act, practice, or course of business  
 22 which operates or would operate as a fraud or deceit upon any  
 23 person.

24 Sec. 102. (a) ~~It is unlawful for any person who receives~~  
 25 ~~any consideration from another person primarily for advising the~~  
 26 ~~other person as to the value of securities or commodity contracts~~  
 27 ~~or their purchase or sale, whether through the issuance of~~

1 ~~analyses or reports or otherwise~~ AN INVESTMENT ADVISER, A  
2 FEDERALLY COVERED ADVISER, OR A PERSON WHO REPRESENTS AN INVEST-  
3 MENT ADVISER OR A FEDERALLY COVERED ADVISER SHALL NOT, DIRECTLY  
4 OR INDIRECTLY, DO ANY OF THE FOLLOWING:

5 (1) ~~To employ any~~ EMPLOY A device, scheme, or artifice to  
6 defraud ~~the other person.~~ A CLIENT OR PROSPECTIVE CLIENT.

7 (2) ~~To engage~~ ENGAGE in ~~any~~ AN act, practice, or course  
8 of business ~~which~~ THAT operates or ~~would~~ COULD operate as a  
9 fraud or deceit upon ~~the other person.~~ A CLIENT OR PROSPECTIVE  
10 CLIENT.

11 (3) Acting as principal for his OR HER own account, know-  
12 ingly ~~to~~ sell any security ~~or commodity contract to~~ or pur-  
13 chase any security ~~or commodity contract~~ from an investment  
14 advisory client, or acting as a broker for a person other than  
15 that client, knowingly ~~to~~ effect any sale or purchase of any  
16 security ~~or commodity contract~~ for the account of that client,  
17 without disclosing to the client in writing before the completion  
18 of the transaction the capacity in which he OR SHE is acting and  
19 obtaining the consent of the client in writing to the  
20 transaction. The prohibitions of this subdivision ~~shall~~ DO not  
21 apply to a transaction with a customer of a broker-dealer if the  
22 broker-dealer is not acting as an adviser in relation to the  
23 transaction.

24 (b) It is unlawful for any investment adviser to enter into,  
25 extend, or renew any investment advisory contract unless it pro-  
26 vides in writing ALL OF THE FOLLOWING:

1 (1) That the investment adviser shall not be compensated on  
2 the basis of a share of capital gains upon or capital  
3 appreciation of the funds or any portion of the funds of the  
4 client. ~~—~~

5 (2) That no assignment of the INVESTMENT ADVISORY contract  
6 may be made by the investment adviser without the consent of the  
7 other party to the contract. ~~—and—~~

8 (3) That the investment adviser, if a partnership, shall  
9 notify the other party to the INVESTMENT ADVISORY contract of any  
10 change in the membership of the partnership within a reasonable  
11 time after the change.

12 (c) It is unlawful for any investment adviser acting as a  
13 finder to DO ANY OF THE FOLLOWING:

14 (1) Take possession of funds or securities in connection  
15 with the transaction for which payment is made for services as a  
16 finder.

17 (2) Fail to disclose clearly and conspicuously in writing to  
18 all persons involved in the transaction as a result of his or her  
19 finding activities before the sale or purchase that the person is  
20 acting as a finder, ~~a~~ ANY payment for services as a finder, the  
21 method and amount of payment, as well as any beneficial interest,  
22 direct or indirect, of the finder or a member of the finder's  
23 immediate family in the issue of the securities ~~or commodities~~  
24 that are the subject of services as a finder.

25 (3) Participate in the offer, purchase, or sale of a secur-  
26 ity ~~or commodity~~ in violation of section 301. However, if the  
27 investment adviser makes a reasonable effort to ascertain if a

1 registration has been effected or an exemption order granted in  
2 this state  ~~, or alternatively~~ TO ASCERTAIN the basis for an  
3 exemption claim and does not have knowledge that the proposed  
4 transaction would violate section 301, his or her activities as a  
5 finder  ~~shall~~ DO not violate section 301.

6 (4) Participate in the offer, purchase, or sale of a secur-  
7 ity  ~~or commodity~~ without obtaining information relative to the  
8 risks of the transaction, the direct or indirect compensation to  
9 be received by promoters, partners, officers, directors, or their  
10 affiliates, the financial condition of the issuer, and the use of  
11 proceeds to be received from investors, or fail to read any  
12 offering materials obtained. This section  ~~shall~~ DOES not  
13 require independent investigation or alteration of offering mate-  
14 rials furnished to the finder.

15 (5) Fail to inform or otherwise  ~~insure~~ ENSURE disclosure  
16 to all persons involved in the transaction as a result of his or  
17 her finding activities of any material information which the  
18 finder knows, or in the exercise of reasonable care should know  
19 based on the information furnished to him or her, is material in  
20 making an investment decision, until conclusion of the  
21 transaction.

22 (6) Locate, introduce, or refer persons that the finder  
23 knows, or after a reasonable inquiry should know, are not suit-  
24 able investors by reason of their financial condition, age,  
25 experience, or need to diversify investments.

26 (D)  ~~(7)~~ The finder is not required to independently  
27 generate information.

1 (E) UNLESS WAIVED BY THE ADMINISTRATOR, AN INVESTMENT  
2 ADVISER REGISTERED OR REQUIRED TO BE REGISTERED UNDER THIS ACT  
3 SHALL, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, FURNISH  
4 EACH ADVISORY CLIENT AND PROSPECTIVE ADVISORY CLIENT WITH A WRIT-  
5 TEN DISCLOSURE STATEMENT WHICH MAY BE A COPY OF PART II OF ITS  
6 FORM ADV OR WRITTEN DOCUMENTS CONTAINING THE INFORMATION REQUIRED  
7 BY PART II OF FORM ADV. AN INVESTMENT ADVISER SHALL DELIVER THE  
8 DISCLOSURE STATEMENT REQUIRED BY THIS SECTION TO A CLIENT OR PRO-  
9 SPECTIVE CLIENT NOT LESS THAN 48 HOURS PRIOR TO ENTERING INTO AN  
10 INVESTMENT ADVISORY CONTRACT WITH THE CLIENT OR PROSPECTIVE  
11 CLIENT, OR AT THE TIME OF ENTERING INTO THE INVESTMENT ADVISORY  
12 CONTRACT IF THE ADVISORY CLIENT HAS A RIGHT TO RESCIND THE  
13 INVESTMENT ADVISORY CONTRACT WITHOUT PENALTY WITHIN 5 BUSINESS  
14 DAYS OF ENTERING INTO THE INVESTMENT ADVISORY CONTRACT.

15 (F) AN INVESTMENT ADVISER SHALL ANNUALLY AND WITHOUT CHARGE  
16 DELIVER OR OFFER TO DELIVER TO EACH OF ITS ADVISORY CLIENTS THE  
17 DISCLOSURE STATEMENT REQUIRED BY THIS SECTION. ANY DISCLOSURE  
18 STATEMENT REQUIRED BY THIS SECTION AND REQUESTED IN WRITING BY AN  
19 ADVISORY CLIENT PURSUANT TO AN OFFER TO DELIVER MUST BE MAILED OR  
20 DELIVERED WITHIN 5 BUSINESS DAYS OF THE REQUEST. THE DELIVERY OR  
21 OFFER TO DELIVER REQUIRED BY THIS SECTION NEED NOT BE MADE TO  
22 ADVISORY CLIENTS RECEIVING ADVISORY SERVICES SOLELY PURSUANT TO A  
23 CONTRACT WITH AN INVESTMENT COMPANY REGISTERED PURSUANT TO SEC-  
24 TION 15(c) OF THE INVESTMENT COMPANY ACT OF 1940, 15  
25 U.S.C. 80a-15.

26 (G) ~~(d)~~ Subsection (b)(1) ~~of this section shall not be~~  
27 ~~construed to~~ DOES NOT prohibit an investment advisory contract

1 which provides for compensation based upon the total value of a  
2 fund averaged over a definite period, or as of definite dates, or  
3 taken as of a definite date, ~~or shall~~ AND DOES not apply to an  
4 investment advisory contract with an investment company regis-  
5 tered under the investment company act of 1940, or any person,  
6 except a trust, collective trust fund, or separate account  
7 referred to in section 3(c)(11) of the investment company act of  
8 1940, 15 U.S.C. 80a-3, if the INVESTMENT ADVISORY contract  
9 relates to the investment of assets in excess of \$1,000,000.00,  
10 and the INVESTMENT ADVISORY contract provides for compensation  
11 based on the asset value of the company or fund under management  
12 averaged over a specific period and increasing and decreasing  
13 proportionately with the investment performance of the company or  
14 fund over a specific period in relation to the investment record  
15 of an appropriate index of securities prices, or ~~such other~~  
16 ANOTHER measure of investment performance as the administrator by  
17 rule, regulation, or order may specify. For purposes of deter-  
18 mining whether subsection (b)(1) applies to an investment  
19 advisory contract, the point from which increases and decreases  
20 in compensation are measured shall be the fee which is paid or  
21 earned when the investment performance of the company or fund is  
22 equivalent to that of the index or other measure of performance,  
23 and an index of securities prices shall be ~~deemed~~ CONSIDERED  
24 appropriate unless the administrator by order shall determine  
25 otherwise. The definition of the term "assignment" and the other  
26 terms used in this section shall be the same as the definitions

1 of those terms in the investment advisers act of 1940. ~~as~~  
2 amended.

3 (H) ~~(e)~~ Unless the administrator by rule or order permits  
4 ~~such~~ TAKING OR HAVING custody, it is unlawful for any invest-  
5 ment adviser not registered as a broker-dealer to take or have  
6 custody of any securities or funds ~~or commodity contracts~~ of  
7 any client.

8 (I) ~~(f)~~ It is unlawful for an agent registered with a  
9 broker-dealer to conduct business as an investment adviser OR AN  
10 INVESTMENT ADVISER REPRESENTATIVE except through the  
11 broker-dealer with which the agent is registered and with the  
12 written consent of the broker-dealer filed with the administra-  
13 tor, in a form and subject to terms and conditions acceptable to  
14 the administrator.

15 Sec. 103. It is unlawful for any person with intent to  
16 deceive to make, offer, or sell imitation or false ingots, bars  
17 of ~~boullion~~ BULLION, wafers, medals, or similar artifacts, or  
18 certificates or other instruments representing securities. ~~or~~  
19 commodities.

20 Sec. 201. (a) A person shall not transact business in this  
21 state as a broker-dealer ~~, commodity issuer,~~ or agent unless  
22 registered under this act.

23 (b) A broker-dealer or issuer shall not employ an agent  
24 unless the agent is registered. The registration of an agent is  
25 not effective during any period when the agent is not associated  
26 with a particular broker-dealer registered under this act or a  
27 particular issuer. If an agent begins or terminates a connection



1 with a broker-dealer or issuer, or begins or terminates those  
2 activities that make him or her an agent, the agent as well as  
3 the broker-dealer or issuer shall immediately notify the adminis-  
4 trator in writing on a form prescribed by the administrator.

5 ~~(c) Unless a broker-dealer is a member of a national secur=  
6 ities exchange as defined in title I of the securities exchange  
7 act of 1934, chapter 404, 48 Stat. 881, the administrator may by  
8 rule or order require that a broker-dealer designate a person who  
9 shall be registered as a principal of the broker-dealer in charge  
10 of management, financial matters, or compliance and the  
11 broker-dealer shall at all times designate and maintain a  
12 principal. The registration of a principal is not effective  
13 during any period when the principal is not associated with a  
14 particular broker-dealer registered under this act. If a princi=  
15 pal begins or terminates a connection with a broker-dealer, or  
16 begins or terminates activities and designation as a principal,  
17 the principal as well as the broker-dealer shall immediately  
18 notify the administrator in writing on a form prescribed by the  
19 administrator.~~

20 (C) ~~(d)~~ A person shall not transact business in this state  
21 as an investment adviser unless the person ~~complies with~~ MEETS  
22 1 or more of the following:

23 (1) The person is registered under this act.

24 (2) The person is registered as a broker-dealer without the  
25 imposition of a condition under section 204(b)(5).

26 (3) The person's only clients in this state are investment  
27 companies, as defined in section 3 of the investment company act

1 of 1940, ~~title I of chapter 686, 54 Stat. 789,~~ 15 U.S.C. 80a-3,  
2 ~~or~~ insurance companies, banks, or trust companies.

3 (4) THE PERSON IS AN INVESTMENT ADVISER WHO IS NOT REQUIRED  
4 TO BE REGISTERED AS AN INVESTMENT ADVISER UNDER THE INVESTMENT  
5 ADVISERS ACT OF 1940 IF ANY OF THE FOLLOWING APPLY:

6 (A) THE INVESTMENT ADVISER'S ONLY CLIENTS IN THIS STATE ARE  
7 OTHER INVESTMENT ADVISERS, FEDERALLY COVERED ADVISERS,  
8 BROKER-DEALERS, OR INSTITUTIONAL INVESTORS.

9 (B) THE INVESTMENT ADVISER HAS NO PLACE OF BUSINESS IN THIS  
10 STATE AND THE INVESTMENT ADVISER DIRECTS BUSINESS COMMUNICATIONS  
11 IN THIS STATE TO A PERSON WHO IS AN EXISTING CUSTOMER AND WHOSE  
12 PRINCIPAL PLACE OF RESIDENCE IS NOT IN THIS STATE.

13 (C) THE INVESTMENT ADVISER HAS NO PLACE OF BUSINESS IN THIS  
14 STATE AND THE INVESTMENT ADVISER DURING THE PRECEDING 12-MONTH  
15 PERIOD HAS HAD NOT MORE THAN 5 CLIENTS, OTHER THAN THOSE SPECI-  
16 FIED IN SUBPARAGRAPH (A), WHO ARE RESIDENTS OF THIS STATE.

17 (5) ~~(4)~~ The person's only clients in this state are indi-  
18 viduals who access the person's services through a 1-900 or  
19 ~~1-800~~ TOLL-FREE telephone number and the services are generic  
20 in nature and not customized or specific to an individual and  
21 would not otherwise be considered the offering of investment  
22 advice.

23 (6) THE PERSON IS A FEDERALLY COVERED ADVISER.

24 (7) A FEDERALLY COVERED ADVISER WHOSE ONLY CLIENTS ARE  
25 INVESTMENT COMPANIES AS DEFINED IN SECTION 3 OF THE INVESTMENT  
26 COMPANY ACT OF 1940, 15 U.S.C. 80a-3.

1       (D) ~~(e)~~ A registration under this section ~~shall be~~ IS  
2 effective ~~until it is withdrawn, terminated, revoked, or~~  
3 ~~canceled. A registrant shall be required to file or have filed~~  
4 ~~an annual report with such information as the administrator may~~  
5 ~~require. The administrator may by rule or order reduce the~~  
6 ~~filing fee for registration applications received more than 6~~  
7 ~~months after the beginning of the fiscal year.~~ UPON ORDER OF THE  
8 ADMINISTRATOR AND EXPIRES ON DECEMBER 31 OF THAT YEAR. IF A  
9 PERSON DOES NOT FILE AN ANNUAL REPORT, WITH THE INFORMATION  
10 REQUIRED BY THE ADMINISTRATOR, BEFORE DECEMBER 31 OF EACH YEAR,  
11 THE PERSON SHALL NOT CONTINUE TO TRANSACT BUSINESS IN THIS STATE  
12 AS AN INVESTMENT ADVISER, BROKER-DEALER, OR AGENT.

13       ~~(f) Unless the administrator by rule provides for regula-~~  
14 ~~tion, the broker-dealer, commodity issuer, and agent registration~~  
15 ~~provisions of this act do not apply to a person engaged in the~~  
16 ~~commodities business in this state and whose transactions with~~  
17 ~~the public involve 1 or more of the following:~~

18       ~~(1) A sale with delivery into the possession of the buyer of~~  
19 ~~the commodity sold, within 10 days after the cash payment, if,~~  
20 ~~with respect to the sales the seller does not do any of the~~  
21 ~~following:~~

22       ~~(i) Guarantee or promise the repurchase of the commodity~~  
23 ~~from the buyer in the future.~~

24       ~~(ii) Promise or agree to act as a broker or dealer on behalf~~  
25 ~~of the buyer in connection with a future resale of the commodity~~  
26 ~~by the buyer.~~

1       ~~(iii) Advertise the commodity except under a plan accepted~~  
2 ~~by the administrator.~~

3       ~~(iv) Pay a commission directly or indirectly for soliciting~~  
4 ~~any prospective buyer.~~

5       ~~(2) Except for investment purposes, the sale or purchase of~~  
6 ~~the commodity from a person using or processing the commodity in~~  
7 ~~a trade or business, including the resale of the commodity,~~  
8 ~~whether or not for immediate delivery.~~

9       ~~(g) The registration provisions of this act do not apply to~~  
10 ~~all commodities accounts, agreements, and transactions excluded~~  
11 ~~from state jurisdiction under the commodity exchange act, chapter~~  
12 ~~369, 42 Stat. 998, 7 U.S.C. 1 to 9b, 10a to 13, 13a to 13c, 15,~~  
13 ~~16, 17, and 18 to 25.~~

14       ~~(E) —(h) The registration provisions of this act do not~~  
15 ~~apply to a county treasurer acting under his or her authority~~  
16 ~~under the local government investment pool act, Act No. 121 of~~  
17 ~~the Public Acts of 1985, being sections 129.141 to 129.150 of the~~  
18 ~~Michigan Compiled Laws 1985 PA 121, MCL 129.141 TO 129.150.~~

19       ~~(F) —(i) A person licensed or registered as a mortgage~~  
20 ~~broker, mortgage lender, or mortgage servicer under the mortgage~~  
21 ~~brokers, lenders, and servicers licensing act, Act No. 173 of~~  
22 ~~the Public Acts of 1987, being sections 445.1651 to 445.1683 of~~  
23 ~~the Michigan Compiled Laws, shall be 1987 PA 173, MCL 445.1651~~  
24 ~~TO 445.1684, IS exempted from registering as a broker-dealer~~  
25 ~~under this act for the offer or sale of mortgage loans as defined~~  
26 ~~under Act No. 173 of the Public Acts of 1987 THE MORTGAGE~~  
27 ~~BROKERS, LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173, MCL~~

1 445.1651 TO 445.1684. ~~Employees~~ AN EMPLOYEE of ~~persons~~ A  
2 PERSON licensed or registered under ~~Act No. 173 of the Public~~  
3 ~~Acts of 1987 are~~ THE MORTGAGE BROKERS, LENDERS, AND SERVICERS  
4 LICENSING ACT, 1987 PA 173, MCL 445.1651 TO 445.1684, IS exempted  
5 from the agent registration provision of this act for THE offer  
6 or sale of mortgage loans as defined under ~~that act~~ THE MORT-  
7 GAGE BROKERS, LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173,  
8 MCL 445.1651 TO 445.1684, when acting as ~~employees~~ AN EMPLOYEE  
9 of the licensed ~~persons~~ OR REGISTERED PERSON.

10 Sec. 202. (a) A broker-dealer, ~~principal, commodity~~  
11 ~~issuer,~~ agent, or investment adviser may obtain an initial reg-  
12 istration by filing with the administrator an application  
13 together with a consent to service of process pursuant to section  
14 414(g). The application shall contain ~~whatever~~ THE information  
15 THAT the administrator by rule requires concerning ~~such matters~~  
16 ~~as~~ ANY OF THE FOLLOWING:

- 17 (1) The applicant's form and place of organization. ~~+~~  
18 (2) The applicant's proposed method of doing business. ~~+~~  
19 (3) The qualifications and business history of the appli-  
20 cant; in the case of a broker-dealer or investment adviser, the  
21 qualifications and business history of any partner, officer, or  
22 director, any person occupying a similar status or performing  
23 similar functions, or any person directly or indirectly control-  
24 ling the broker-dealer or investment adviser; and, in the case of  
25 an investment adviser, the qualifications and business history of  
26 any employee. ~~+~~

1 (4) Any injunction or administrative order or conviction of  
2 a misdemeanor or of a felony. ~~and~~

3 (5) The applicant's financial condition and history.

4 (B) The administrator may by rule or order require an appli-  
5 cant for initial registration to publish an announcement of the  
6 application in 1 or more specified newspapers published in this  
7 state. Registration becomes effective upon order of the  
8 administrator. The administrator may by rule or order establish  
9 classes of or otherwise condition the registration of  
10 broker-dealers, ~~principals, commodities issuers,~~ agents, or  
11 investment advisers.

12 (C) ~~(b)~~ Every applicant for registration shall pay a  
13 filing fee and every registrant shall pay an annual fee of  
14 \$250.00 in the case of a broker-dealer, ~~\$250.00 in the case of a~~  
15 ~~commodity issuer, \$30.00 in the case of a principal,~~ \$30.00 in  
16 the case of an agent, and \$150.00 in the case of an investment  
17 adviser. Every applicant filing an application for registration  
18 of a successor pursuant to ~~section 202(c)~~ SUBSECTION (D) shall  
19 pay a filing fee of \$100.00 for the unexpired portion of the  
20 year. A ~~licensed~~ REGISTERED agent who has terminated his or  
21 her connection with a broker-dealer shall pay a transfer fee of  
22 \$10.00 when transferring his or her connection to another  
23 broker-dealer. The administrator, in connection with any exami-  
24 nation pursuant to section 204(b)(6), may require by rule the  
25 payment of a reasonable fee sufficient to defray the expense of  
26 preparing, administering, scoring, and disseminating information  
27 concerning the examination. The administrator may either collect

1 this fee for, or direct that it be paid in whole or in part to,  
2 any agency, association, or organization cooperating in adminis-  
3 tering this examination.

4 (D) ~~(c)~~ A registered broker-dealer ~~, commodity issuer,~~  
5 or investment adviser may file an application for registration of  
6 a successor, whether or not the successor is then in existence.  
7 The administrator may grant or deny the application.

8 (E) AN APPLICANT FOR REGISTRATION UNDER THIS ACT OR AN  
9 ISSUER WHO OFFERS OR SELLS A SECURITY IN THIS STATE THROUGH ANY  
10 PERSON SHALL FILE WITH THE ADMINISTRATOR, IN THE FORM PRESCRIBED  
11 BY THE ADMINISTRATOR BY RULE OR ORDER, AN IRREVOCABLE CONSENT TO  
12 SERVICE OF PROCESS.

13 (F) ~~(d)~~ The administrator may by rule OR ORDER require a  
14 minimum capital for registered broker-dealers ~~, commodity~~  
15 ~~issuers,~~ WHO ARE SUBJECT TO SECTION 15 OF TITLE I OF THE SECURI-  
16 TIES EXCHANGE ACT OF 1934, 15 U.S.C. 78o, and investment advisers  
17 WHO ARE SUBJECT TO SECTION 222 OF THE INVESTMENT ADVISERS ACT OF  
18 1940, 15 U.S.C. 80b-18a, and prescribe a ratio between net capi-  
19 tal and aggregate indebtedness. If the registrant fails to  
20 comply with the minimum net capital requirement, the registrant  
21 shall immediately cease all investment advisory ~~services,~~ OR  
22 securities ~~, or commodities~~ business operations and promptly  
23 notify the administrator of its failure to maintain the required  
24 net capital, of the steps to be taken to cure the net capital  
25 deficiency, and of its anticipated date of reopening business  
26 operations. The registrant shall not reactivate its securities

1 ~~or commodities~~ or investment advisory business OPERATIONS  
2 without prior notification to the administrator.

3 ~~(e) The administrator may by rule require registered~~  
4 ~~broker-dealers, commodity issuers, principals, agents, and~~  
5 ~~investment advisers to post surety bonds in amounts up to~~  
6 ~~\$100,000.00, and may determine their conditions. Any appropriate~~  
7 ~~deposit of cash or securities shall be accepted in lieu of any~~  
8 ~~bond required. A bond may not be required of any registrant~~  
9 ~~whose net capital, which may be defined by rule, exceeds~~  
10 ~~\$100,000.00. Every bond shall provide for action thereon by any~~  
11 ~~person who has a cause of action under section 410 and, if the~~  
12 ~~administrator by rule or order requires, by any person who has a~~  
13 ~~cause of action not arising under this act. Every bond shall~~  
14 ~~provide that action may not be maintained to enforce any liabil-~~  
15 ~~ity on the bond unless brought within 2 years after the sale or~~  
16 ~~other act upon which it is based. If a civil action is main-~~  
17 ~~tained under the provisions of the bond, the court shall require~~  
18 ~~the person maintaining an action against the principal or surety,~~  
19 ~~or both, on the bond to place a notice in a newspaper of general~~  
20 ~~circulation in the county where the registrant maintains its~~  
21 ~~principal office, or if there is no principal office in this~~  
22 ~~state, then in the county of each registered office in this~~  
23 ~~state, for 3 successive days, stating that a claim has been made~~  
24 ~~under the provisions of the bond; or the court may provide for~~  
25 ~~alternative notice designed to advise prospective claimants~~  
26 ~~against the broker-dealer or surety. The court shall for a~~  
27 ~~period of 30 days thereafter permit other claimants against the~~



1 ~~bond to join the action and claim under the provisions of the~~  
2 ~~bond.~~

3 ~~(f) The administrator may by rule require registered~~  
4 ~~broker-dealers and investment advisers to carry fidelity bonds in~~  
5 ~~amounts up to \$400,000.00 in the case of broker-dealers and up to~~  
6 ~~\$100,000.00 in the case of investment advisers covering the~~  
7 ~~registrant's general partners and employees or covering its offi-~~  
8 ~~cers and employees.~~

9 (G) THE ADMINISTRATOR MAY REQUIRE A FIDELITY BOND FROM A  
10 BROKER-DEALER, AGENT, OR INVESTMENT ADVISER WHO IS REQUIRED TO BE  
11 REGISTERED UNDER THIS ACT.

12 (H) ~~(g)~~ Unless the requirement is waived by rule or order  
13 of the administrator, all persons, including but not limited to  
14 partners, officers, directors, and agents employed by a  
15 broker-dealer ~~, commodity issuer,~~ or investment adviser who are  
16 regularly employed within this state shall, as a condition of  
17 employment, be fingerprinted. The administrator may process the  
18 fingerprint cards with the federal bureau of investigation and  
19 the department of state police either directly or through the  
20 national association of securities dealers. The fingerprints or  
21 information relating to the fingerprints shall be used for the  
22 official use of the administrator only.

23 SEC. 202A. (A) EXCEPT AS PROVIDED IN SUBSECTION (B), BEFORE  
24 CONDUCTING BUSINESS IN THIS STATE, A FEDERALLY COVERED ADVISER  
25 SHALL FILE WITH THE ADMINISTRATOR SOME OR ALL OF THE DOCUMENTS  
26 THAT THE FEDERALLY COVERED ADVISER HAS FILED WITH THE SECURITIES  
27 AND EXCHANGE COMMISSION, AND AMENDMENTS TO DOCUMENTS FILED WITH

1 THE SECURITIES AND EXCHANGE COMMISSION, AS THE ADMINISTRATOR BY  
2 RULE REQUIRES. THE ADMINISTRATOR MAY REQUIRE A CONSENT TO SERV-  
3 ICE OF PROCESS AND A FEE IN CONJUNCTION WITH THE FILING.

4 (B) A FEDERALLY COVERED ADVISER IS NOT REQUIRED TO MAKE A  
5 NOTICE FILING IF 1 OR MORE OF THE FOLLOWING APPLY TO THE FEDER-  
6 ALLY COVERED ADVISER:

7 (1) HE OR SHE IS A REGISTERED BROKER-DEALER WHO IS NOT  
8 SUBJECT TO A CONDITION IMPOSED UNDER SECTION 204(B)(5).

9 (2) HE OR SHE IS NOT AN INVESTMENT ADVISER UNDER SECTION  
10 401(1)(1), (2), (3), (4), (6), (7), (8), (9), OR (11).

11 (3) HE OR SHE DOES NOT HAVE A PLACE OF BUSINESS IN THE STATE  
12 AND DURING ANY PERIOD OF 12 CONSECUTIVE MONTHS HE OR SHE DOES NOT  
13 HAVE MORE THAN 5 CLIENTS IN THIS STATE OTHER THAN INVESTMENT COM-  
14 PANIES AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 OR CLI-  
15 ENTS DESCRIBED IN SECTION 401(1)(5)(A).

16 (4) HIS OR HER ONLY CLIENTS IN THIS STATE ARE INDIVIDUALS  
17 WHO ACCESS HIS OR HER SERVICES THROUGH A TOLL-FREE TELEPHONE  
18 NUMBER, AND THE SERVICES ARE GENERIC IN NATURE, ARE NOT CUSTOM-  
19 IZED OR SPECIFIC TO AN INDIVIDUAL, AND ARE NOT OTHERWISE THE  
20 OFFERING OF INVESTMENT ADVICE.

21 (C) A NOTICE FILING SHALL BE EFFECTIVE UPON RECEIPT BY THE  
22 ADMINISTRATOR AND SHALL EXPIRE ON DECEMBER 31 OF THE YEAR OF  
23 FILING. A FEDERALLY COVERED ADVISER SHALL MAKE A NEW NOTICE  
24 FILING TO CONDUCT BUSINESS IN THIS STATE IN A SUBSEQUENT CALENDAR  
25 YEAR.

26 (D) A FEDERALLY COVERED ADVISER MAY TERMINATE OR WITHDRAW A  
27 NOTICE FILING BY NOTIFYING THE ADMINISTRATOR OF THE TERMINATION

1 OR WITHDRAWAL IN WRITING. A TERMINATION OR WITHDRAWAL IS  
2 EFFECTIVE UPON RECEIPT BY THE ADMINISTRATOR OF THE WRITTEN  
3 NOTIFICATION.

4 (E) A FEDERALLY COVERED ADVISER THAT ACQUIRES THE BUSINESS  
5 OF AN INVESTMENT ADVISER OR ANOTHER FEDERALLY COVERED ADVISER, OR  
6 AN INVESTMENT ADVISER THAT ACQUIRES THE BUSINESS OF A FEDERALLY  
7 COVERED ADVISER, SHALL MAKE A NOTICE FILING.

8 (F) IF A FEDERALLY COVERED ADVISER FILES AN AMENDMENT WITH  
9 THE SECURITIES AND EXCHANGE COMMISSION TO CORRECT INFORMATION  
10 THAT IS OR BECOMES INACCURATE OR INCOMPLETE IN A DOCUMENT ALSO  
11 FILED WITH THE ADMINISTRATOR AS PART OF A NOTICE FILING, THE FED-  
12 ERALLY COVERED ADVISER SHALL FILE A COPY OF THE AMENDMENT WITH  
13 THE ADMINISTRATOR.

14 (G) IF A FEDERALLY COVERED ADVISER FILES AN AMENDMENT TO ITS  
15 DISCIPLINARY HISTORY WITH THE SECURITIES AND EXCHANGE COMMISSION,  
16 THE FEDERALLY COVERED ADVISER SHALL AT THE SAME TIME FILE A COPY  
17 OF THE AMENDMENT WITH THE ADMINISTRATOR.

18 (H) FOR PURPOSES OF THIS SECTION, "NOTICE FILING" MEANS THE  
19 DOCUMENTS FILED WITH THE ADMINISTRATOR UNDER SUBSECTION (A).

20 Sec. 203. (a) Every registered broker-dealer ~~, commodity~~  
21 ~~issuer,~~ and investment adviser shall make and keep ~~such~~  
22 accounts, correspondence, memoranda, papers, books, and other  
23 records as the administrator by rule OR ORDER prescribes. All  
24 records ~~so~~ required shall be preserved for 3 years unless the  
25 administrator by rule OR ORDER prescribes otherwise for particu-  
26 lar types of records.

1 (b) Every registered broker-dealer ~~, commodity issuer,~~ and  
2 investment adviser shall file ~~such~~ financial reports as the  
3 administrator by rule prescribes.

4 (c) If the information contained in any document filed with  
5 the administrator is or becomes inaccurate or incomplete in any  
6 material respect, the registrant shall promptly file a correcting  
7 amendment unless notification of the correction has been given  
8 under section 201(b).

9 (d) All the records referred to in subsection (a) are  
10 subject at any time or from time to time to ~~such~~ reasonable  
11 periodic, special, or other examinations by representatives of  
12 the administrator, within or without this state, as the adminis-  
13 trator ~~deems~~ CONSIDERS necessary or appropriate in the public  
14 interest or for the protection of investors. The expenses rea-  
15 sonably attributable to the examination of a matter arising under  
16 this section may be charged to the applicant or registrant  
17 involved. For the purpose of avoiding unnecessary duplication of  
18 examinations, the administrator, insofar as it deems it practica-  
19 ble in administering this subsection, may cooperate and exchange  
20 information with the securities and commodities administrators of  
21 other states, the securities and exchange commission, the commod-  
22 ity futures trading commission, ~~and~~ any national securities  
23 exchange or national securities association registered under the  
24 securities exchange act of 1934, and other appropriate law  
25 enforcement agencies. Failure of a registrant to promptly pro-  
26 vide records for inspection shall be cause for a summary

1 suspension order until conclusion of the examination of the  
2 records.

3 (e) A registered broker-dealer ~~, commodity issuer,~~ or  
4 investment adviser may not withdraw or terminate its registration  
5 unless the registrant has complied with all of the following:

6 (1) Filed a broker-dealer ~~, commodity issuer,~~ or invest-  
7 ment adviser withdrawal form as prescribed by the administrator.

8 (2) Delivered all securities ~~, commodities,~~ and cash bal-  
9 ances owing to all customers.

10 (3) Delivered all securities owing to other broker-dealers.

11 (4) Met other conditions as the administrator may by rule or  
12 order prescribe.

13 (5) Received a withdrawal order from the administrator  
14 approving the withdrawal request.

15 (f) Notwithstanding the provisions of subsection (e):

16 (1) A registrant may temporarily cease business by promptly  
17 advising the administrator in writing on or before the date of  
18 temporary cessation of business of the fact of cessation, the  
19 reasons for cessation, and the date or basis for reopening of the  
20 business.

21 (2) A registrant OR FEDERALLY COVERED ADVISER subject to a  
22 merger or acquisition where all obligations of the predecessor  
23 registrant OR FEDERALLY COVERED ADVISER are acquired by or trans-  
24 ferred to the new broker-dealer ~~, commodity issuer,~~ or invest-  
25 ment adviser ~~which shall continue~~ OR FEDERALLY COVERED ADVISER  
26 THAT CONTINUES the business in an uninterrupted fashion shall

1 comply with ~~the provisions of~~ section ~~202(c)~~ 202(D) OR  
2 202A(E), WHICHEVER IS APPLICABLE, instead of this section.

3 ~~(3) The administrator may modify the aforementioned~~  
4 ~~requirements by rule or order, in unusual and appropriate~~  
5 ~~circumstances.~~

6 (g) A registered broker-dealer shall immediately notify the  
7 administrator of the appointment of a trustee for the registrant  
8 pursuant to the securities investor protection act of 1970. A  
9 broker-dealer for whom such a trustee has been appointed shall  
10 file with the administrator a broker-dealer withdrawal form in  
11 accordance with subsection (e). A broker-dealer's registration  
12 continues effective until entry of the withdrawal order by the  
13 administrator.

14 (h) A registrant or applicant for registration shall  
15 promptly notify the administrator in writing if any proceedings  
16 have been commenced or any sanction imposed by securities admin-  
17 istrators ~~or commodities administrators~~ of other states, other  
18 state regulatory agencies, the securities and exchange commis-  
19 sion, ~~the commodity futures trading commission,~~ or any national  
20 securities exchange ~~, commodities exchange,~~ or national securi-  
21 ties association registered under the securities exchange act of  
22 1934.

23 (i) ~~The~~ EXCEPT FOR ADVERTISING RELATED TO A FEDERALLY COV-  
24 ERED SECURITY, THE administrator may by rule or order require a  
25 broker-dealer or investment adviser to file all advertising for  
26 review and acceptance before use. ~~All advertising shall be~~  
27 ~~filed with the administrator contemporaneously with its use.~~

1 (J) THE ADMINISTRATOR SHALL NOT REQUIRE ANY OF THE  
2 FOLLOWING:

3 (1) THAT A BROKER-DEALER THAT IS REGISTERED UNDER THE SECUR-  
4 ITIES EXCHANGE ACT OF 1934 MAKE, MAINTAIN, OR PRESERVE ANY  
5 RECORDS OTHER THAN THOSE REQUIRED TO BE MADE, MAINTAINED, AND  
6 PRESERVED UNDER THE SECURITIES EXCHANGE ACT OF 1934.

7 (2) THAT AN INVESTMENT ADVISER THAT MAINTAINS ITS PRINCIPAL  
8 PLACE OF BUSINESS IN ANOTHER STATE MAKE, MAINTAIN, OR PRESERVE  
9 ANY RECORDS OTHER THAN THOSE REQUIRED BY THAT STATE, PROVIDED  
10 THAT THE INVESTMENT ADVISER IS REGISTERED IN THAT STATE AND IS IN  
11 COMPLIANCE WITH ANY RECORD-KEEPING REQUIREMENTS OF THAT STATE.

12 (3) THAT A BROKER-DEALER THAT IS REGISTERED UNDER THE SECUR-  
13 ITIES EXCHANGE ACT OF 1934 FILE A FINANCIAL REPORT THAT IS NOT  
14 REQUIRED TO BE CREATED AND FILED UNDER THE SECURITIES EXCHANGE  
15 ACT OF 1934.

16 (4) THAT AN INVESTMENT ADVISER THAT MAINTAINS ITS PRINCIPAL  
17 PLACE OF BUSINESS IN ANOTHER STATE CREATE OR FILE A FINANCIAL  
18 REPORT THAT IS NOT REQUIRED BY THAT STATE, PROVIDED THAT THE  
19 INVESTMENT ADVISER IS REGISTERED IN THAT STATE AND IS IN COMPLI-  
20 ANCE WITH ANY FINANCIAL REPORTING REQUIREMENTS OF THAT STATE.

21 Sec. 204. (a) The administrator may by order, if it finds  
22 the order in the public interest, deny, suspend, or revoke any  
23 registration, or censure a registrant, if it finds that 1 OR MORE  
24 OF THE FOLLOWING APPLY:

25 (1) The applicant or registrant or, in the case of a  
26 broker-dealer ~~, commodity issuer,~~ or investment adviser, any  
27 partner, officer, ~~principal,~~ or director, any person occupying

1 a similar status or performing similar functions, or any person  
2 directly or indirectly controlling the broker-dealer ~~, commodity~~  
3 ~~issuer,~~ or investment adviser:

4 (A) Has filed an application for registration which as of  
5 its effective date, or as of any date after filing in the case of  
6 an order denying effectiveness, was incomplete in any material  
7 respect or contained any statement which was, in light of the  
8 circumstances under which it was made, false or misleading with  
9 respect to any material fact. ~~—~~

10 (B) Has violated or failed to comply with any provision of  
11 this act or a predecessor act or any rule or order under this act  
12 or a predecessor act. ~~—~~

13 (C) Has been convicted of any misdemeanor involving moral  
14 turpitude or any felony. ~~—~~

15 (D) Is permanently or temporarily enjoined by any court of  
16 competent jurisdiction from engaging in or continuing any conduct  
17 or practice involving any aspect of the securities ~~or commodity~~  
18 ~~contracts~~ business. ~~—~~

19 (E) Is the subject of an order of the administrator denying,  
20 suspending, or revoking registration as a broker-dealer, agent,  
21 or investment adviser. ~~—~~

22 (F) Is the subject of an order entered by the securities ~~or~~  
23 ~~commodities~~ administrator of any other state or by the securi-  
24 ties and exchange commission ~~or the commodity futures trading~~  
25 ~~commission~~ denying, suspending, or revoking registration as a  
26 broker-dealer, ~~future commission merchant,~~ floor broker,  
27 ~~commodity exchange, commodity solicitor, commodity option~~



1 ~~issuer, commodity salesman, commodity adviser, commodity trading~~  
2 ~~adviser, commodity pool operator,~~ agent, or investment adviser,  
3 or the substantial equivalent of those terms as defined in this  
4 act, or is the subject of an order of the securities and exchange  
5 commission suspending or expelling him OR HER from a national  
6 securities exchange or national securities association registered  
7 under the securities exchange act of 1934 or in the case of an  
8 individual, is subject to an order by the securities and exchange  
9 commission barring the individual from association with a  
10 broker-dealer or investment adviser ~~or equivalent order of the~~  
11 ~~commodity futures trading commission~~ or is the subject of an  
12 order of a national securities exchange or a national securities  
13 association registered under the securities EXCHANGE act of 1934  
14 suspending or expelling him OR HER from membership, or is the  
15 subject of a United States post office fraud order. The adminis-  
16 trator may by order deny, suspend, or revoke any broker-dealer ~~,~~  
17 ~~commodity issuer,~~ OR investment adviser ~~,~~ or principal regis-  
18 tration if the applicant or registrant has been associated with a  
19 broker-dealer which was liquidated pursuant to the securities  
20 investor protection act of 1970, or if 1 or more of the  
21 applicant's or registrant's partners, officers, OR directors ~~,~~  
22 ~~or principals has~~ HAVE been associated with a broker-dealer liq-  
23 uidated under that act, unless the association was terminated 12  
24 months or more before the commencement of litigation under that  
25 act, or unless the associated person establishes that he or she  
26 did not engage in dishonest or unethical business practices or  
27 violate or fail to comply with any provisions of this act or a

1 predecessor act, or any rule or order ~~thereunder~~ UNDER THIS ACT  
2 OR A PREDECESSOR ACT, during association with that broker-dealer.

3 ~~—~~

4 (G) Has engaged in dishonest or unethical business  
5 practices. ~~—~~

6 (H) Is insolvent, either in the sense that his OR HER  
7 liabilities exceed his OR HER assets or in the sense that he OR  
8 SHE cannot meet his OR HER obligations as they mature; but the  
9 administrator may not enter an order against a broker-dealer or  
10 investment adviser under this ~~clause~~ SUBDIVISION without a  
11 finding of insolvency as to the broker-dealer or investment  
12 adviser. ~~—~~

13 (I) Is not qualified on the basis of such factors as train-  
14 ing, experience, and knowledge of the securities ~~or commodities~~  
15 ~~businesses~~ BUSINESS, except as otherwise provided in subsection  
16 (b). ~~—~~

17 (J) Has delayed unreasonably delivery of securities ~~or~~  
18 ~~commodities~~ to the extent that the registrant is in a position  
19 to control or direct the delivery of the securities. The burden  
20 of proof of inability to CONTROL OR DIRECT delivery shall rest  
21 with the registrant. ~~—~~

22 (K) Has represented that securities will be listed or that  
23 application for listing will be made, without basis in fact for  
24 the representation. ~~—~~

25 (L) Has induced excessive trading in a customer's account,  
26 or induced trading beyond the customer's known financial  
27 resources, if done with the intent to produce profits and

1 commissions for the registrant or an agent in disregard of the  
2 customer's best interests as they reasonably appeared at the time  
3 of the transaction, and if improper under the then existing  
4 circumstances. ~~—~~

5 (M) Has recommended to a customer the purchase, sale, or  
6 exchange of any ~~security or commodity contract~~ SECURITY without  
7 reasonable grounds to believe that the recommendation is suitable  
8 for the customer on the basis of information furnished by the  
9 customer after reasonable inquiry as may be necessary under the  
10 circumstances concerning the customer's investment objectives,  
11 financial situation and needs, and other information known by the  
12 person making the recommendation. ~~—~~

13 (N) Has recommended speculative low priced securities to  
14 customers without knowledge of or an attempt to obtain informa-  
15 tion concerning the customer's other securities holdings, finan-  
16 cial situation, investment objectives, and ability to bear the  
17 risks inherent in the purchase of those securities, or has recom-  
18 mended the securities in disregard of the information. ~~—~~

19 (O) Has executed a transaction on behalf of a customer with-  
20 out authority to do so. ~~—~~

21 (P) Has executed transactions pursuant to general discre-  
22 tionary authority for the account of a customer without first  
23 obtaining general discretionary authority in writing from the  
24 customer. However, written authority is not required if the dis-  
25 cretionary authority relates solely to the execution of an order  
26 and is limited in scope. ~~—~~

1 (Q) Has acted on an agency basis for both the seller and the  
2 purchaser of a security ~~or commodity contract~~ without  
3 disclosing that fact to both on the confirmation. ~~+~~

4 (R) Has, while acting on an agency basis for a customer in  
5 any transaction, charged the customer more than a fair commission  
6 or service charge, taking into consideration all relevant circum-  
7 stances including market conditions with respect to a security  
8 ~~or commodity~~ at the time of the transaction, the expense of  
9 executing the order and the value of any service rendered by  
10 reason of experience in and knowledge of the security, ~~or~~  
11 ~~commodity,~~ and the market ~~therefor~~ FOR THE SECURITY; or ~~while~~  
12 ~~acting on a principal basis for a customer in any transaction,~~  
13 has sold at an excessive markup in relation to the market price  
14 of the security ~~or commodity~~ at the time of sale in light of  
15 the volume of securities ~~or commodities~~ traded at that time.  
16 ~~+~~

17 (S) Has entered into a transaction with a customer in a  
18 security ~~or commodity~~ at a price not reasonably related to the  
19 market price of the security. ~~or commodity;~~

20 (T) Has extended credit to a customer in violation of the  
21 securities exchange act of 1934 or the regulations of the federal  
22 reserve board. ~~+~~

23 (U) Has employed in connection with the purchase or sale of  
24 a security ~~or commodity~~ a manipulative or deceptive device or  
25 contrivance. ~~+~~

26 (V) Has sold a security to or purchased a security from a  
27 customer without disclosing that the broker-dealer is acting as a

1 market maker ~~is~~ IN that security or has a substantial position  
2 in the market. ~~+~~

3 (W) Has, while registered as an agent or investment  
4 ~~advisor~~ ADVISER, borrowed money from a customer. ~~+~~

5 (X) Has made unauthorized use of the funds of a customer; or  
6 has hypothecated a customer's securities ~~or commodity~~ contract  
7 without having a lien thereon unless written consent of the cus-  
8 tomer was first obtained. ~~+~~

9 (Y) Has, while registered as an agent, effected securities  
10 ~~or commodity contract~~ transactions when those transactions were  
11 not recorded on the records of the employer broker-dealer. ~~+~~

12 (Z) Has operated an account under a fictitious name.

13 (2) The applicant or registrant has failed reasonably to  
14 supervise its agents if it is a broker-dealer or its employees if  
15 an investment adviser. ~~+~~ ~~or~~

16 (3) The applicant or registrant has failed to pay the proper  
17 filing fee. ~~+~~ ~~but the~~ THE administrator may enter only a denial  
18 order under this ~~clause~~ SUBDIVISION, and it shall vacate ~~such~~  
19 ~~an~~ THE DENIAL order when the deficiency has been corrected.

20 (b) The following provisions govern the application of  
21 ~~section 204(a)(1)(I)~~ SUBSECTION (A)(1)(I):

22 (1) The administrator may not enter an order against a  
23 broker-dealer on the basis of the lack of qualification of any  
24 person other than the broker-dealer ~~himself~~ if he OR SHE is an  
25 individual or an agent of the broker-dealer.

26 (2) The administrator may not enter an order against an  
27 investment adviser on the basis of the lack of qualification of

1 any person other than the investment adviser ~~himself~~ if he OR  
2 SHE is an individual or any other person who represents the  
3 investment adviser in doing any of the acts which make him OR HER  
4 an investment adviser.

5 (3) The administrator may not enter an order solely on the  
6 basis of lack of experience if the applicant or registrant is  
7 qualified by training or knowledge or both.

8 (4) The administrator shall consider that an agent who will  
9 work under the supervision of a registered broker-dealer need not  
10 have the same qualifications as a broker-dealer.

11 (5) The administrator shall consider that an investment  
12 adviser is not necessarily qualified solely on the basis of  
13 experience as a broker-dealer or agent. When it finds that an  
14 applicant for registration as a broker-dealer is not qualified as  
15 an investment adviser, it may by order condition the applicant's  
16 registration as a broker-dealer upon his OR HER not transacting  
17 business in this state as an investment adviser.

18 (6) The administrator may by rule provide for an examina-  
19 tion, which may be written or oral or both, to be taken by any  
20 class of or all applicants, as well as persons who represent or  
21 will represent an investment adviser in doing any of the acts  
22 which make him OR HER an investment adviser.

23 (c) The administrator may by order summarily postpone or  
24 suspend registration pending final determination of any proceed-  
25 ing under this section. Upon the entry of the order, the admin-  
26 istrator shall promptly notify the applicant or registrant, as  
27 well as the employer or prospective employer if the applicant or

1 registrant is an agent, that ~~it~~ THE ORDER has been entered and  
2 of the reasons therefor and that within 15 days after the receipt  
3 of a written request the matter will be set down for hearing. If  
4 a hearing is not requested and none is ordered by the administra-  
5 tor, the order will remain in effect until it is modified or  
6 vacated by the administrator. If a hearing is requested or  
7 ordered, the administrator, after notice of and opportunity for  
8 hearing, may modify or vacate the order or extend it until final  
9 determination.

10 (d) If the administrator finds that any registrant or appli-  
11 cant for registration is no longer in existence or has ceased to  
12 do business as a broker-dealer, ~~commodity issuer, principal,~~  
13 agent, or investment adviser, or is subject to an adjudication of  
14 mental incompetence or to the control of a committee, conserva-  
15 tor, or guardian, or cannot be located after reasonable search,  
16 the administrator may by order cancel the registration or  
17 application.

18 (e) The administrator may institute a revocation or suspen-  
19 sion proceeding under ~~section 204(a)(1)(B)~~ SUBSECTION (A)(1)(B)  
20 within 1 year after withdrawal from registration of a  
21 broker-dealer, ~~commodity issuer, principal,~~ agent, or invest-  
22 ment adviser became effective and enter a revocation or suspen-  
23 sion order as of the last date on which registration was  
24 effective.

25 (f) An order may not be entered under any part of this sec-  
26 tion except the first sentence of subsection (c) without ALL OF  
27 THE FOLLOWING:

1 (1) Appropriate prior notice to the applicant or registrant,  
 2 as well as to the employer or prospective employer if the appli-  
 3 cant or registrant is an agent. ~~+~~

4 (2) Opportunity for hearing. ~~+~~ and

5 (3) Written findings of fact and conclusions of law.

6 (g) The administrator may by order, if it finds the order to  
 7 be in the public interest, impose a civil ~~penalty~~ FINE of  
 8 \$1,000.00 on any registrant if it finds that the registrant, or  
 9 in the case of a broker-dealer ~~, commodity issuer,~~ or invest-  
 10 ment adviser, any partner, officer, ~~principal~~ or director, any  
 11 person occupying a similar status or performing similar func-  
 12 tions, or any person directly or indirectly controlling the  
 13 broker-dealer ~~, commodity issuer,~~ or investment adviser, has  
 14 engaged in conduct prohibited by ~~sections 204(a)(1)(B)~~  
 15 SUBSECTION (A)(1)(B), (G), or (J) to (Z).

16 (h) A violation of a provision of THIS section ~~204~~ or  
 17 action of the administrator pursuant to THIS section ~~204~~ shall  
 18 not subject a registrant to civil liability to a customer of the  
 19 registrant ~~, except as~~ UNLESS that violation or action is con-  
 20 trary to another provision of this act.

21 Sec. 301. It is unlawful for any person to offer or sell  
 22 any security in this state unless 1 OF THE FOLLOWING IS MET:

23 (1) ~~it~~ IT is registered under this act. ~~or~~

24 (2) ~~the~~ THE security or transaction is exempted under sec-  
 25 tion 402.

26 (3) THE SECURITY IS A FEDERALLY COVERED SECURITY.



1           Sec. 304a. (1) A security that is exempt from registration  
2 under the federal exemption set forth in 17 C.F.R. 230.504 may be  
3 registered under this section. An issuer eligible to register a  
4 security under this section shall use a registration form  
5 approved by the administrator as the disclosure document for the  
6 offering. A registration under this section shall be known as a  
7 small ~~corporate~~ COMPANY offering registration.

8           (2) An application for a small ~~corporate~~ COMPANY offering  
9 registration shall comply with this section. THE OFFERING IS  
10 EXEMPT PURSUANT TO 17 C.F.R. 230.504, 17 C.F.R. 230.251, OR SEC-  
11 TION 3(a)(11) OF THE SECURITIES ACT OF 1933. However, the admin-  
12 istrator may waive provisions of this section.

13           (3) A small ~~corporate~~ COMPANY offering registration under  
14 this section is not available to either of the following:

15           (a) Investment companies subject to the investment company  
16 act of 1940. ~~, title I of chapter 686, 54 Stat. 789, 15~~  
17 ~~U.S.C. 80a-1 to 80a-64.~~

18           (b) Issuers subject to the reporting requirements of section  
19 13 or section 15(d) of title I of the securities exchange act of  
20 1934, 15 U.S.C. 78m and 78o.

21           (4) All of the following provisions apply to the availabil-  
22 ity of a small ~~corporate~~ COMPANY offering registration:

23           (a) A small ~~corporate~~ COMPANY offering registration shall  
24 not be utilized by the following issuers and programs unless the  
25 administrator grants written permission based upon a showing that  
26 adequate disclosure can be made to investors using the small  
27 ~~corporate~~ COMPANY offering registration format:

1 (i) Holding companies, OR companies that have a principal  
2 purpose of owning stock in, or supervising the management of,  
3 other companies.

4 (ii) Portfolio companies, such as real estate investment  
5 trusts.

6 (iii) Issuers with complex capital structures.

7 (iv) Commodity pools.

8 (v) Equipment leasing programs.

9 (vi) Real estate programs.

10 (b) A small ~~corporate~~ COMPANY offering registration under  
11 this section is available only to the issuer of the securities  
12 and not to any affiliate of that issuer or to any other person  
13 for resale of the issuer's securities. In addition, each of the  
14 following requirements shall be met:

15 (i) The issuer is a domestic corporation, ~~or~~ a foreign  
16 corporation, OR A MANAGER MANAGED LIMITED LIABILITY COMPANY orga-  
17 nized under the laws of any state, territory, or possession of  
18 the United States OR PROVINCE OR TERRITORY OF CANADA. The admin-  
19 istrator may allow other entities to file a small ~~corporate~~  
20 COMPANY offering registration.

21 (ii) The offering is not a blind pool or other offering for  
22 which the specific business to be engaged in or property to be  
23 acquired by the issuer cannot be specified.

24 (iii) The offering price for ~~common stock~~ SECURITIES; the  
25 exercise price if the securities offered are options, warrants,  
26 or rights for common stock OR MEMBERSHIP INTERESTS; ~~and~~ OR the  
27 conversion price if the securities are convertible into common

1 stock OR UNITS OF MEMBERSHIP INTEREST is at least ~~-\$5.00~~ \$1.00  
2 per share ~~, unless the administrator authorizes a lower price~~  
3 ~~per share~~ OR UNIT OF MEMBERSHIP INTEREST. THE ISSUER SHALL  
4 ENTER INTO AN AGREEMENT WITH THE ADMINISTRATOR THAT THE ISSUER  
5 WILL NOT SPLIT ANY CLASS OF SECURITY OR DECLARE A DIVIDEND FOR 2  
6 YEARS AFTER THE EFFECTIVE DATE OF THE REGISTRATION IF SUCH ACTION  
7 HAS THE EFFECT OF LOWERING THE PRICE BELOW \$1.00 PER SHARE.

8 (iv) The aggregate offering price of the securities offered,  
9 within or outside this state, is not more than \$1,000,000.00,  
10 ~~under the federal exemption set forth in~~ OR A GREATER AMOUNT  
11 ESTABLISHED UNDER 17 C.F.R. 230.504, or \$5,000,000.00 if a fed-  
12 eral exemption is granted to this state pursuant to section 3(b)  
13 of the securities act of 1933, ~~title I of chapter 38, 48~~  
14 ~~Stat. 75,~~ 15 U.S.C. 77c, OR AN AMOUNT AUTHORIZED UNDER 17  
15 C.F.R. 230.251, IF THE ISSUER IS UTILIZING A REGISTRATION FORM  
16 APPROVED BY THE ADMINISTRATOR.

17 (c) A small ~~corporate~~ COMPANY offering registration under  
18 this section is only available for debt offerings if the issuer  
19 can demonstrate a reasonable ability to service its debt.

20 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, FINAN-  
21 CIAL STATEMENTS SHALL BE PREPARED IN ACCORDANCE WITH GENERALLY  
22 ACCEPTED ACCOUNTING PRINCIPLES OR THE CANADIAN EQUIVALENT. IF  
23 THE ISSUER HAS NOT CONDUCTED SIGNIFICANT OPERATIONS, STATEMENTS  
24 OF RECEIPTS AND DISBURSEMENTS SHALL BE INCLUDED IN LIEU OF STATE-  
25 MENTS OF INCOME. INTERIM FINANCIAL STATEMENTS MAY BE UNAUDITED.  
26 ANNUAL FINANCIAL STATEMENTS SHALL BE AUDITED BY INDEPENDENT  
27 CERTIFIED PUBLIC ACCOUNTANTS OR CHARTERED ACCOUNTANTS, AS

1 APPROPRIATE, EXCEPT THAT ANNUAL FINANCIAL STATEMENTS IN LIEU OF  
2 BEING AUDITED MAY BE REVIEWED BY INDEPENDENT CERTIFIED PUBLIC  
3 ACCOUNTANTS OR CHARTERED ACCOUNTANTS, IN ACCORDANCE WITH THE  
4 ACCOUNTING AND REVIEW SERVICES STANDARDS PROMULGATED BY THE  
5 AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OR THE  
6 CANADIAN EQUIVALENT, CONSISTENTLY APPLIED, RATHER THAN AUDITED,  
7 IF ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

8 (A) THE ISSUER HAS NOT PREVIOUSLY SOLD SECURITIES THROUGH AN  
9 OFFERING INVOLVING GENERAL ADVERTISING OR THE SOLICITATION OF  
10 PROSPECTIVE INVESTORS.

11 (B) THE ISSUER HAS NOT BEEN PREVIOUSLY REQUIRED UNDER FEDER-  
12 AL, STATE, PROVINCIAL, OR TERRITORIAL SECURITIES LAWS TO PROVIDE  
13 AUDITED FINANCIAL STATEMENTS IN CONNECTION WITH ANY SALE OF ITS  
14 SECURITIES.

15 (C) THE AGGREGATE AMOUNT OF ALL PREVIOUS SALES OF SECURITIES  
16 BY THE ISSUER WITHIN THE LAST 24 MONTHS DOES NOT EXCEED  
17 \$1,000,000.00.

18 (D) THE AMOUNT OF THE SMALL COMPANY OFFERING FOR WHICH A  
19 SMALL COMPANY REGISTRATION IS SOUGHT DOES NOT EXCEED  
20 \$1,000,000.00.

21 (6) ~~(5)~~ A small ~~corporate~~ COMPANY offering registration  
22 under this section is not available if any of the following pro-  
23 visions apply to the issuer, to any of the issuer's officers,  
24 directors, MANAGERS, 10% ~~stockholders~~ SECURITY HOLDERS, promot-  
25 ers, or selling agent of the securities to be offered, or to any  
26 officer, director, or partner of the selling agent of the  
27 securities to be offered:

1 (a) The person has filed a registration statement that is  
2 the subject of a currently effective registration stop order  
3 entered pursuant to any federal or state securities law within 5  
4 years before the small ~~corporate~~ COMPANY offering registration  
5 application is filed.

6 (b) The person has been convicted of any felony or misde-  
7 meanor in connection with the offer, purchase, or sale of any  
8 security or any felony involving fraud or deceit, including any  
9 of the following, within 5 years before the small ~~corporate~~  
10 COMPANY offering registration application is filed:

11 (i) Forgery.

12 (ii) Embezzlement.

13 (iii) Obtaining money under false pretenses.

14 (iv) Larceny.

15 (v) Conspiracy to defraud.

16 (c) The person is currently subject to either of the  
17 following:

18 (i) A state administrative enforcement order or judgment  
19 entered against that person by a state securities administrator  
20 or the securities and exchange commission within 5 years before  
21 the small ~~corporate~~ COMPANY offering registration application  
22 is filed.

23 (ii) A federal or state administrative enforcement order or  
24 judgment in which fraud or deceit, including making untrue state-  
25 ments of material facts or failing to state material facts, was  
26 found and the order or judgment was entered within 5 years before

1 the small ~~corporate~~ COMPANY offering registration application  
2 is filed.

3 (d) The person is subject to a federal or state administra-  
4 tive enforcement order or judgment that prohibits, denies, or  
5 revokes the use of any exemption for registration in connection  
6 with the offer, purchase, or sale of securities.

7 (e) The person is currently subject to a court order, judg-  
8 ment, or decree entered within 5 years before the small  
9 ~~corporate~~ COMPANY offering registration application is filed  
10 that does either of the following:

11 (i) Temporarily, preliminarily, or permanently restrains or  
12 enjoins that person from engaging in or continuing any conduct or  
13 practice in connection with the purchase or sale of any  
14 security.

15 (ii) Involves the making of a false filing with any state or  
16 with the securities and exchange commission.

17 (f) A person who is disqualified under this subsection shall  
18 not act in any capacity other than that for which the person is  
19 licensed or registered. A disqualification under this subsection  
20 is automatically waived if the administrator or other state or  
21 federal agency that created the basis for disqualification deter-  
22 mines, upon a showing of good cause, that it is not necessary  
23 under the circumstances to deny the exemption.

24 (g) Subdivisions (a), (b), (c), and (e) do not apply if the  
25 person disqualified under those subdivisions is licensed or reg-  
26 istered to conduct securities related business in the state in  
27 which the administrative order or judgment was entered against

1 that person or if the broker-dealer who employs the person is  
2 licensed or registered in this state and the form BD filed in  
3 this state discloses the order, conviction, judgment, or decree  
4 relating to that person.

5       (7) ~~(6)~~ An applicant who files a small ~~corporate~~ COMPANY  
6 offering registration application in this state shall not split  
7 ~~common stock~~ ITS SECURITIES or declare a stock OR MEMBERSHIP  
8 dividend for any security issued under this section for 2 years  
9 after the registration is effective without the prior written  
10 approval of the administrator.

11       (8) ~~(7)~~ In addition to a properly completed application  
12 form, an applicant for a small ~~corporate~~ COMPANY offering reg-  
13 istration under this section shall file all of the following  
14 exhibits with the administrator:

15       (a) The form of the selling agency agreement.

16       (b) The issuer's articles of incorporation or other charter  
17 documents and all amendments.

18       (c) The issuer's bylaws OR OPERATING AGREEMENT, as amended.

19       (d) Copies of any resolutions by directors OR MANAGERS set-  
20 ting forth terms and provisions of ~~capital stock~~ SECURITIES to  
21 be issued.

22       (e) Any indenture, form of note, or other contractual provi-  
23 sion containing terms of notes or other debt or of options, war-  
24 rants, or rights to be offered.

25       (f) A specimen of the security to be offered, including any  
26 legend restricting resale.

1 (g) Consent to service of process accompanied by an  
2 appropriate ~~corporate~~ resolution.

3 (h) Copies of all material directed or furnished to invest-  
4 ors in the offering.

5 (i) The form of escrow agreement for escrow of proceeds. An  
6 escrow agreement shall comply with all of the following:

7 (i) The administrator may require that the issuer impound  
8 the proceeds from the sale of a registered security in this state  
9 until the issuer receives a specified amount from the sale of  
10 that security in this state or elsewhere that is sufficient to  
11 accomplish the stated purposes of the offering or until the  
12 issuer's stipulated requirements are met.

13 (ii) The administrator may require that the issuer return  
14 any impounded proceeds, together with any accrued interest, to  
15 investors if the issuer fails to raise the specified amount while  
16 the registration is effective or within 1 year or if the issuer's  
17 stipulated requirements are not met.

18 (iii) A bank or trust company may act as THE depository or  
19 escrow agent for impounded proceeds. Checks, drafts, and money  
20 orders shall be made payable to the depository. If a  
21 broker-dealer is acting as selling agent for the issuer, the  
22 broker-dealer shall promptly remit payments made directly to  
23 ~~that~~ THE broker-dealer to the depository or escrow agent.

24 (iv) A request to release impounded funds shall be in  
25 writing. The request shall confirm compliance with the registra-  
26 tion and shall be accompanied by a statement from the depository  
27 or escrow agent setting forth the total amount on deposit.



1 (j) Consent to inclusion in the disclosure document of an  
2 accountant's report.

3 (k) Consent to inclusion in the disclosure document of a tax  
4 advisor's opinion or a description of tax consequences.

5 (l) Consent to inclusion in the disclosure document of an  
6 evaluation by a licensed attorney of any pending or anticipated  
7 litigation or administrative action.

8 (m) The form of any subscription agreement for the purchase  
9 of securities in the offering.

10 (n) An opinion of a licensed attorney that the securities to  
11 be sold in the offering are duly authorized and binding on the  
12 issuer in accordance with the terms of the securities.

13 (o) A list of the residence street addresses of officers,  
14 directors, MANAGERS, and principal ~~stockholders~~ SECURITY  
15 HOLDERS.

16 (9) ~~(8)~~ Information provided to the administrator under  
17 subsection ~~(7)~~ (8) is exempt from disclosure under the freedom  
18 of information act, ~~Act No. 442 of the Public Acts of 1976,~~  
19 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws~~  
20 1976 PA 442, MCL 15.231 TO 15.246.

21 (10) ~~(9)~~ An applicant for a small ~~corporate~~ COMPANY  
22 offering registration under this section shall pay a filing fee  
23 of 1/10 of 1% of the maximum aggregate offering price at which  
24 the registered securities are to be offered in this state, but in  
25 no case less than \$100.00 or more than \$1,250.00, to the adminis-  
26 trator with the application form. If the applicant withdraws the  
27 application before the small ~~corporate~~ COMPANY offering

1 registration is effective or before a preeffective stop order is  
2 issued, the administrator shall retain the entire filing fee if  
3 review of the application has commenced, or shall retain a  
4 \$100.00 fee and refund the balance of the filing fee to the  
5 applicant if review of the application has not commenced.

6       (11) ~~(10)~~ A small ~~corporate~~ COMPANY offering registra-  
7 tion statement filed under this section is effective for 1 year  
8 from its effective date, except during the time a stop order is  
9 in effect under this section. A small ~~corporate~~ COMPANY offer-  
10 ing registration statement may be extended by the administrator  
11 by rule or order. All outstanding securities of the same class  
12 as a registered security are considered to be registered for the  
13 purpose of any nonissuer transaction so long as the small  
14 ~~corporate~~ COMPANY offering registration statement is  
15 effective. A small ~~corporate~~ COMPANY offering registration  
16 statement may not be withdrawn for 1 year from its effective date  
17 if any securities of the same class are outstanding. A small  
18 ~~corporate~~ COMPANY offering registration statement may be with-  
19 drawn otherwise only in the discretion of the administrator.

20       (12) ~~(11)~~ For the period that a small ~~corporate~~ COMPANY  
21 offering registration statement is effective, the administrator  
22 may by rule or order require the person who filed the small  
23 ~~corporate~~ COMPANY offering registration statement to file  
24 reports, not more often than quarterly, to keep reasonably cur-  
25 rent the information contained in the small ~~corporate~~ COMPANY  
26 offering registration statement and to disclose the progress of  
27 the offering.

1           (13) ~~(12)~~ A small ~~corporate~~ COMPANY offering  
2 registration statement relating to a security may be amended  
3 after its effective date to increase the securities specified as  
4 proposed to be offered. As to securities not yet sold, an amend-  
5 ment becomes effective upon the administrator's order. In the  
6 case of securities that are sold in an amount in excess of the  
7 amount or number of securities specified in an effective small  
8 ~~corporate~~ COMPANY offering registration statement ~~,~~ as pro-  
9 posed to be offered, the person or persons who filed the small  
10 ~~corporate~~ COMPANY offering registration statement may, in  
11 accordance with rules the administrator shall promulgate as nec-  
12 essary or appropriate in the public interest and for the protec-  
13 tion of investors, elect to have the small ~~corporate~~ COMPANY  
14 offering registration of those securities considered effective as  
15 of the time of their sale, upon payment to the administrator  
16 within 6 months after the sale of a registration fee equal to the  
17 difference between the registration fee previously paid and the  
18 amount of the fee that would have otherwise been applicable to  
19 those additional securities if they had been included in the  
20 small ~~corporate~~ COMPANY offering registration statement, if  
21 any, plus a late registration fee of \$250.00. Upon the election  
22 and payment, the small ~~corporate~~ COMPANY offering registration  
23 statement shall be considered to have been in effect with respect  
24 to those ~~shares~~ SECURITIES. Every person filing an amendment  
25 under this section shall pay a filing fee, calculated in the  
26 manner specified in subsection ~~(9)~~ (10), with respect to the  
27 additional securities.

1           (14) ~~(13)~~ Fees, expense reimbursements, and fines received  
2 under this section shall be deposited in the state treasury to  
3 the credit of the administrator, to be used pursuant to legisla-  
4 tive appropriation by the corporation, ~~and~~ securities, AND LAND  
5 DEVELOPMENT bureau in carrying out those duties required by law.  
6 After the payment of the amounts appropriated by the legislature  
7 for the necessary expenses incurred in the administration of this  
8 act, the money remaining shall be credited to the general fund of  
9 this state.

10           (15) ~~(14)~~ Fees and fines received under this section shall  
11 not be expended for partisan political activity.

12           (16) ~~(15)~~ All of the following apply to orders under this  
13 subsection:

14           (a) The administrator may issue a stop order denying effec-  
15 tiveness to, or suspending or revoking the effectiveness of, any  
16 small ~~corporate~~ COMPANY offering registration statement if it  
17 finds that the order is in the public interest and any of the  
18 following:

19           (i) The small ~~corporate~~ COMPANY offering registration  
20 statement as of its effective date or as of any earlier date in  
21 the case of an order denying effectiveness, or any amendment  
22 under subsection ~~(12)~~ (13) as of its effective date, or any  
23 report under subsection ~~(11)~~ (12) is incomplete in any material  
24 respect or contains any statement that was, in the light of the  
25 circumstances under which it was made, false or misleading with  
26 respect to any material fact.

1           (ii) Any provision of this section or any rule, order, or  
2 condition lawfully imposed under this section has been violated  
3 in connection with the offering by any of the following:

4           (A) The person filing the small ~~corporate~~ COMPANY offering  
5 registration statement.

6           (B) The issuer, any ~~partner,~~ officer, ~~or~~ director, OR  
7 MANAGER of the issuer, any person occupying a similar status or  
8 performing similar functions, or any person directly or indi-  
9 rectly controlling or controlled by the issuer, but only if the  
10 person filing the small ~~corporate~~ COMPANY offering registration  
11 statement is directly or indirectly controlled by or acting for  
12 the issuer.

13           (C) Any underwriter.

14           (iii) The security registered or sought to be registered is  
15 the subject of an administrative stop order or similar order or a  
16 permanent or temporary injunction of any court entered under any  
17 other federal or state act applicable to the offering. However,  
18 the administrator shall not institute a proceeding against an  
19 effective small ~~corporate~~ COMPANY offering registration state-  
20 ment under this subdivision more than 1 year from the date of the  
21 order or injunction relied on, and may not enter an order under  
22 this subdivision on the basis of an order or injunction entered  
23 under any other state act unless that order or injunction was  
24 based on facts that would currently constitute a ground for a  
25 stop order under this section.

26           (iv) The issuer's enterprise or method of business includes  
27 or would include activities that are illegal where performed.

1 (v) The offering has worked or has tended to work a fraud,  
2 deception, or imposition or would operate to work a fraud, decep-  
3 tion, or imposition.

4 (b) The administrator may by order summarily postpone or  
5 suspend the effectiveness of the small ~~corporate~~ COMPANY offer-  
6 ing registration statement pending final determination of any  
7 proceeding under this section. Upon the entry of the order, the  
8 administrator shall promptly notify each person specified in  
9 subdivision (c) that the order has been entered, the reasons that  
10 the order has been entered, and that within 15 days after the  
11 receipt of a written request the matter will be scheduled for  
12 hearing. If no hearing is requested and none is ordered by the  
13 administrator, the order shall remain in effect until it is modi-  
14 fied or vacated by the administrator. If a hearing is requested  
15 or ordered, the administrator, after notice and opportunity for  
16 hearing to each person specified in subdivision (c), may modify,  
17 vacate, or extend the order until final determination.

18 (c) A stop order shall not be entered under this section  
19 except under the first sentence of subdivision (b) without all of  
20 the following:

21 (i) Appropriate prior notice to the applicant or registrant,  
22 the issuer, and the person on whose behalf the securities are to  
23 be or have been offered.

24 (ii) Opportunity for hearing.

25 (iii) Written findings of fact and conclusions of law.

26 (d) The administrator may vacate or modify a stop order if  
27 it finds that the conditions that prompted entry of the stop

1 order have changed or that it is otherwise in the public interest  
2 to vacate or modify the stop order.

3       Sec. 305. (a) A registration statement may be filed by the  
4 issuer, any other person on whose behalf the offering is to be  
5 made, or a registered broker-dealer.

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

15       (c) Every registration statement shall specify ALL OF THE  
16 FOLLOWING:

17       (1) The amount of securities to be offered in this state.

18       (2) The states in which a registration statement or similar  
19 document in connection with the offering has been or is to be  
20 filed.

21       (3) Any withdrawal or any adverse order, judgment, or decree  
22 entered in connection with the offering by the regulatory author-  
23 ities in each state or by any court or the securities and  
24 exchange commission.

25       (d) Any document filed under this act or a predecessor act  
26 within 5 years preceding the filing of a registration statement

1 may be incorporated by reference in the registration statement to  
2 the extent that the document is currently accurate.

3 (e) The administrator may by rule or otherwise permit the  
4 omission of any item of information or document from any regis-  
5 tration statement.

6 (f) The administrator may by rule or order require as a con-  
7 dition of registration by qualification or coordination both of  
8 the following:

9 (1) That any security issued or to be issued to a promoter  
10 for a consideration substantially different from the public  
11 offering price, or to any person for a consideration other than  
12 cash, be deposited in escrow.

13 (2) That the proceeds from the sale of the registered secur-  
14 ity in this state be impounded until the issuer receives a speci-  
15 fied amount from the sale of the security either in this state or  
16 elsewhere. The administrator may by rule or order determine the  
17 conditions of any escrow or impounding required under this sub-  
18 section, and, after prior notice and opportunity for hearing, may  
19 order the cancellation in whole or in part of any security depos-  
20 ited in escrow if necessary for the protection of security  
21 holders. The administrator may not reject a depository solely  
22 because of location in another state.

23 (g) The administrator may by rule or order impose conditions  
24 under which a security registered by qualification may be sold,  
25 if it finds that the conditions are reasonable and in the public  
26 interest.



1 (h) Every registration statement is effective for 1 year  
2 from its effective date, except during the time a stop order is  
3 in effect under section 306. A registration statement may be  
4 extended by the administrator by rule or order. All outstanding  
5 securities of the same class as a registered security are consid-  
6 ered to be registered for the purpose of any nonissuer transac-  
7 tion so long as the registration statement is effective or the  
8 issuer has a class of securities that have been subject to the  
9 reporting requirements of section 13 or 15(d) of title I of the  
10 securities exchange act of 1934, 15 U.S.C. 78m and 78o, for not  
11 less than 9 months before the transaction and all reports  
12 required by that act have been filed for that period. A regis-  
13 tration statement may not be withdrawn for 1 year from its effec-  
14 tive date if any securities of the same class are outstanding. A  
15 registration statement may be withdrawn otherwise only in the  
16 discretion of the administrator.

17 (i) For the period that the registration statement is effec-  
18 tive, the administrator may by rule or order require the person  
19 who filed the registration statement to file reports, not more  
20 often than quarterly, to keep reasonably current the information  
21 contained in the registration statement and to disclose the  
22 progress of the offering.

23 (j) A registration statement relating to a security may be  
24 amended after its effective date to increase the securities spec-  
25 ified as proposed to be offered. As to securities not yet sold,  
26 an amendment becomes effective upon the administrator's order.  
27 In the case of securities that are sold in an amount in excess of

1 the amount or number of securities specified in an effective  
2 registration statement, as proposed to be offered, the person or  
3 persons who filed the registration statement may, in accordance  
4 with rules the administrator shall promulgate as necessary or  
5 appropriate in the public interest and for the protection of  
6 investors, elect to have the registration of those securities  
7 considered effective as of the time of their sale, upon payment  
8 to the administrator within 6 months after the sale of a regis-  
9 tration fee equal to the difference between the registration fee  
10 previously paid and the amount of the fee that would have other-  
11 wise been applicable to those additional securities if they had  
12 been included in the registration statement, if any, plus a late  
13 registration fee of \$250.00. Upon the election and payment, the  
14 registration statement shall be considered to have been in effect  
15 with respect to those shares. Every person filing an amendment  
16 under this subsection shall pay a filing fee, calculated in the  
17 manner specified in subsection (b), with respect to the addi-  
18 tional securities.

19 (k) Fees, expense reimbursements, and fines received under  
20 this act shall be deposited in the state treasury to the credit  
21 of the administrator, to be used pursuant to legislative appro-  
22 priation by the corporation, ~~and~~ securities AND LAND  
23 DEVELOPMENT bureau in carrying out those duties required by law.  
24 After the payment of the amounts appropriated by the legislature  
25 for the necessary expenses incurred in the administration of this  
26 act, the money remaining shall be credited to the general fund of  
27 this state.

1 (l) Fees and fines received under this act shall not be  
2 expended for partisan political activity.

3 (m) This section does not apply to securities registered  
4 under section 304a.

5 SEC. 308. (A) ANY SECURITY ISSUED BY AN INVESTMENT COMPANY,  
6 OTHER THAN A UNIT INVESTMENT TRUST, THAT IS REGISTERED OR THAT  
7 HAS FILED A REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY  
8 ACT OF 1940 MAY BE OFFERED FOR SALE AND SOLD INTO, FROM, OR  
9 WITHIN THIS STATE UPON THE ANNUAL RECEIPT BY THE ADMINISTRATOR OF  
10 ALL OF THE FOLLOWING:

11 (1) A NOTICE AS PRESCRIBED BY THE ADMINISTRATOR. A COPY OF  
12 THE FEDERAL REGISTRATION STATEMENT FILED WITH THE SECURITIES AND  
13 EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933 MAY BE PRO-  
14 VIDED TO THE ADMINISTRATOR IN LIEU OF THE NOTICE.

15 (2) PAYMENT OF A FEE OF \$1,000.00.

16 (3) A CONSENT TO SERVICE OF PROCESS.

17 (B) ANY SECURITY ISSUED BY A UNIT INVESTMENT TRUST THAT IS  
18 REGISTERED OR THAT HAS FILED A REGISTRATION STATEMENT UNDER THE  
19 INVESTMENT COMPANY ACT OF 1940 AS AN INVESTMENT COMPANY MAY BE  
20 OFFERED FOR SALE AND SOLD INTO, FROM, OR WITHIN THIS STATE FOR AN  
21 INDEFINITE PERIOD COMMENCING UPON THE LATER OF THE TRUST'S EFFEC-  
22 TIVENESS WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE  
23 ADMINISTRATOR'S RECEIPT OF A NOTICE AS PRESCRIBED BY THE  
24 ADMINISTRATOR.

25 (C) EACH OF THE FOLLOWING APPLIES TO A NOTICE FILING UNDER  
26 SUBSECTION (A):

1 (1) A NOTICE FILING IS EFFECTIVE FOR A PERIOD OF 1 YEAR,  
2 COMMENCING UPON THE LATER OF THE EFFECTIVENESS OF THE OFFERING  
3 WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE  
4 ADMINISTRATOR'S RECEIPT OF THE NOTICE FILING.

5 (2) A NOTICE FILING MAY BE RENEWED FOR AN ADDITIONAL 1-YEAR  
6 PERIOD BY FILING THE DOCUMENTS AND FEE REQUIRED BY SUBSECTION (A)  
7 BEFORE THE EXPIRATION OF THE 1-YEAR EFFECTIVE PERIOD. THE  
8 RENEWAL IS EFFECTIVE UPON THE EXPIRATION OF THE PRIOR NOTICE  
9 PERIOD.

10 (3) A NOTICE FILING MAY BE TERMINATED BY FILING WITH THE  
11 ADMINISTRATOR A NOTICE OF TERMINATION AS PRESCRIBED BY THE  
12 ADMINISTRATOR. THE TERMINATION IS EFFECTIVE UPON THE  
13 ADMINISTRATOR'S RECEIPT OF THE NOTICE OF TERMINATION.

14 (D) WITH RESPECT TO ANY SECURITY THAT IS A FEDERALLY COVERED  
15 SECURITY UNDER THE SECURITIES ACT OF 1933, THE ISSUER SHALL FILE  
16 A NOTICE ON SECURITIES AND EXCHANGE COMMISSION FORM D OR A FORM  
17 APPROVED BY THE ADMINISTRATOR; WITH A CONSENT TO SERVICE OF PRO-  
18 CESS SIGNED BY THE ISSUER, NO LATER THAN 15 DAYS AFTER THE FIRST  
19 SALE OF A FEDERALLY COVERED SECURITY IN THIS STATE, TOGETHER WITH  
20 A NONREFUNDABLE FILING FEE OF \$100.00.

21 (E) THE ADMINISTRATOR, BY RULE OR ORDER, MAY REQUIRE THE  
22 FILING OF ANY DOCUMENT FILED WITH THE SECURITIES AND EXCHANGE  
23 COMMISSION UNDER THE SECURITIES ACT OF 1933, WITH RESPECT TO A  
24 FEDERALLY COVERED SECURITY UNDER THE SECURITIES ACT OF 1933,  
25 TOGETHER WITH A NONREFUNDABLE FILING FEE OF \$100.00.

26 (F) THE ADMINISTRATOR MAY ISSUE A STOP ORDER SUSPENDING THE  
27 OFFER AND SALE OF A FEDERALLY COVERED SECURITY, EXCEPT A

1 FEDERALLY COVERED SECURITY UNDER SECTION 18(b)(1) OF THE  
2 SECURITIES ACT OF 1933, 15 U.S.C. 77r, IF IT FINDS THAT THE ORDER  
3 IS IN THE PUBLIC INTEREST AND THERE IS A FAILURE TO COMPLY WITH  
4 THIS SECTION.

5 (G) THE ADMINISTRATOR, BY RULE OR ORDER, MAY WAIVE ANY OR  
6 ALL OF THE PROVISIONS OF THIS SECTION.

7 (H) FOR PURPOSES OF THIS SECTION, "NOTICE FILING" MEANS THE  
8 DOCUMENTS FILED WITH THE ADMINISTRATOR UNDER SUBSECTION (A).

9 Sec. 401. ~~When~~ AS used in this act, unless the context  
10 otherwise requires:

11 (a) "Administrator" means the corporation, ~~and~~ securities  
12 AND LAND DEVELOPMENT bureau of the department of ~~commerce~~  
13 CONSUMER AND INDUSTRY SERVICES.

14 (B) "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY  
15 THROUGH 1 OR MORE INTERMEDIARIES CONTROLS, IS CONTROLLED BY, OR  
16 IS UNDER COMMON CONTROL WITH A SPECIFIED PERSON.

17 (C) ~~(b)~~ "Agent" means any individual other than a  
18 broker-dealer who represents a broker-dealer or issuer in effect-  
19 ing or attempting to effect purchases or sales of securities. ~~or~~  
20 ~~commodity contracts.~~ "Agent" does not include an individual who  
21 represents an issuer in (1) effecting transactions in a security  
22 exempted by section 402(a)(1), (2), (3), (4), (5), (9), or (10),  
23 (2) effecting transactions exempted by section 402(b), (3)  
24 EFFECTING TRANSACTIONS IN A COVERED SECURITY AS DEFINED IN SEC-  
25 TION 18(b)(3) OR 18(b)(4)(D) OF THE SECURITIES ACT OF 1933, 15  
26 U.S.C. 77r, or ~~(3)~~ (4) effecting transactions with existing  
27 employees, partners, officers, or directors of the issuer or any

1 of its subsidiaries ~~and~~ if, in connection with all of these ~~3~~  
2 4 cases, no commission is paid or given directly or indirectly  
3 for soliciting any person in this state. "Agent" does not  
4 include an officer or general partner of an issuer whose securi-  
5 ties are registered under the provisions of this act, who repre-  
6 sents the issuer in effecting transactions in ~~such~~ THE regis-  
7 tered securities, if no commission is paid or given directly or  
8 indirectly for soliciting any person in this state. "Agent" does  
9 not include a person acting solely as a finder and registered  
10 pursuant to this act or acting as a finder under a transaction  
11 exempt pursuant to section 402(b)(19). "AGENT" DOES NOT INCLUDE  
12 A PERSON WHOSE TRANSACTIONS IN THIS STATE ARE LIMITED TO ONLY  
13 THOSE TRANSACTIONS SET FORTH IN SECTION 15(h)(2) OF THE SECURI-  
14 TIES EXCHANGE ACT OF 1934, 15 U.S.C. 78o. A partner, officer, or  
15 director of a broker-dealer or issuer, or a person occupying a  
16 similar status or performing similar functions, is an agent only  
17 if he or she otherwise comes within this definition. The admin-  
18 istrator may by rule or order exclude other persons from the def-  
19 inition of the word "agent".

20 (D) ~~(c)~~ "Broker-dealer" means any person engaged in the  
21 business of effecting transactions in securities ~~or commodity~~  
22 ~~contracts~~ for the account of others or for his or her own  
23 account. "Broker-dealer" does not include (1) an agent, (2) an  
24 issuer, (3) a bank, savings institution, or trust company, (4) a  
25 person who has no place of business in this state if (A) he or  
26 she effects transactions in this state exclusively with or  
27 through (i) the issuers of the securities ~~or commodity~~

1 ~~contracts~~ involved in the transactions, (ii) other  
2 broker-dealers, or (iii) banks, savings institutions, trust com-  
3 panies, insurance companies, investment companies as defined in  
4 the investment company act of 1940, pension or profit-sharing  
5 trusts, or other financial institutions or institutional buyers,  
6 whether acting for themselves or as trustees, or (B) during any  
7 period of 12 consecutive months he or she does not direct more  
8 than 15 offers to sell or buy into this state in any manner to  
9 persons other than those specified in clause (A) OF THIS  
10 SUBDIVISION, whether or not the offeror or any of the offerees is  
11 then present in this state, or (5) a person acting solely as a  
12 finder and registered pursuant to this act or acting as a finder  
13 under a transaction exempt pursuant to section 402(b)(19). The  
14 administrator may by rule or order exclude other persons from the  
15 definition of the word "broker-dealer".

16 (E) "COMMISSION" MEANS ANY PAYMENT IN CASH, SECURITIES, OR  
17 GOODS FOR OFFERING OR SELLING, PROMISE, OR COMMITMENT TO PROVIDE  
18 PAYMENT IN THE FUTURE FOR OFFERING OR SELLING, OR ANY OTHER SIMI-  
19 LAR PAYMENT. COMMISSION DOES NOT INCLUDE A REAL ESTATE COMMIS-  
20 SION COMMENSURATE WITH FEES PAID IN THE AREA FOR SIMILAR SERV-  
21 ICES, PAID TO LICENSED REAL ESTATE BROKERS SOLELY FOR REAL ESTATE  
22 SERVICES WHICH HAVE BEEN RENDERED, OR PAYMENT BY A PERSON TO A  
23 LAWYER OR ACCOUNTANT IN CONNECTION WITH ADVICE OR RECOMMENDATIONS  
24 MADE BY A LAWYER OR ACCOUNTANT TO THE CLIENT WITH WHOM THE LAWYER  
25 OR ACCOUNTANT HAS AN ESTABLISHED PROFESSIONAL RELATIONSHIP, IF  
26 DISCLOSURE OF THE PAYMENT AND THE INTEREST OF THE LAWYER OR  
27 ACCOUNTANT IN THE TRANSACTION OR IN THE ISSUER OR ANY AFFILIATE

1 OF THE ISSUER, IS MADE IN WRITING TO THE CLIENT BEFORE THE SALE.  
2 OFFICERS, DIRECTORS, AND PARTNERS OF AN ISSUER OR PURCHASER, OR  
3 PERSONS OCCUPYING A SIMILAR STATUS SHALL NOT BE CONSIDERED A  
4 FINDER IF THEIR CONTACT WAS PURELY INCIDENTAL AND THEIR COMPENSA-  
5 TION WAS NOT DIRECTLY OR INDIRECTLY TIED TO OR CONDITIONED UPON  
6 INVOLVEMENT IN SECURITIES SOLICITATION OR PURCHASE.

7 (F) "DIRECT OR INDIRECT COMPENSATION OR REMUNERATION" MEANS  
8 ANY PAYMENT, RECEIPT OR USE OF PROCEEDS OF AN OFFERING FOR THE  
9 BENEFIT OF THE PROMOTER, GENERAL PARTNERS, OFFICERS OR DIRECTORS,  
10 OR PERSONS OCCUPYING SIMILAR POSITIONS OR THEIR AFFILIATES, ANY  
11 RECEIPT, PAYMENT, OR USE OF SECURITIES OR GOODS BY THOSE PERSONS  
12 AT LESS THAN THE AMOUNT PUBLIC INVESTORS PAID FOR THE SECURITIES  
13 OR GOODS, OR ANY MARKUP CHARGED ON SALE OF PROPERTY TO THE ENTITY  
14 RAISING CAPITAL, ANY ADVANTAGEOUS CONTRACTUAL RELATIONSHIPS, ANY  
15 REAL ESTATE COMMISSION, OR OTHER SIMILAR PAYMENTS OR ARRANGEMENTS  
16 TO THOSE PERSONS.

17 (G) "FEDERALLY COVERED ADVISER" MEANS A PERSON WHO IS REGIS-  
18 TERED UNDER SECTION 203 OF THE INVESTMENT ADVISERS ACT OF 1940,  
19 15 U.S.C. 80b-3; OR IS EXCLUDED FROM THE DEFINITION OF  
20 "INVESTMENT ADVISER" UNDER SECTION 202(a)(11) OF THE INVESTMENT  
21 ADVISERS ACT OF 1940, 15 U.S.C. 80b-2; EXCEPT AS PROVIDED IN THE  
22 INVESTMENT ADVISERS ACT OF 1940, A FEDERALLY COVERED ADVISER FOR  
23 WHICH A NONPAYMENT OR UNDERPAYMENT OF A FEE HAS NOT BEEN PROMPTLY  
24 REMEDIED FOLLOWING WRITTEN NOTIFICATION TO THE ADVISER OF THE  
25 NONPAYMENT OR UNDERPAYMENT IS NOT A FEDERALLY COVERED ADVISER.

26 (H) "FEDERALLY COVERED SECURITY" MEANS ANY SECURITY THAT IS  
27 A "COVERED SECURITY" UNDER THE SECURITIES ACT OF 1933 OR RULES OR



1 REGULATIONS PROMULGATED UNDER THAT ACT. EXCEPT IF PROVIDED BY  
2 THE SECURITIES ACT OF 1933, A FEDERALLY COVERED SECURITY FOR  
3 WHICH A FEE HAS NOT BEEN PAID AND PROMPTLY REMEDIED FOLLOWING  
4 WRITTEN NOTIFICATION FROM THE ADMINISTRATOR TO THE ISSUER OF THE  
5 NONPAYMENT OR UNDERPAYMENT OF THE FEE, AS REQUIRED BY THIS ACT,  
6 IS NOT A FEDERALLY COVERED SECURITY.

7 (I) "FINDER" MEANS A PERSON WHO, FOR CONSIDERATION, PARTICI-  
8 PATES IN THE OFFER TO SELL, SALE, OR PURCHASE OF SECURITIES OR  
9 COMMODITIES BY LOCATING, INTRODUCING, OR REFERRING POTENTIAL PUR-  
10 CHASERS OR SELLERS. THE FINDER DOES NOT INCLUDE A PERSON WHOSE  
11 ACTIONS ARE SOLELY INCIDENTAL TO A TRANSACTION EXEMPT PURSUANT TO  
12 SECTION 402(B)(19). THE ADMINISTRATOR MAY BY RULE OR ORDER  
13 EXCLUDE OTHER PERSONS FROM THIS DEFINITION.

14 (J) ~~(d)~~ "Fraud", "deceit", and "defraud" are not limited  
15 to common-law deceit.

16 (K) ~~(e)~~ "Guaranteed" means guaranteed as to payment of  
17 principal, interest, or dividends.

18 (L) ~~(f)~~ "Investment adviser" means any person who, for  
19 consideration, engages in the business of advising others, either  
20 directly or through publications or writings, as to the value of  
21 securities, ~~or commodity contracts,~~ or as to the advisability  
22 of investing in, purchasing, or selling securities, ~~or commodity~~  
23 ~~contracts,~~ who, for consideration and as a part of a regular  
24 business, issues or promulgates analyses or reports concerning  
25 securities, ~~or commodity contracts,~~ or who acts as a finder in  
26 conjunction with the offer, sale, or purchase of a security. ~~or~~

1 ~~commodity.~~ "Investment adviser" does not include ANY OF THE  
2 FOLLOWING:

3 (1) ~~a~~ A bank, savings institution, or trust company. ~~→~~

4 (2) ~~a~~ A lawyer, accountant, engineer, geologist, geophysicist,  
5 cist, or teacher whose performance of these services is solely  
6 incidental to the practice of his or her profession. ~~→~~

7 (3) ~~a~~ A broker-dealer or a registered agent acting on  
8 behalf of a broker-dealer whose performance of these services is  
9 solely incidental to the conduct of his or her business as a  
10 broker-dealer. ~~→~~

11 (4) ~~a~~ A publisher, ~~of any bona fide newspaper, news maga-~~  
12 ~~zine, or business or financial publication of general, regular,~~  
13 ~~and paid circulation;~~ EMPLOYEE, OR COLUMNIST OF A NEWSPAPER,  
14 NEWS MAGAZINE, OR BUSINESS OR FINANCIAL PUBLICATION, OR AN OWNER,  
15 OPERATOR, PRODUCER, OR EMPLOYEE OF A CABLE, RADIO, OR TELEVISION  
16 NETWORK, STATION, OR PRODUCTION FACILITY IF, IN EITHER CASE, THE  
17 FINANCIAL OR BUSINESS NEWS PUBLISHED OR DISSEMINATED IS MADE  
18 AVAILABLE TO THE GENERAL PUBLIC AND THE CONTENT DOES NOT CONSIST  
19 OF RENDERING ADVICE ON THE BASIS OF THE SPECIFIC INVESTMENT SITU-  
20 ATION OF A CLIENT.

21 (5) ~~a~~ A person who has no place of business in this state  
22 if EITHER OF THE FOLLOWING APPLIES:

23 (A) ~~his~~ HIS or her only clients in this state are other  
24 investment advisers, FEDERALLY COVERED ADVISERS, broker-dealers,  
25 banks, savings institutions, trust companies, insurance com-  
26 panies, investment companies as defined in the investment company  
27 act of 1940, pension or profit-sharing trusts the assets of which

1 are managed by a bank or trust company or other institutional  
 2 manager, or other financial institutions or institutional buyers,  
 3 whether acting for themselves or as trustees.  ~~, or~~

4 (B) ~~during~~ DURING any period of 12 consecutive months he  
 5 or she does not ~~direct business communications into this state~~  
 6 ~~in any manner to~~ HAVE more than 5 clients IN THIS STATE other  
 7 than those specified in ~~clause (A), whether or not he or she or~~  
 8 ~~any of the persons to whom the communications are directed is~~  
 9 ~~then present in this state;~~ SUBPARAGRAPH (A).

10 (6) A PERSON EXCLUDED FROM THE DEFINITION OF INVESTMENT  
 11 ADVISER UNDER SECTION 202(a)(11) OF THE INVESTMENT ADVISERS ACT  
 12 OF 1940, 15 U.S.C. 80b-2.

13 (7) ~~any~~ ANY other persons not within the intent of this  
 14 paragraph as the administrator may by rule or order designate.  
 15 ~~;~~

16 (8) ~~(7) a~~ A trustee whose custody of assets is pursuant to  
 17 judicial appointment, OR appointment under a trust indenture ~~,~~  
 18 or agreement, and who does not hold himself or herself out to the  
 19 general public as giving advice to others with respect to securi-  
 20 ties and who maintains close contact with the personal financial  
 21 affairs of his or her clients as a part of his or her fiduciary  
 22 responsibilities, or a person who gives advice only to such a  
 23 trustee.  ~~; or,~~

24 (9) ~~(8) a~~ A county treasurer acting pursuant to his or her  
 25 authority under the local government investment pool act, 1985 PA  
 26 121, MCL 129.141 TO 129.150.

1 (10) A PERSON WHO IS A FEDERALLY COVERED ADVISER.

2 (11) A PERSON WHO IS EMPLOYED BY OR ASSOCIATED WITH AN  
3 INVESTMENT ADVISER.

4 (M) "INVESTMENT ADVISER REPRESENTATIVE" MEANS A PARTNER,  
5 OFFICER, OR DIRECTOR, OR A PERSON OCCUPYING A SIMILAR STATUS OR  
6 PERFORMING SIMILAR FUNCTIONS, OR OTHER INDIVIDUAL EXCEPT A CLERI-  
7 CAL OR MINISTERIAL EMPLOYEE OR OTHER EMPLOYEE OR ASSOCIATE DESIG-  
8 NATED BY THE ADMINISTRATOR BY RULE OR ORDER AS WITHIN THE INTENT  
9 OF THIS SUBSECTION, WHO IS EMPLOYED BY OR ASSOCIATED WITH EITHER  
10 OF THE FOLLOWING:

11 (1) AN INVESTMENT ADVISER THAT IS REGISTERED OR REQUIRED TO  
12 BE REGISTERED UNDER THIS ACT AND WHO DOES ANY OF THE FOLLOWING:

13 (i) MAKES ANY RECOMMENDATIONS OR OTHERWISE RENDERS ADVICE  
14 REGARDING SECURITIES.

15 (ii) MANAGES ACCOUNTS OR PORTFOLIOS OF CLIENTS.

16 (iii) DETERMINES WHICH RECOMMENDATION OR ADVICE REGARDING  
17 SECURITIES SHOULD BE GIVEN.

18 (iv) SOLICITS, OFFERS, OR NEGOTIATES FOR THE SALE OF OR  
19 SELLS INVESTMENT ADVISORY SERVICES.

20 (v) SUPERVISES EMPLOYEES WHO PERFORM ANY OF THE ACTIVITIES  
21 DESCRIBED IN SUBPARAGRAPH (i), (ii), (iii), OR (iv).

22 (2) A FEDERALLY COVERED ADVISER THAT IS SUBJECT TO  
23 SECTION 203A OF TITLE II OF THE INVESTMENT ADVISERS ACT OF 1940,  
24 15 U.S.C. 80b-3a, AND IS DESIGNATED BY THE ADMINISTRATOR BY RULE  
25 OR ORDER.

1 (N) "INVESTMENT ADVISERS ACT OF 1940" MEANS THE INVESTMENT  
2 ADVISERS ACT OF 1940, TITLE II OF CHAPTER 686, 54 STAT. 847, 15  
3 U.S.C. 80b-1 TO 80b-21.

4 (O) "INVESTMENT COMPANY ACT OF 1940" MEANS THE INVESTMENT  
5 COMPANY ACT OF 1940, TITLE I OF CHAPTER 686, 54 STAT. 789, 15  
6 U.S.C. 80a-1 TO 80a-3 AND 80a-4 TO 80a-64.

7 (P) ~~(g)~~ "Issuer" means any person who issues or proposes  
8 to issue any security, ~~or commodity contract,~~ except that:

9 (1) For certificates of deposit, voting-trust certificates  
10 or collateral-trust certificates, or with respect to certificates  
11 of interest or shares in an unincorporated investment trust not  
12 having a board of directors, or persons performing similar func-  
13 tions or of the fixed, restricted management or unit type, the  
14 term "issuer" means the person or persons performing the acts and  
15 assuming the duties of depositor or manager pursuant to the pro-  
16 visions of the trust or other agreement or instrument under which  
17 the security is issued.

18 (2) For certificates of interest or participation in oil,  
19 gas, or mining titles or leases, or in payments out of production  
20 under titles or leases, the term "issuer" means the owner of the  
21 oil, gas, or mining titles or leases or payments out of produc-  
22 tion or any fractional part thereof who creates and sells certif-  
23 icates of interest or participation therein.

24 ~~(3) For commodity contracts, issuer means a person engaged~~  
25 ~~in the operation of a market on which commodities contracts are~~  
26 ~~traded, and a person providing services or performing a function~~  
27 ~~including, but not limited to, clearing, constituting a portion~~

1 of the market. ~~The administrator may by rule or order exempt any~~  
2 ~~person from the definition of commodity issuer.~~

3 (Q) ~~(h)~~ "Nonissuer" means not directly or indirectly for  
4 the benefit of the issuer. A sale of securities shall be consid-  
5 ered to be indirectly for the benefit of the issuer if all of the  
6 following conditions are met:

7 (1) The sale is directly or indirectly made for the benefit  
8 of a director ~~,~~ or executive officer of the issuer, or a person  
9 occupying a similar status or performing similar functions, or a  
10 beneficial owner of 10% or more of any class of equity securities  
11 of the issuer.

12 (2) The sale, together with all sales made in this state by  
13 or for the benefit of the issuer during the 6-month period imme-  
14 diately before the date of the sale, otherwise than pursuant to a  
15 registration statement or exemption order under this act, exceeds  
16 1% of the outstanding securities of the class of securities being  
17 sold.

18 (3) The securities are not of a class that has been desig-  
19 nated by the administrator as eligible for trading in this  
20 state.

21 (R) "NOTICE FILING" MEANS THE DOCUMENTS FILED WITH THE  
22 ADMINISTRATOR UNDER SECTION 202A OR 308, OR BOTH, AS APPLICABLE.

23 (S) ~~(i)~~ "Person" means an individual, a corporation, a  
24 partnership, an association, a joint-stock company, a trust where  
25 the interests of the beneficiaries are evidenced by a security,  
26 an unincorporated organization, a government, or a political  
27 subdivision of a government.

1 (T) "PROMOTER" MEANS A PERSON WHO, ACTING ALONE OR IN  
2 CONJUNCTION WITH 1 OR MORE PERSONS, DIRECTLY OR INDIRECTLY TAKES  
3 THE INITIATIVE IN FOUNDING AND ORGANIZING THE BUSINESS OR ENTER-  
4 PRISE OF AN ISSUER; OR A PERSON WHO, IN CONNECTION WITH THE  
5 FOUNDING OR ORGANIZING OF THE BUSINESS OR ENTERPRISE OF AN  
6 ISSUER, DIRECTLY OR INDIRECTLY RECEIVES IN CONSIDERATION OF SERV-  
7 ICES OR PROPERTY, 10% OR MORE OF THE PROCEEDS FROM THE SALE OF  
8 ANY CLASS OF SECURITIES OR 10% OR MORE OF THE EQUITY INTEREST IN  
9 THE ISSUER AFTER THE OFFERING IS COMPLETE. HOWEVER, A PERSON WHO  
10 RECEIVES SUCH AN AMOUNT OF SECURITIES OR PROCEEDS EITHER SOLELY  
11 AS UNDERWRITING COMMISSIONS PURSUANT TO AN OFFERING OF SECURITIES  
12 REGISTERED UNDER THIS ACT OR SOLELY IN CONSIDERATION OF PROPERTY  
13 OR LEGAL OR ACCOUNTING SERVICES SHALL NOT BE CONSIDERED A PRO-  
14 MOTER WITHIN THE MEANING OF THIS SUBSECTION IF THE PERSON DOES  
15 NOT OTHERWISE TAKE PART IN FOUNDING AND ORGANIZING THE  
16 ENTERPRISE.

17 (U) "PUBLIC UTILITY HOLDING COMPANY ACT OF 1935" MEANS THE  
18 PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, TITLE I OF  
19 CHAPTER 687, 49 STAT. 838.

20 (V)(1) ~~(j)(1)~~ "Sale" or "sell" includes every contract of  
21 sale of, contract to sell, or disposition of a security ~~or com-~~  
22 ~~modity contract,~~ or interest in a security ~~or commodity~~  
23 ~~contract,~~ for value.

24 (2) "Offer" or "offer to sell" includes every attempt or  
25 offer to dispose of, or solicitation of an offer to buy, a secur-  
26 ity ~~or commodity contract,~~ or interest in a security ~~or~~  
27 ~~commodity contract,~~ for value.

1 (3) Any security ~~or commodity contract~~ given or delivered  
2 with, or as a bonus on account of, any purchase of securities ~~—~~  
3 ~~or commodity contracts,~~ or any other thing is considered to con-  
4 stitute part of the subject of the purchase and to have been  
5 offered and sold for value.

6 (4) A purported gift of assessable stock is considered to  
7 involve an offer and sale.

8 (5) Every sale or offer of a warrant or right to purchase or  
9 subscribe to another security ~~or commodity contract~~ of the same  
10 or another issuer, as well as every sale or offer of a security  
11 ~~or commodity contract~~ which gives the holder a present or  
12 future right or privilege to convert into another security ~~or~~  
13 ~~commodity contract~~ of the same or another issuer, is considered  
14 to include an offer of the other security. ~~or commodity~~  
15 ~~contract.~~

16 (6) The terms defined in this ~~subsection~~ SUBDIVISION do  
17 not include:

18 (A) Any stock dividend, whether the corporation distributing  
19 the dividend is the issuer of the stock or not, if nothing of  
20 value is given by stockholders for the dividend other than the  
21 surrender of a right to a cash or property dividend when each  
22 stockholder may elect to take the dividend in cash or property or  
23 in stock.

24 (B) Any act incident to a judicially approved reorganization  
25 in which a security is issued in exchange for 1 or more outstand-  
26 ing securities, claims, or property interests, or partly in  
27 ~~such~~ exchange and partly for cash.



1       ~~(k) "Securities act of 1933", "securities exchange act of~~  
2 ~~1934", "public utility holding company act of 1935", "investment~~  
3 ~~company act of 1940", "investment advisers act of 1940",~~  
4 ~~"securities investor protection act of 1970", "commodity futures~~  
5 ~~trading commission act of 1974", and "small business investment~~  
6 ~~act of 1958", mean the federal statutes of those names as amended~~  
7 ~~before or after the effective date of this act.~~

8       (W) "SECURITIES ACT OF 1933" MEANS THE SECURITIES ACT OF  
9 1933, TITLE I OF CHAPTER 38, 48 STAT. 74, 15 U.S.C. 77a TO 77r  
10 AND 77s TO 77aa.

11       (X) "SECURITIES EXCHANGE ACT OF 1934" MEANS THE SECURITIES  
12 EXCHANGE ACT OF 1934, CHAPTER 404, 48 STAT. 881.

13       (Y) "SECURITIES INVESTOR PROTECTION ACT OF 1970" MEANS THE  
14 SECURITIES INVESTOR PROTECTION ACT OF 1970, PUBLIC LAW 91-598, 84  
15 STAT. 1636.

16       (Z) ~~(i)~~ "Security" means any note; stock; treasury stock;  
17 bond; debenture; evidence of indebtedness; certificate of inter-  
18 est or participation in any profit-sharing agreement;  
19 collateral-trust certificate; preorganization certificate or sub-  
20 scription; transferable share; investment contract; voting-trust  
21 certificate; certificate of deposit for a security; certificate  
22 of interest or participation in an oil, gas, or mining title or  
23 lease or in payments out of production under such a title or  
24 lease; or, in general, any interest or instrument commonly known  
25 as a "security", or any certificate of interest or participation  
26 in, temporary or interim certificate for, receipt for, guarantee  
27 of, or warrant or right to subscribe to or purchase, any of the

1 foregoing. "Security" includes any contractual or quasi  
 2 contractual arrangement pursuant to which: (1) a person fur-  
 3 nishes capital, other than services, to an issuer; (2) a portion  
 4 of that capital is subjected to the risks of the issuer's enter-  
 5 prise; (3) the furnishing of that capital is induced by the rep-  
 6 resentations of an issuer, promoter, or their affiliates which  
 7 give rise to a reasonable understanding that a valuable tangible  
 8 benefit will accrue to the person furnishing the capital as a  
 9 result of the operation of the enterprise; (4) the person fur-  
 10 nishing the capital does not intend to be actively involved in  
 11 the management of the enterprise in a meaningful way; and (5) a  
 12 promoter or its affiliates anticipate, at the time the capital is  
 13 furnished, that financial gain may be realized as a result  
 14 thereof. "Security" does not include an insurance or endowment  
 15 policy or annuity contract under which an insurance company prom-  
 16 ises to pay money either in a lump sum or periodically for life  
 17 or some other specified period or a commodity contract. The  
 18 administrator may exclude by rule or by order other transactions  
 19 or agreements from the definition of the word "security".

20 (AA) "SMALL BUSINESS INVESTMENT ACT OF 1958" MEANS THE SMALL  
 21 BUSINESS INVESTMENT ACT OF 1958, PUBLIC LAW 85-699, 72 STAT. 689.

22 (BB) ~~(m)~~ "State" means any state, territory, or possession  
 23 of the United States, the District of Columbia, and Puerto Rico.

24 ~~(n)~~ "Commodity" means: ~~(1) Those goods defined as commodi-~~  
 25 ~~ties in the commodity futures trading commission act of 1974, (2)~~  
 26 ~~those goods commonly classified as commodities within the normal~~  
 27 ~~course of business dealings, (3) anything movable which is traded~~

~~1 or for which contracts are executed or issued on any board of  
2 trade, or commodity exchange or market, or (4) precious metals.  
3 The administrator may by rule further define "commodity" or  
4 "commodity contract".~~

~~5 (o) "Commodity contract" means the transactions dealing in,  
6 resulting in, or relating to contracts of purchase or sale of a  
7 commodity: for (1) delivery in the future at a specified time or  
8 a time to be determined or where delivery is not customarily  
9 made, including puts, calls, or any combinations thereof; (2) for  
10 present delivery where the value of the commodity is difficult to  
11 ascertain except by a person expert in the analysis of the com=  
12 modity, and the commodity is offered for sale to the general  
13 public as an investment; (3) other options; (4) margin contracts;  
14 (5) or in general, any interest in an instrument commonly known  
15 as a commodity contract.~~

~~16 (p) "Principal" means a person associated with a  
17 broker-dealer who is actively engaged in the management of the  
18 broker-dealer's commodities, investment banking, or securities  
19 business, including supervision, solicitation, conduct of busi=  
20 ness, or training of persons associated with a broker-dealer for  
21 any of these functions.~~

~~22 (q) "Promoter" means a person who, acting alone or in con=  
23 junction with 1 or more persons, directly or indirectly takes the  
24 initiative in founding and organizing the business or enterprise  
25 of an issuer; or a person who, in connection with the founding or  
26 organizing of the business or enterprise of an issuer, directly  
27 or indirectly receives in consideration of services or property,~~

~~1 10% or more of the proceeds from the sale of any class of  
2 securities or 10% or more of the equity interest in the issuer  
3 after the offering is complete. However, a person who receives  
4 such an amount of securities or proceeds either solely as under=  
5 writing commissions pursuant to an offering of securities regis=  
6 tered under this act or solely in consideration of property or  
7 legal or accounting services shall not be deemed a promoter  
8 within the meaning of this subsection if the person does not oth=  
9 erwise take part in founding and organizing the enterprise.~~

~~10 (r) "Commission" means any payment in cash, securities, or  
11 goods for offering or selling, promise, or commitment to provide  
12 payment in the future for offering or selling, or any other simi=  
13 lar payment. Commission does not include a real estate commis=  
14 sion commensurate with fees paid in the area for similar serv=  
15 ices, paid to licensed real estate brokers solely for real estate  
16 services which have been rendered, or payment by a person to a  
17 lawyer or accountant in connection with advice or recommendations  
18 made by a lawyer or accountant to the client with whom the lawyer  
19 or accountant has an established professional relationship, if  
20 disclosure of the payment and the interest of the lawyer or  
21 accountant in the transaction or in the issuer or any affiliate  
22 of the issuer, is made in writing to the client before the sale.  
23 Officers, directors, and partners of an issuer or purchaser, or  
24 persons occupying a similar status shall not be considered a  
25 finder if their contact was purely incidental and their compensa=  
26 tion was not directly or indirectly tied to or conditioned upon~~

1 ~~involvement in securities or commodities solicitation or~~  
2 ~~purchase.~~

3 ~~(s) "Direct or indirect compensation or remuneration" means~~  
4 ~~any payment, receipt or use of proceeds of an offering for the~~  
5 ~~benefit of the promoter, general partners, officers or directors,~~  
6 ~~or persons occupying similar positions or their affiliates, any~~  
7 ~~receipt, payment, or use of securities or goods by those persons~~  
8 ~~at less than the amount public investors paid for the securities~~  
9 ~~or goods, or any markup charged on sale of property to the entity~~  
10 ~~raising capital, any advantageous contractual relationships, any~~  
11 ~~real estate commission, or other similar payments or arrangements~~  
12 ~~to those persons.~~

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

16 ~~(u) "Finder" means a person who, for consideration, partici-~~  
17 ~~pates in the offer to sell, sale, or purchase of securities or~~  
18 ~~commodities by locating, introducing, or referring potential pur-~~  
19 ~~chasers or sellers. The finder does not include a person whose~~  
20 ~~actions are solely incidental to a transaction exempt pursuant to~~  
21 ~~section 402(b)(19). The administrator may by rule or order~~  
22 ~~exclude other persons from this definition.~~

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

25 (1) Any security, including a revenue obligation, issued or  
26 guaranteed by the United States, any state, any political  
27 subdivision of a state, or any agency or corporate or other

1 instrumentality of 1 or more of the foregoing, or any certificate  
2 of deposit for any of the foregoing, or any guarantee or other  
3 obligation made in connection therewith.

4 (2) Any security issued or guaranteed by Canada, any  
5 Canadian province, any political subdivision of any ~~such~~  
6 CANADIAN province, any agency or corporate or other instrumentality  
7 of 1 or more of the foregoing, or any other foreign govern-  
8 ment with which the United States currently maintains diplomatic  
9 relations, if the security is recognized as a valid obligation by  
10 the issuer or guarantor.

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

15 (4) Any security issued by and representing an interest in  
16 or a debt of, or guaranteed by, any federal savings and loan  
17 association, or any building and loan or similar association  
18 organized under the laws of any state and authorized to do busi-  
19 ness in this state.

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

25 (6) Any security issued or guaranteed by any railroad, other  
26 common carrier, public utility, or public utility holding company  
27 ~~which~~ THAT is ~~:- (A) A~~ A registered holding company under the

1 public utility holding company act of 1935 or a subsidiary of  
2 such a company within the meaning of that act, ~~;/ or (B)~~  
3 ~~Regulated~~ OR REGULATED in respect of the issuance or guarantee  
4 of the security by a governmental authority of the United States,  
5 ~~any~~ A state, Canada, or ~~any~~ A Canadian province. ~~;/ also~~  
6 ALSO, any equipment trust certificate or equipment note or bond  
7 based on chattel mortgages, leases, or agreements for conditional  
8 sales of cars, motive power, or other rolling stock mortgages,  
9 leased or sold to or furnished for the use of or upon ~~such~~  
10 railroads, other common carriers, public utilities, or holding  
11 companies supervised ~~as above~~ BY A GOVERNMENTAL AUTHORITY OF  
12 THE UNITED STATES, A STATE, CANADA, OR A CANADIAN PROVINCE, or  
13 equipment, notes, or bonds where the ownership or title of such  
14 equipment is pledged or retained in accordance with the provi-  
15 sions of the laws of the United States, ~~any~~ A state, Canada, or  
16 ~~any~~ A Canadian province, to secure the payment of ~~such~~ THE  
17 equipment trust certificates, bonds, or notes.

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

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

10 (A) ~~(i)~~ Ten days before offer or sale of the security file  
11 with the administrator an offering circular in a form the admin-  
12 istrator may by rule or order require together with a filing fee  
13 of \$50.00, and the administrator does not disallow the  
14 exemption.

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

18 (C) ~~(iii)~~ Sell only through registered securities  
19 broker-dealers or through persons exempted from the definition of  
20 the term "agent" by the administrator. In connection with all of  
21 the foregoing, the administrator may by rule or order withdraw or  
22 further condition this exemption, or waive the conditions con-  
23 tained in subparagraphs ~~(i)~~ (A) and ~~(ii)~~ (B).

24 (9) Any prime quality negotiable commercial paper sold in an  
25 aggregate amount of not less than \$25,000.00 to any 1 purchaser  
26 which arises out of a current transaction or the proceeds of  
27 which have been or are to be used for current transactions, and



1 which evidences an obligation to pay cash at a fixed date within  
2 9 months of the date of issuance, exclusive of days of grace, or  
3 any nonautomatic renewal of ~~such~~ THE commercial paper which is  
4 likewise limited, or any guarantee of ~~such~~ THE commercial paper  
5 or of any such renewal if the commercial paper is sold through a  
6 registered broker-dealer or an institution whose securities are  
7 exempted under subsection (a)(3).

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

11 ~~(11) Any security issued by an issuer registered as an~~  
12 ~~open-end management investment company or unit investment trust~~  
13 ~~under section 8 of the investment company act of 1940,~~  
14 ~~15 U.S.C. 80a-8, if all of the following apply:~~

15 (A) ~~If either 1 of the following applies:~~

16 (1) ~~The issuer has acted, or is affiliated with an invest-~~  
17 ~~ment adviser that has acted, as an investment adviser to 1 or~~  
18 ~~more registered investment companies or unit investment trusts~~  
19 ~~for at least 3 years next preceding an offer or sale of a secur-~~  
20 ~~ity claimed to be exempt under this subsection; and the issuer is~~  
21 ~~advised by an investment adviser that:~~

22 (i) ~~Is a depository institution exempt from registration~~  
23 ~~under the investment advisers act of 1940, 15 U.S.C. 80b-1 to~~  
24 ~~80b-21.~~

25 (ii) ~~Is currently registered as an investment adviser and~~  
26 ~~has been registered, or is affiliated with an adviser that has~~  
27 ~~been registered, as an investment adviser under the investment~~

~~1 advisers act of 1940 for at least 3 years next preceding an offer  
2 or sale of a security claimed to be exempt under this  
3 subsection.~~

~~4 (2) The issuer has a sponsor that has at all times through=  
5 out the 3 years preceding an offer or sale of a security claimed  
6 to be exempt under this subsection sponsored 1 or more registered  
7 investment companies or unit investment trusts the aggregate  
8 total assets of which have exceeded \$100,000,000.00.~~

~~9 (B) The administrator has received, prior to any sale  
10 exempted under this subsection, both of the following:~~

~~11 (1) Notice of intention to sell on a form specified by the  
12 administrator which has been executed by the issuer setting forth  
13 the name and address of the issuer and the securities to be  
14 offered in this state.~~

~~15 (2) A filing fee of \$1,250.00 for the open-end management  
16 companies or a filing fee of \$750.00 for unit investment trust.~~

~~17 (C) In the event any offer or sale is to be made more than  
18 12 months after the date the notice under subparagraph (B) was  
19 filed with the bureau under this subsection, it shall be neces=  
20 sary to refile a notice of intention to sell and to pay the  
21 filing fee set forth in subparagraph (B).~~

~~22 (D) For the purpose of this subsection, an investment  
23 adviser is affiliated with another investment adviser if it con=  
24 trols, is controlled by, or is under common control with the  
25 other investment adviser.~~

1       ~~(E) An exemption under this subsection does not grant an~~  
2 ~~exemption from registration for salespersons under~~  
3 ~~section 201(a).~~

4       (11) ~~(12)~~ A security listed or approved for listing upon  
5 notice of issuance on the national association of securities  
6 dealers automated quotation national market system and any other  
7 security of the same issuer that is of senior or substantially  
8 equal rank, a security called for by subscription rights or war-  
9 rants so listed or approved, or a warrant or right to purchase or  
10 subscribe to any of the foregoing. The administrator may, after  
11 providing notice of hearing to all interested parties, opportu-  
12 nity for hearing, written findings of fact and conclusions of  
13 law, and a right to judicial appeal, do any of the following:

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

16       (B) Deny this exemption by rule or order to a category of  
17 securities when necessary in the public interest and for the pro-  
18 tection of investors.

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

25       (b) The following transactions are exempted from sections  
26 301 and 403:

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

7           (2) ~~Any~~ A nonissuer distribution of an outstanding secur-  
8 ity whose issuer and any predecessors have been in continuous  
9 operation for at least 5 years if ~~:(A) A~~ A recognized securi-  
10 ties manual contains the names of the issuer's officers and  
11 directors, a balance sheet of the issuer as of a date within 18  
12 months, and a profit and loss statement for either the fiscal  
13 year preceding that date or the most recent year of operations,  
14 or ~~(B) The~~ THE security has a fixed maturity or a fixed inter-  
15 est or dividend provision and there has been no default during  
16 the current fiscal year or within the 3 preceding fiscal years in  
17 the payment of principal, interest, or dividends on the  
18 security. ~~(C)~~ For purposes of this subdivision, an issuer or  
19 predecessor is in continuous operation only if it has gross oper-  
20 ating revenue in each of the 5 years immediately preceding its  
21 claim of exemption and has had gross operating revenue of at  
22 least \$500,000.00 in not less than 3 of those 5 years.

23           (3) ~~Any~~ A nonissuer transaction effected by or through a  
24 registered broker-dealer pursuant to an unsolicited order or  
25 offer to buy; but the administrator may by rule require that the  
26 customer acknowledge upon a specified form that the sale was

1 unsolicited, and that a signed copy of each such form be  
2 preserved by the broker-dealer for a specified period.

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

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

15 (6) ~~Any~~ A transaction by an executor, a personal represen-  
16 tative, administrator, sheriff, marshal, receiver, trustee in  
17 bankruptcy, guardian, or conservator.

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

21 (8) ~~Any~~ AN offer or sale to a bank, savings institution,  
22 trust company, insurance company, investment company as defined  
23 in the investment company act of 1940, the federal national mort-  
24 gage association, the federal home loan mortgage corporation, or  
25 the government national mortgage association, pension or profit  
26 sharing trust the assets of which are managed by an institutional  
27 manager, the treasurer of this state, other financial

1 institution, broker-dealer, whether the purchaser is acting for  
2 itself or in some fiduciary capacity, or a lender approved by the  
3 federal housing administration and who has satisfied any addi-  
4 tional requirements established by the administrator by rule or  
5 order.

6 (9) ~~Any~~ A transaction pursuant to an offering which satis-  
7 fies in full each of the following requirements:

8 (A) The issuer and any person acting on its behalf shall  
9 exercise reasonable care to assure that purchasers in this state  
10 of the securities in the offering do not resell the securities  
11 without compliance with state and federal securities laws. For  
12 sales described in subparagraph (D)(2), (3), and (5) that reason-  
13 able care shall include, where appropriate, but not necessarily  
14 be limited to, all of the following:

15 (1) Making reasonable inquiry to determine if the purchaser  
16 is acquiring the securities for his OR HER own account or on  
17 behalf of other persons who may be considered as separate  
18 offerees or purchasers. ~~—~~

19 (2) Placing a legend on the certificate or other document  
20 evidencing the securities stating that the securities have not  
21 been registered under the act and setting forth or referring to  
22 the restrictions on transferability and sale of the securities.  
23 ~~—~~

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

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

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

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

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

20 (1) ~~Sales~~ THE SALE IS to any of the following classes of  
21 persons:

22 (i) Promoters or other persons actively engaged or reason-  
23 ably expected to be actively engaged in the management of the  
24 issuer, or in a professional capacity as attorneys or accountants  
25 to the issuer, or directly related by blood or marriage to the  
26 promoter or person actively engaged or reasonably expected to be  
27 actively engaged in the management of the issuer, if such persons

1 are purchasing with investment intent and the issuer relies upon  
2 this subparagraph for sales to not more than 10 persons in this  
3 state within a 12-month period. ~~—~~

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

9       (2) Sales to not more than 15 persons in this state within  
10 any 12-month period, in reliance upon this subparagraph, and the  
11 issuer provides to all such offerees at least 48 hours before  
12 sale a document THAT INCLUDES ALL OF THE FOLLOWING:

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

15       (ii) Disclosing in reasonable detail the current financial  
16 condition of the issuer and in the case of a limited partnership  
17 or oil and gas venture, the current financial condition of the  
18 general partner or oil and gas issuer; except that in the case of  
19 a limited partnership interest or interest in oil or gas, the  
20 document may merely state that the general partner or oil and gas  
21 issuer has a net worth, determined in accordance with generally  
22 accepted accounting principles, in excess of a stated sum, and  
23 that its net worth exceeds the obligations undertaken by the gen-  
24 eral partner or oil and gas issuer, and that the assets or opera-  
25 tions of the general partner or oil and gas issuer will generate  
26 sufficient cash to meet these obligations as they come due. ~~—~~



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

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

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

10 (vi) Stating, except in the case of a corporate issuer, that  
11 each investor or his OR HER designated representative may inspect  
12 the books and records of the issuer or the venture at any reason-  
13 able time for proper purposes. ~~—~~

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

19 (viii) Stating, except in the case of a corporate issuer,  
20 that the issuer shall agree to maintain at its offices a list of  
21 names and addresses of all investors in the entity available to  
22 any investor or the designated representative of any investor.  
23 ~~—~~

24 (ix) Stating that the issuer shall provide all investors  
25 with a detailed written statement of the application of the pro-  
26 ceeds of the offering within 6 months after commencement of the  
27 offering or upon completion, whichever occurs first, and with

1 annual current balance sheets and income statements to investors  
2 thereafter.

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

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

8 (ii) The administrator by order finds the offering consis-  
9 tent with ~~the provisions of~~ section 306 and declares this  
10 exemption effective. ~~—~~

11 (iii) The offering is made upon ~~such~~ conditions and with  
12 ~~such~~ information or provisions in the offering circular as the  
13 administrator may require. ~~—~~

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

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

21 (5) Sales made to a person who the seller has reasonable  
22 grounds to believe and does believe ~~meets~~ IS 1 of the  
23 following: ~~conditions:~~

24 (i) A business entity having either ~~(i)~~ net income from  
25 operations after taxes in excess of \$100,000.00 in its last  
26 fiscal year or its latest 12-month period, or ~~(ii)~~ a net worth  
27 in excess of \$1,000,000.00 at the time of purchase, and after the

1 purchase has less than 10% of its total assets invested in the  
2 securities of the issuer.

3       (ii) An individual who after the purchase has an investment  
4 of \$50,000.00 or more in the securities of the issuer, including  
5 installment payments to be made within 1 year after purchase by  
6 the investor; has either personal income before taxes in excess  
7 of \$100,000.00 for his or her last fiscal year or latest 12-month  
8 period and is capable of bearing the economic risk, or net worth  
9 in excess of \$1,000,000.00; and has ~~such~~ THE knowledge and  
10 experience in financial and business matters that he or she is  
11 capable of evaluating the merits and risks of the prospective  
12 investment or has obtained the advice of an attorney, certified  
13 public accountant, ~~or~~ investment adviser registered under the  
14 investment advisers act of 1940, ~~title II of chapter 686, 54~~  
15 ~~Stat. 789, 15 U.S.C. 80b-1 to 80b-21,~~ or an investment adviser  
16 registered under this act, with respect to the merits and risks  
17 of the prospective investment.

18       (E) ~~(F)~~ For purposes of this ~~subdivision~~ SUBPARAGRAPH:

19       (1) Each offer or sale made to a pension or profit sharing  
20 trust shall be ~~deemed~~ CONSIDERED to have been made to each ben-  
21 eficiary as an individual offeree unless all of the following  
22 apply:

23       (i) The trust has an independent trustee. ~~+~~

24       (ii) The issuer makes inquiry and reasonably believes that  
25 the trust invests not more than 10% of its assets in the securi-  
26 ties sold by the issuer. ~~+~~ ~~and~~

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

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

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

13           (ii) Within the 2-year period before the initial offer of  
14 the securities, the issuer was not directly or indirectly con-  
15 nected with the formation or subsequent operation of the partner-  
16 ship or association or solicitation of its investors and the  
17 issuer makes inquiry and reasonably believes that the partnership  
18 or association was not formed to purchase the securities of the  
19 issuer.

20           (3) Each offer or sale made to a corporation or business  
21 trust shall be ~~deemed~~ CONSIDERED to have been made to each  
22 security holder of the corporation or business trust as an indi-  
23 vidual unless within the 2-year period before the initial offer  
24 of the securities the issuer was not directly or indirectly con-  
25 nected with the formation or subsequent operation of the corpora-  
26 tion or trust or solicitation of its investors and the issuer  
27 makes inquiry and reasonably believes that the corporation or

1 trust, or in the case of a wholly owned subsidiary, its parent,  
2 was not formed to purchase the securities of the issuer and 1 of  
3 the following applies:

4 (i) ~~a~~ A class of securities of the corporation or trust is  
5 registered pursuant to the securities exchange act of 1934. ~~,~~

6 (ii) ~~the~~ THE decision of the corporation or trust to  
7 acquire the shares of the issuer is directly or indirectly  
8 related to the business of the corporation or trust and not for  
9 investment purposes, and its principal business is not investing  
10 in securities. ~~, or~~

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

14 (4) An offer or sale to an investment company registered  
15 under the investment company act of 1940 ~~shall constitute~~  
16 CONSTITUTES an offer or sale to an individual.

17 (5) Husband, wife, and children living as a family are con-  
18 sidered to be 1 individual.

19 (6) Each client of an investment adviser, each customer of a  
20 broker-dealer, or a person with a similar relationship shall be  
21 considered an offeree or purchaser for purposes of this subdivi-  
22 sion regardless of the amount of discretion given to the invest-  
23 ment adviser, broker-dealer, or other person to act on behalf of  
24 the client, customer, or trust.

25 (F) ~~(G)~~ The administrator may by rule or order as to any  
26 security or transaction, or any type of security or transaction,  
27 increase the number of offerees or purchasers, waive any

1 conditions, and in conjunction with a request to exercise its  
2 discretion under these provisions, the administrator may further  
3 condition this exemption.

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

7 (A) No commission is paid or given directly or indirectly  
8 for soliciting any prospective subscriber. ~~---~~

9 (B) There are not more than 10 purchasers. ~~---~~

10 (C) Advertising is not published or circulated unless it has  
11 been reviewed and no objection thereto is made by the administra-  
12 tor in writing. ~~---~~

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

16 (E) The administrator may by rule or order waive the condi-  
17 tions in subparagraph (A) and require reports of sales under this  
18 exemption.

19 (11) ~~Any~~ A transaction pursuant to an offer to existing  
20 security holders of the issuer, including persons who at the time  
21 of the transaction are holders of convertible securities, non-  
22 transferable warrants, or transferable warrants exercisable  
23 within not more than 90 days of their issuance, if either of the  
24 following occurs:

25 (A) A commission, other than a standby commission, is not  
26 paid or given directly or indirectly for soliciting any security  
27 holder in this state and the offer is made either to holders of

1 the convertible securities or warrants and relates to the  
2 underlying security, or the securities are purchased by not more  
3 than 25 security holders in this state within a 12-month period.

4 (B) Twenty business days before any offer, the issuer files  
5 with the administrator the offering circular or other materials  
6 proposed to be sent to security holders and other persons  
7 describing the terms of the offer together with a filing fee of  
8 \$100.00 and the administrator does not by order disallow the  
9 exemption within the next 20 business days.

10 (12) ~~Any~~ AN offer, but not a sale, of a security for which  
11 a registration statement or exemption order request was filed  
12 under this act if a stop order is not in effect and a public pro-  
13 ceeding or examination looking toward ~~such an~~ A STOP order is  
14 not pending and if made in compliance with section 307.

15 (13) ~~Any~~ AN offer, sale, or issuance of securities pursu-  
16 ant to an investment contract or option which is exempt under  
17 subsection (a)(10).

18 (14) ~~Any~~ AN offer or sale of a security as contemplated  
19 under the small business investment act of 1958 ~~(1)~~ to the fed-  
20 eral small business administration, or ~~(2)~~ by a small business  
21 concern to a small business investment company or to a develop-  
22 ment company for equity capital provided or loans made, or ~~(3)~~  
23 by a small business investment company to a small business con-  
24 cern as a condition to providing the latter with equity capital  
25 or loans.

26 (15) ~~Any~~ AN offer or sale of any security by a nonprofit  
27 development corporation, formed and existing under the laws of

1 this state, if the primary purpose of the corporation is to  
2 promote and assist the growth and development of business enter-  
3 prises in the area covered by its operations.

4 (16) The distribution by a cooperative corporation of its  
5 securities to its patrons as patronage refunds or returns dis-  
6 tributed on a patronage basis.

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

12 (18) The sale of capital stock issued by a professional  
13 service corporation formed under the professional service corpo-  
14 ration act, ~~Act No. 192 of the Public Acts of 1962, as amended,~~  
15 ~~being sections 450.221 to 450.235 of the Michigan Compiled Laws~~  
16 1962 PA 192, MCL 450.221 TO 450.235.

17 (19) ~~Any~~ A transaction incident to a class vote by share-  
18 holders pursuant to the certificate of incorporation or the  
19 applicable corporation statute, on a merger, consolidation,  
20 reclassification of securities, or sale of corporate assets in  
21 consideration of the issuance of securities of another  
22 corporation.

23 (20) ~~Any~~ A transaction that the administrator by order  
24 exempts from the registration provisions of this act after a  
25 determination that registration is not necessary in the public  
26 interest and for the protection of investors. An order may be



1 granted either before or after consummation of the transaction  
2 upon the petition of any interested party in the transaction.

3 (21) ~~Any~~ A transaction made pursuant to a uniform limited  
4 offering exemption filing WITH THE DEPARTMENT. A person claiming  
5 under this subdivision shall pay a filing fee of \$100.00 at the  
6 time of filing the initial notice form.

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

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

13 Sec. 403. The administrator may by rule or order require  
14 the filing and acceptance before use of any prospectus, pamphlet,  
15 circular, form letter, advertisement, or other sales literature  
16 or advertising communication addressed or intended for distribu-  
17 tion to prospective investors, including clients or prospective  
18 clients of an investment adviser OR FEDERALLY COVERED ADVISER,  
19 unless the security, ~~commodity contract,~~ or transaction is  
20 exempted by section 402(a)(1) to (7) OR IS A FEDERALLY COVERED  
21 SECURITY.

22 Sec. 405. (a) Neither the fact that an application for reg-  
23 istration under sections 201 to 204, A NOTICE FILING UNDER  
24 SECTION 202A OR 308, or a registration statement under sections  
25 301 to 306 has been filed, nor the fact that a person or security  
26 is effectively registered OR A NOTICE FILING HAS BEEN MADE,  
27 constitutes a finding by the administrator that any document

1 filed under this act is true, complete, and not misleading.

2 Neither any such fact nor the fact that an exemption or exception  
3 is available for a security or a transaction, or that an order  
4 has been issued by the administrator, means that the administra-  
5 tor has passed in any way upon the merits or qualifications of,  
6 or recommended or given approval to, any person, security, or  
7 transaction.

8 (b) A person shall not make, or cause to be made, to a pro-  
9 spective purchaser, customer, or client a representation incon-  
10 sistent with subsection (a).

11 Sec. 406. (a) This act shall be administered by the  
12 corporation, ~~and~~ securities AND LAND DEVELOPMENT bureau of the  
13 department of ~~commerce~~ CONSUMER AND INDUSTRY SERVICES which  
14 ~~shall be~~ IS a criminal justice agency as defined in 28 C.F.R.  
15 20.3(c).

16 (b) The administrator or any of its officers or employees  
17 shall not disclose to the public or use for personal benefit any  
18 information which is filed with or obtained by the administrator  
19 and which is not made public pursuant to this act. This act does  
20 not authorize the administrator or any of its officers or employ-  
21 ees to disclose any ~~such~~ information except among themselves or  
22 when necessary or appropriate in a proceeding or investigation  
23 under this act, or to federal, state, local, or foreign govern-  
24 mental agencies for their own official use. No provision of this  
25 act either creates or derogates from any privilege which exists  
26 at common law or otherwise when documentary or other evidence is

1 sought under a subpoena directed to the administrator or any of  
2 its officers or employees.

3 (c) The administrator may conduct joint investigations or  
4 inspections with ~~the~~ federal, state, or local agencies, or  
5 self-regulatory bodies as defined in the securities exchange act  
6 of 1934.

7 Sec. 409. (a) Any person who willfully violates ~~sections~~  
8 SECTION 101, 102, 103, 201, 203(h), ~~301,~~ 301(1) OR (2), 402,  
9 405(b), or 406(b), or who engages in conduct prohibited by sec-  
10 tion 204(a)(1)(J) to (S) and (V) to (Z), or who willfully vio-  
11 lates section 404 knowing the statement made to be false or mis-  
12 leading in any material respect, shall upon conviction be fined  
13 not more than \$25,000.00 for each violation, or imprisoned not  
14 more than 10 years, or both.

15 (b) The administrator may refer such evidence as is avail-  
16 able concerning violations of this act or of any rule or order  
17 hereunder to the attorney general or the proper prosecuting  
18 attorney, who may, with or without such a reference, institute  
19 the appropriate criminal proceedings under this act.

20 (c) Nothing in this act limits the power of the state to  
21 punish any person for any conduct which constitutes a crime by  
22 statute or at common law.

23 (d) Any criminal complaint or indictment for violation of  
24 this act shall be filed within 6 years after the commission of  
25 the offense, but any period during which the party charged was  
26 not usually and publicly resident within this state shall not be  
27 included as part of the 6 years.

1           Sec. 410. (a) Any person who does either of the following  
2 ~~shall be~~ IS liable to the person buying the security ~~or com-~~  
3 ~~modity contract~~ from him or her and the buyer may sue either at  
4 law or in equity to recover the consideration paid for the  
5 security, ~~or commodity contract,~~ together with interest at 6%  
6 per year from the date of payment, costs, and reasonable  
7 ~~attorneys'~~ ATTORNEY fees, less the amount of income received on  
8 the security, ~~or commodity contract,~~ upon the tender of the  
9 security ~~or commodity contract,~~ or, if he or she no longer owns  
10 the security, ~~or commodity contract,~~ for damages which shall be  
11 the amount that would be recoverable upon a tender less the value  
12 of the security ~~or commodity contract~~ when the buyer disposed  
13 of it and interest at 6% per year from the date of disposition:

14           (1) Offers or sells a security ~~or commodity contract~~ in  
15 violation of section 201(a), 301, or 405(b), or of any rule or  
16 order under section 403 which requires the affirmative approval  
17 of sales literature before it is used, or of any condition  
18 imposed under section 304(d), 305(f), 305(g), or 412(g). ~~, or~~

19           (2) Offers or sells a security ~~or commodity contract~~ by  
20 means of any untrue statement of a material fact or any omission  
21 to state a material fact necessary in order to make the state-  
22 ments made, in the light of the circumstances under which they  
23 are made, not misleading, the buyer not knowing of the untruth or  
24 omission, and who does not sustain the burden of proof that he or  
25 she did not know, and in the exercise of reasonable care could  
26 not have known, of the untruth or omission.

1 (b) Every person who directly or indirectly controls a  
2 seller liable under subsection (a), every partner, officer, or  
3 director of ~~such a~~ THE seller, every person occupying a similar  
4 status or performing similar functions, every employee of ~~such~~  
5 ~~a~~ THE seller who materially aids in the sale, and every  
6 broker-dealer or agent who materially aids in the sale are also  
7 liable jointly and severally with and to the same extent as the  
8 seller, unless the ~~nonseller who is so liable~~ PERSON sustains  
9 the burden of proof that he or she did not know, and in exercise  
10 of reasonable care could not have known, of the existence of the  
11 facts by reason of which the liability is alleged to exist.  
12 There is contribution as in cases of contract among the several  
13 persons so liable.

14 (c) Any tender specified in this section may be made at any  
15 time before entry of judgment.

16 (d) Every cause of action under this statute survives the  
17 death of any person who might have been a plaintiff or  
18 defendant.

19 (e) A person may not bring an action under subsection (a)(1)  
20 more than 2 years after the contract of sale. A person may not  
21 bring an action under subsection (a)(2) more than 2 years after  
22 ~~such~~ THE person, in the exercise of reasonable care, knew or  
23 should have known of the untruth or omission, but in no event  
24 more than 4 years after the contract of sale. A person may not  
25 bring an action under this section if the buyer received a writ-  
26 ten RESCISSION offer, before the action and at a time when he or  
27 she owned the security, ~~or commodity contract,~~ to refund the

1 consideration paid together with interest at 6% per year from the  
2 date of payment, less the amount of any income received on the  
3 security, and he or she failed to accept the offer within 30 days  
4 of its receipt, or if the buyer received ~~such an~~ THE offer  
5 before the action and at a time when he or she did not own the  
6 security, ~~or commodity contract,~~ unless he or she rejected the  
7 offer in writing within 30 days of its receipt. The documents  
8 making full written disclosure about the financial and business  
9 condition of the issuer and the financial and business risks  
10 associated with the retention of the securities ~~or commodities~~  
11 shall be provided to the offeree concurrently with the written  
12 rescission offer. Such an offer shall not be made until 45 days  
13 after the date of sale of the securities and acceptance or rejec-  
14 tion of the offer shall not be binding until 48 hours after  
15 receipt by the offeree. The rescission offer shall recite the  
16 provisions of this section. A rescission offer under this  
17 ~~section~~ SUBSECTION shall not be valid unless the offeror sub-  
18 stantiates that it has the ability to fund the offering and this  
19 information is set forth in the disclosure documents.

20 (f) No person who has made or engaged in the performance of  
21 any contract in violation of any provision of this act or any  
22 rule or order hereunder, or who has acquired any purported right  
23 under any such contract with knowledge of the facts by reason of  
24 which its making or performance was in violation, may base any  
25 suit on the contract.

26 (g) Any condition, stipulation, or provision binding any  
27 person acquiring any security ~~or commodity contract~~ to waive

1 compliance with any provision of this act or any rule or order  
2 hereunder is void.

3 (h) The rights and remedies provided by this act are in  
4 addition to any other rights or remedies that may exist at law or  
5 in equity, but this act does not create any cause of action not  
6 specified in this section. ~~or section 202(e).~~

7 Sec. 412. (a) The administrator may from time to time make,  
8 amend, and rescind rules, forms, and orders as are necessary to  
9 carry out the provisions of this act, including rules and forms  
10 governing registration statements, NOTICE FILINGS UNDER  
11 SECTION 202A OR 308, applications, and reports —, and defining  
12 any terms, whether or not used in this act, insofar as the defi-  
13 nitions are not inconsistent with this act. For the purpose of  
14 rules and forms, the administrator may classify securities, ~~or~~  
15 ~~commodity contracts,~~ persons, and matters within its jurisdic-  
16 tion —, and prescribe different requirements for different  
17 classes.

18 (b) A rule, form, or order may not be made, amended, or  
19 rescinded unless the administrator finds that the action is nec-  
20 essary or appropriate in the public interest or for the protec-  
21 tion of investors and consistent with the purposes fairly  
22 intended by the policy and provisions of this act. In prescrib-  
23 ing rules and forms, the administrator may cooperate with the  
24 securities administrators of the other states and the securities  
25 and exchange commission with a view to effectuating the policy of  
26 this statute to achieve maximum uniformity in the form and

1 content of registration statements, applications, and reports  
2 wherever practicable.

3 (c) The administrator may by rule or order prescribe ~~-(1)-~~  
4 the form and content of financial statements required under this  
5 act, ~~-(2)-~~ the circumstances under which consolidated financial  
6 statements shall be filed, and ~~-(3)-~~ whether any required finan-  
7 cial statements shall be certified by independent or certified  
8 public accountants. Financial statements shall be prepared in  
9 accordance with generally accepted accounting practices.

10 (d) Rules and forms of the administrator shall be  
11 published.

12 (e) A provision of this act imposing any liability applies  
13 to any act done or omitted in good faith in conformity with any  
14 rule, form, or order of the administrator, notwithstanding that  
15 the rule, form, or order may not later be amended or rescinded or  
16 be determined by judicial or other authority to be invalid for  
17 any reason.

18 (f) Every hearing in an administrative proceeding shall be  
19 public unless the administrator in its discretion grants a  
20 request joined in by all the respondents that the hearing be con-  
21 ducted privately.

22 (g) The administrator shall promulgate rules with respect to  
23 ~~commodity issuers,~~ broker-dealers ~~,~~ and agents as necessary  
24 or appropriate in the public interest or for the protection of  
25 investors. The rules may require, among other things, the  
26 promulgation and issuance of a disclosure statement by the  
27 broker-dealer, ~~or issuer of a commodity contract,~~ the



1 segregation of customer's funds and assets, maintenance of  
2 reserves for obligations, contingent or otherwise, to customers,  
3 the maintenance of a fidelity bond, hedging or covering obliga-  
4 tions to customers, the signing and filing of a consent to serv-  
5 ice of process, and prior approval of advertising, limitation of  
6 the content of ~~such~~ advertising, and margin requirements.

7 (h) The rules promulgated and hearings held under this act  
8 shall be in accordance with ~~Act No. 306 of the Public Acts of~~  
9 ~~1969, as amended, being sections 24.201 to 24.315 of the Michigan~~  
10 ~~Compiled Laws~~ THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA  
11 306, MCL 24.201 TO 24.328.

12 Sec. 413. (a) A document is filed when it is received by  
13 the administrator with the appropriate fee and all required  
14 forms.

15 (b) The administrator shall keep a register of all applica-  
16 tions for registration, NOTICE FILINGS UNDER SECTIONS 202A AND  
17 308, and registration statements that are or have ever been  
18 effective under this act and all denial, suspension, or revoca-  
19 tion orders that have been entered under this act. The register  
20 shall be open for public inspection.

21 (c) The information contained in or filed with any registra-  
22 tion statement, NOTICE FILING, application, or report may be  
23 retained and stored by the administrator in the document's origi-  
24 nal form or by reproduction pursuant to the records media act.  
25 Reproductions of any registration statement, application, or  
26 report may be made available to the public under ~~such~~ rules  
27 ~~as~~ PRESCRIBED BY the administrator, ~~prescribes,~~ except that

1 the administrator may withhold from public inspection  
2 information, the disclosure of which is not necessary in the  
3 public interest and for the protection of investors.

4 (d) Upon request and for a reasonable charge as ~~it~~ HE OR  
5 SHE prescribes, the administrator shall furnish to any person a  
6 reproduction pursuant to the records media act, 1992 PA 116, MCL  
7 24.401 TO 24.403, certified under ~~its~~ HIS OR HER seal of office  
8 if requested, of ~~any~~ AN entry in the register or any document  
9 that is a matter of public record. The charges made shall con-  
10 stitute reimbursement to the administrator for the cost of  
11 reproduction. In ~~any~~ A proceeding or prosecution under this  
12 act, a CERTIFIED reproduction in a medium pursuant to the records  
13 media act, 1992 PA 116, MCL 24.401 TO 24.403, or a CERTIFIED  
14 reproduction consisting of a printout or other output readable by  
15 sight from ~~such~~ a medium ~~, so certified,~~ PURSUANT TO THE  
16 RECORDS MEDIA ACT, 1992 PA 116, MCL 24.401 TO 24.403, is prima  
17 facie evidence of the contents of the entry or document  
18 certified.

19 (e) The administrator may certify the nonexistence of a  
20 filing for ~~any documents~~ A DOCUMENT that this act permits to be  
21 filed with the administrator, upon certification that the  
22 ~~documents are~~ DOCUMENT IS of a type that, if filed, ~~would be~~  
23 ARE filed with the administrator and that a personal search of  
24 the records has been made by the person ~~so certifying~~ MAKING  
25 THE CERTIFICATION. A certificate of nonexistence is prima facie  
26 evidence that ~~such a~~ THE document has not been filed with the  
27 administrator.

1           (f) The administrator in ~~its~~ HIS OR HER discretion may  
2 honor ~~requests~~ A REQUEST from AN interested ~~persons~~ PERSON  
3 for AN interpretative ~~opinions~~ OPINION and may promulgate rules  
4 ~~setting forth procedures~~ THAT SET FORTH THE PROCEDURE for  
5 requesting ~~those opinions~~ AN OPINION.

6           Sec. 414. (a) Sections 101, 201(a), 301, 405, and 410 apply  
7 to persons who sell or offer to sell when ~~(1)~~ an offer to sell  
8 is made in this state, or ~~(2)~~ an offer to buy is made and  
9 accepted in this state.

10          (b) Sections 101, 201(a), and 405 apply to persons who buy  
11 or offer to buy when ~~(1)~~ an offer to buy is made in this state,  
12 or ~~(2)~~ an offer to sell is made and accepted in this state.

13          (c) For the purpose of this section, an offer to sell or to  
14 buy is made in this state, whether or not either party is then  
15 present in this state, when the offer ~~(1)~~ originates from this  
16 state, or ~~(2)~~ is directed by the offeror to this state and  
17 received at the place to which it is directed ~~,~~ or at any post  
18 office in this state in the case of a mailed offer.

19          (d) For the purpose of this section, an offer to buy or to  
20 sell is accepted in this state when acceptance ~~(1)~~ is communi-  
21 cated to the offeror in this state and ~~(2)~~ has not previously  
22 been communicated to the offeror, orally or in writing, outside  
23 this state; and acceptance is communicated to the offeror in this  
24 state, whether or not either party is then present in this state,  
25 when the offeree directs it to the offeror in this state reason-  
26 ably believing the offeror to be in this state and it is received

1 at the place to which it is directed, or at any post office in  
2 this state in the case of a mailed acceptance.

3 (e) An offer to sell or to buy is not made in this state  
4 when ~~(1)~~ the publisher circulates or there is circulated on his  
5 OR HER behalf in this state any bona fide newspaper or other pub-  
6 lication of general, regular, and paid circulation which is not  
7 published in this state, or which is published in this state but  
8 has had more than 2/3 of its circulation outside this state  
9 during the past 12 months, or ~~(2)~~ a radio or television program  
10 originating outside this state is received in this state.

11 (f) Sections 102 and 201(c), as well as section 405 so far  
12 as investment ~~advisors~~ ADVISERS are concerned, apply when any  
13 act instrumental in effecting prohibited conduct is done in this  
14 state, whether or not either party is then present in this  
15 state.

16 (g) Every applicant for registration under this act, EVERY  
17 PERSON SUBMITTING A NOTICE FILING UNDER SECTION 202A OR 308, and  
18 every issuer which proposes to offer a security ~~or commodity~~  
19 ~~contract~~ in this state through any person acting on an agency  
20 basis in the common-law sense shall file with the administrator,  
21 in ~~such~~ A form as ~~it~~ THE ADMINISTRATOR by rule prescribes, an  
22 irrevocable consent appointing the administrator or its successor  
23 in office to be his OR HER attorney to receive service of any  
24 lawful process in any noncriminal suit, action, or proceeding  
25 against him OR HER or his OR HER successor executor or adminis-  
26 trator which arises under this act or any rule or order hereunder  
27 after the consent has been filed, with the same force and

1 validity as if served personally on the person filing the  
2 consent. A person who has filed ~~such~~ a consent in connection  
3 with a previous registration OR NOTICE FILING need not file  
4 another. Service may be made by leaving a copy of the process in  
5 the office of the administrator, but it is not effective unless  
6 ~~(1)~~ the plaintiff, who may be the administrator in a suit,  
7 action, or proceeding instituted by it, ~~forthwith~~ PROMPTLY  
8 sends notice of the service and a copy of the process by regis-  
9 tered mail to the defendant or respondent at his OR HER last  
10 address on file with the administrator, and ~~(2)~~ the plaintiff's  
11 affidavit of compliance with this subsection is filed in the case  
12 on or before the return day of the process, if any, or within  
13 ~~such~~ A further time ~~as~~ THAT the court allows.

14 (h) When ~~any~~ A person, including ~~any~~ A nonresident of  
15 this state, engages in conduct prohibited or made actionable by  
16 this act or any rule or order hereunder, and he OR SHE has not  
17 filed a consent to service of process under subsection (g) and  
18 personal jurisdiction over him OR HER cannot otherwise be  
19 obtained in this state, that conduct shall be considered equiva-  
20 lent to his OR HER appointment of the administrator or its suc-  
21 cessor in office to be his OR HER attorney to receive service of  
22 any lawful process in any noncriminal suit, action, or proceeding  
23 against him OR HER or his OR HER successor executor or adminis-  
24 trator which grows out of that conduct and which is brought under  
25 this act or any rule or order hereunder, with the same force and  
26 validity as if served on him OR HER personally. Service may be  
27 made by leaving a copy of the process in the office of the

1 administrator, and it is not effective unless ~~(1)~~ the  
2 plaintiff, who may be the administrator in a suit, action, or  
3 proceeding instituted by it, ~~forthwith~~ PROMPTLY sends notice of  
4 the service and a copy of the process by registered mail to the  
5 defendant or respondent at his OR HER last known address or takes  
6 other steps which are reasonably calculated to give actual  
7 notice, and ~~(2)~~ the plaintiff's affidavit of compliance with  
8 this subsection is filed in the case on or before the return day  
9 of the process, if any, or within ~~such~~ A further time ~~as~~ THAT  
10 the court allows.

11 (i) When process is served under this section, the court, or  
12 the administrator in a proceeding before it, shall order ~~such~~ A  
13 continuance as may be necessary to afford the defendant or  
14 respondent reasonable opportunity to defend.

15 Sec. 417. Except as saved in this section:

16 (a) Act No. 220 of the Public Acts of 1923, as amended,  
17 being sections 451.101 to 451.133 of the Compiled Laws of 1948,  
18 is repealed.

19 (b) Prior law exclusively governs all suits, actions,  
20 prosecutions, or proceedings which are pending or may be initi-  
21 ated on the basis of facts or circumstances occurring before the  
22 effective date of this act, except that no civil suit or action  
23 may be maintained to enforce any liability under prior law unless  
24 brought within ~~any~~ A period of limitation which applied when  
25 the cause of action accrued and in any event within 2 years after  
26 the effective date of this act.

1 (c) All effective registrations under prior law, all  
2 administrative orders relating to ~~such~~ EFFECTIVE registrations  
3 UNDER PRIOR LAW, ~~and~~ all conditions imposed upon ~~such~~  
4 EFFECTIVE registrations UNDER PRIOR LAW, AND ALL NOTICE FILINGS  
5 UNDER SECTION 202A OR 308 MADE WITH THE ADMINISTRATOR SINCE  
6 ENACTMENT OF THE NATIONAL SECURITIES MARKETS IMPROVEMENTS ACT OF  
7 1996, PUBLIC LAW 104-290, 110 STAT. 3416, remain in effect so  
8 long as they would have remained in effect if this act had not  
9 been passed. They are considered to have been filed, entered, or  
10 imposed under this act, but are governed by prior law.

11 (d) Prior law applies in respect of any offer or sale made  
12 within 1 year after the effective date of this act pursuant to an  
13 offering begun in good faith before its effective date on the  
14 basis of an exemption available under prior law.

15 (e) Judicial review of all administrative orders as to which  
16 review proceedings have not been instituted by the effective date  
17 of this act are governed by section 411, except that no review  
18 proceeding may be instituted unless the petition is filed within  
19 any period of limitation which applied to a review proceeding  
20 when the order was entered and in any event within 60 days after  
21 the effective date of this act.