

**SUBSTITUTE FOR
HOUSE BILL NO. 6338**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 1

2 GENERAL PROVISIONS

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

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

3 (a) "Administrator" means the office of financial and insur-
4 ance services of the department of consumer and industry
5 services.

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

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

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

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

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

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

26 (B) A substantial portion of its business consists of
27 receiving deposits or exercising fiduciary powers similar to

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1 those permitted to be exercised by national banks under the
2 authority of the comptroller of the currency pursuant to section
3 1 of Public Law 87-722, 12 U.S.C. 92a.

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

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

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

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

14 (i) An agent.

15 (ii) An issuer.

16 (iii) A bank, savings institution, or trust company.

17 (iv) An international banking institution.

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

19 (e) "Depository institution" means a bank; or a savings
20 institution, trust company, credit union, or similar institution
21 that is organized or chartered under the laws of a state or of
22 the United States, authorized to receive deposits, and supervised
23 and examined by an official or agency of a state or the United
24 States if its deposits or share accounts are insured by the fed-
25 eral deposit insurance corporation, the national credit union
26 share insurance fund, or a successor authorized by federal law.
27 The term does not include any of the following:

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

3 (ii) A Morris Plan bank.

4 (iii) An industrial loan company.

5 (f) "Federal covered investment adviser" means a person reg-
6 istered under the investment advisers act of 1940.

7 (g) "Federal covered security" means a security that is, or
8 upon completion of a transaction will be, a covered security
9 under section 18(b) of the securities act of 1933, title I of
10 chapter 38, 15 U.S.C. 77r, or rules or regulations adopted under
11 that provision.

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

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

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

23 (k) "Guaranteed" means guaranteed as to payment of all prin-
24 cipal and all interest.

25 Sec. 102a. As used in this act, unless the context other-
26 wise requires:

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

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

5 (ii) An insurance company.

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

7 (iv) An investment company as defined in the investment com-
8 pany act of 1940.

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

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

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

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1 1934, an investment adviser registered or exempt from
2 registration under the investment advisers act of 1940, an
3 investment adviser registered under this act, a depository insti-
4 tution, or an insurance company.

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

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

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

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

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

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1 (xiii) A "qualified institutional buyer" as defined in rule
2 144A(a)(1), other than rule 144A(a)(1)(H), adopted under the
3 securities act of 1933, 17 C.F.R. 230.144A(a)(1).

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

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

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

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

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

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

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

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

8 (i) An investment adviser representative.

9 (ii) A lawyer, accountant, engineer, or teacher whose per-
10 formance of investment advice is solely incidental to the prac-
11 tice of the person's profession.

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

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

19 (v) A federal covered investment adviser.

20 (vi) A bank or savings institution.

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

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

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

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

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

10 (i) Performs only clerical or ministerial acts.

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

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

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

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

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

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

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

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

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

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

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

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1 (a) "Nonissuer transaction" or "nonissuer distribution"
2 means a transaction or distribution not directly or indirectly
3 for the benefit of the issuer.

4 (b) "Offer to purchase" includes an attempt or offer to
5 obtain, or solicitation of an offer to sell, a security or inter-
6 est in a security for value. The term does not include a tender
7 offer that is subject to section 14(d) of title I of the securi-
8 ties exchange act of 1934, 15 U.S.C. 78n.

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

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

18 (i) An office at which the broker-dealer, investment advis-
19 er, or federal covered investment adviser regularly provides bro-
20 kerage or investment advice, or solicits, meets with, or other-
21 wise communicates with customers or clients.

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

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

2 (f) "Price amendment" means the amendment to a registration
3 statement filed under the securities act of 1933 or, if an amend-
4 ment is not filed, the prospectus or prospectus supplement filed
5 under the securities act of 1933 that includes a statement of the
6 offering price, underwriting and selling discounts or commis-
7 sions, amount of proceeds, conversion rates, call prices, and
8 other matters dependent upon the offering price.

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

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

19 Sec. 102c. As used in this act, unless the context other-
20 wise requires:

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

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1 (i) A security given or delivered with, or as a bonus on
2 account of, any purchase of securities or any other thing
3 constituting part of the subject of the purchase and having been
4 offered and sold for value.

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

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

13 (b) "Securities and exchange commission" means the United
14 States securities and exchange commission.

15 (c) "Security" means a note; stock; treasury stock; security
16 future; bond; debenture; evidence of indebtedness; certificate of
17 interest or participation in a profit-sharing agreement; collat-
18 eral trust certificate; preorganization certificate or subscrip-
19 tion; transferable share; investment contract; voting trust cer-
20 tificate; certificate of deposit for a security; fractional undi-
21 vided interest in oil, gas, or other mineral rights; put, call,
22 straddle, option, or privilege on a security, certificate of
23 deposit, or group or index of securities, including an interest
24 in or based on the value of that put, call, straddle, option, or
25 privilege on that security, certificate of deposit, or group or
26 index of securities; put, call, straddle, option, or privilege
27 entered into on a national securities exchange relating to

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1 foreign currency; an investment in a viatical or life settlement
2 agreement; or, in general, an interest or instrument commonly
3 known as a "security"; or a certificate of interest or participa-
4 tion in, temporary or interim certificate for, receipt for, guar-
5 antee of, or warrant or right to subscribe to or purchase, any of
6 the foregoing. All of the following apply to the term security:

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

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

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

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

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

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

26 (ii) The term includes both a certificated and an
27 uncertificated security.

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1 (iii) The term does not include an insurance or endowment
2 policy or annuity contract under which an insurance company prom-
3 ises to pay a fixed or variable sum of money either in a lump sum
4 or periodically for life or other specified period.

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

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

15 (vi) The term may include, as an investment contract, an
16 interest in a limited partnership, a limited liability company,
17 or a limited liability partnership.

18 (d) "Self-regulatory organization" means a national securi-
19 ties exchange registered under the securities exchange act of
20 1934, a national securities association of broker-dealers regis-
21 tered under the securities exchange act of 1934, a clearing
22 agency registered under the securities exchange act of 1934, or
23 the municipal securities rule-making board established under the
24 securities exchange act of 1934.

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

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

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

4 (f) "State" means a state of the United States, the District
5 of Columbia, the Commonwealth of Puerto Rico, the United States
6 Virgin Islands, or any territory or insular possession subject to
7 the jurisdiction of the United States.

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

10 (a) "Commodity exchange act" means the commodity exchange
11 act, chapter 369, 42 Stat. 998, 7 U.S.C. 1 to 9c, 10a to 12d, 13,
12 13a to 13c, 15, 16, 17, and 18 to 25.

13 (b) "Electronic signatures in global and national commerce
14 act" means the electronic signatures in global and national com-
15 merce act, Public Law 106-229, 114 Stat. 464.

16 (c) "Employee retirement income security act of 1974" means
17 the employee retirement income security act of 1974, Public Law
18 93-406, 88 Stat. 829.

19 (d) "Internal revenue code" means the United States internal
20 revenue code of 1986.

21 (e) "Investment advisers act of 1940" means the investment
22 advisers act of 1940, title II of chapter 686, 54 Stat. 847, 15
23 U.S.C. 80b-1 to 80b-21.

24 (f) "Investment company act of 1940" means the investment
25 company act of 1940, title I of chapter 686, 54 Stat. 789, 15
26 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64.

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

3 (h) "Public utility holding company act of 1935" means the
4 public utility holding company act of 1935, title I of chapter
5 687, 49 Stat. 838, 15 U.S.C. 79 to 792-6.

6 (i) "Securities act of 1933" means the securities act of
7 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r
8 and 77s to 77aa.

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

11 (k) "Securities investor protection act of 1970" means the
12 securities investor protection act of 1970, Public Law 91-598, 84
13 Stat. 1636.

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

17 (m) "Small business investment act of 1958" means the small
18 business investment act of 1958, Public Law 85-699, 72
19 Stat. 689.

20 (2) A reference in this act to a federal statute defined in
21 subsection (1) includes that statute and the rules and regula-
22 tions adopted under that statute. The administrator may, by rule
23 or order, adopt an amendment or successor to a federal statute
24 defined in subsection (1) or rules and regulations adopted under
25 a federal statute defined in subsection (1), a federal statute
26 that is similar to a federal statute defined in subsection (1),

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1 or a rule or regulation that is similar to a rule or regulation
2 adopted under a federal statute defined in subsection (1).

3 Sec. 104. Any reference in this act to an agency or depart-
4 ment of the United States is also a reference to any successor
5 agency, department, or entity of that agency or department.

6 Sec. 105. This act modifies, limits, and supersedes the
7 electronic signatures in global and national commerce act, but
8 does not modify, limit, or supersede section 101(c) of that act,
9 15 U.S.C. 7001, or authorize electronic delivery of any of the
10 notices described in section 103(b) of that act, 15 U.S.C. 7003.
11 This act authorizes the filing of records and signatures, when
12 specified by provisions of this act or by a rule or order under
13 this act, in a manner consistent with section 104(a) of that act,
14 15 U.S.C. 7004.

15 ARTICLE 2

16 EXEMPTIONS FROM REGISTRATION OF SECURITIES

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

19 (a) A security, including a revenue obligation or a separate
20 security as defined in rule 131 adopted under the securities act
21 of 1933, 17 C.F.R. 230.131, issued, insured, or guaranteed by the
22 United States; by a state; by a political subdivision of a state;
23 by a public authority, agency, or instrumentality of 1 or more
24 states; by a political subdivision of 1 or more states; or by a
25 person controlled or supervised by and acting as an instrumental-
26 ity of the United States under authority granted by the Congress;
27 or a certificate of deposit for any of the foregoing.

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

6 (c) A security issued by and representing, or that will rep-
7 resent an interest in or a direct obligation of, or be guaranteed
8 by, any of the following:

9 (i) An international banking institution.

10 (ii) A banking institution organized under the laws of the
11 United States; a member bank of the federal reserve system; or a
12 depository institution a substantial portion of the business of
13 which consists or will consist of either receiving deposits or
14 share accounts that are insured to the maximum amount authorized
15 by statute by the federal deposit insurance corporation, the
16 national credit union share insurance fund, or a successor autho-
17 rized by federal law or exercising fiduciary powers that are sim-
18 ilar to those permitted for national banks under the authority of
19 the comptroller of currency pursuant to section 1 of Public Law
20 87-722, 12 U.S.C. 92a.

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

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

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

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

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

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

12 (f) A federal covered security specified in section 18(b)(1)
13 of the securities act of 1933, 15 U.S.C. 77r, or a security
14 listed or approved for listing on another securities market spec-
15 ified by rule under this act; a put or a call option contract;
16 warrant; a subscription right on or with respect to those securi-
17 ties; or an option or similar derivative security on a security
18 or an index of securities or foreign currencies issued by a
19 clearing agency registered under the securities exchange act of
20 1934 and listed or designated for trading on a national securi-
21 ties exchange, a facility of a national securities exchange, or a
22 facility of a national securities association registered under
23 the securities exchange act of 1934 or an offer or sale, of the
24 underlying security in connection with the offer, sale, or exer-
25 cise of an option or other security that was exempt when the
26 option or other security was written or issued; or an option or a
27 derivative security designated by the securities and exchange

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1 commission under section 9(b) of the securities exchange act of
2 1934, 15 U.S.C. 78i.

3 (g) A security issued by a person organized and operated
4 exclusively for religious, educational, benevolent, fraternal,
5 charitable, social, athletic, or reformatory purposes, or as a
6 chamber of commerce, and not for pecuniary profit, no part of the
7 net earnings of which inures to the benefit of a private stock-
8 holder or other person, or a security of a company that is
9 excluded from the definition of an investment company under sec-
10 tion 3(c)(10)(B) of the investment company act of 1940, 15
11 U.S.C. 80a-3. With respect to the offer or sale of a note, bond,
12 debenture, or other evidence of indebtedness by a person
13 described in this subdivision, the administrator by rule may
14 limit the availability of this exemption by classifying securi-
15 ties, persons, and transactions, imposing different requirements
16 for different classes, specifying with respect to subparagraph
17 (ii) the scope of the exemption and the grounds for denial or
18 suspension, and requiring an issuer to meet 1 or more of the
19 following:

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

25 (ii) To file a request for exemption authorization for which
26 a rule under this act may specify the scope of the exemption; the
27 requirement of an offering statement; the filing of sales and

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1 advertising literature; the filing of consent to service of
2 process complying with section 611; and grounds for denial or
3 suspension of the exemption.

4 (iii) To register under section 304.

5 (h) A member's or owner's interest in, or a retention cer-
6 tificate or like security given in lieu of a cash patronage divi-
7 dend issued by, a cooperative organized and operated as a non-
8 profit membership cooperative under the cooperative laws of a
9 state, but not a member's or owner's interest, retention certifi-
10 cate, or like security sold to persons other than bona fide mem-
11 bers of the cooperative.

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

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

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

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

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

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

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

14 (iv) One of the following:

15 (A) A nationally recognized securities manual or its elec-
16 tronic equivalent designated by rule or order under this act or a
17 record filed with the securities and exchange commission that is
18 publicly available and that contains all of the following:

19 (I) A description of the business and operations of the
20 issuer.

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

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

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1 (IV) An audited income statement for each of the issuer's 2
2 immediately previous fiscal years or for the period of existence
3 of the issuer, whichever is shorter, or, in the case of a reorga-
4 nization or merger when each party to the reorganization or
5 merger had audited income statements, a pro forma income
6 statement.

7 (B) The issuer of the security has a class of equity securi-
8 ties listed on a national securities exchange registered under
9 the securities exchange act of 1934 or designated for trading on
10 the national association of securities dealers automated quota-
11 tion system, unless the issuer of the security is a unit invest-
12 ment trust registered under the investment company act of 1940;
13 or the issuer of the security, including its predecessors, has
14 been engaged in continuous business for at least 3 years; or the
15 issuer of the security has total assets of at least \$2,000,000.00
16 based on an audited balance sheet as of a date within 18 months
17 before the date of the transaction or, in the case of a reorgani-
18 zation or merger when the parties to the reorganization or merger
19 each had the audited balance sheet, a pro forma balance sheet for
20 the combined entity.

21 (c) A nonissuer transaction by or through a broker-dealer
22 registered or exempt from registration under this act in a secur-
23 ity of a foreign issuer that is a margin security defined in reg-
24 ulations or rules adopted by the board of governors of the fed-
25 eral reserve system.

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

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1 outstanding security if the guarantor of the security files
2 reports with the securities and exchange commission under the
3 reporting requirements of section 13 or 15(d) of the securities
4 exchange act of 1934, 15 U.S.C. 78m or 78o.

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

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

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

13 (A) A default has not occurred during the current fiscal
14 year or within the 3 previous fiscal years or during the exis-
15 tence of the issuer and any predecessor if less than 3 fiscal
16 years, in the payment of principal, interest, or dividends on the
17 security.

18 (B) The issuer is engaged in business, is not in the organi-
19 zational stage or in bankruptcy or receivership, and is not and
20 has not been within the previous 12 months a blank check, blind
21 pool, or shell company that has no specific business plan or pur-
22 pose or has indicated that its primary business plan is to engage
23 in a merger or combination of the business with, or an acquisi-
24 tion of, an unidentified person.

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

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

3 (h) A nonissuer transaction by a federal covered investment
4 adviser with investments under management in excess of
5 \$100,000,000.00 acting in the exercise of discretionary authority
6 in a signed record for the account of others.

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

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

17 (k) A transaction in a note, bond, debenture, or other evi-
18 dence of indebtedness secured by a mortgage or other security
19 agreement if all of the following are met:

20 (i) The note, bond, debenture, or other evidence of indebt-
21 edness is offered and sold with the mortgage or other security
22 agreement as a unit.

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

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

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1 (l) A transaction by an executor, administrator of an
2 estate, sheriff, marshal, receiver, trustee in bankruptcy, guard-
3 ian, or conservator.

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

5 (i) An institutional investor.

6 (ii) A federal covered investment adviser.

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

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

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

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

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

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

25 (o) A transaction under an offer to existing security hold-
26 ers of the issuer, including persons that at the date of the
27 transaction are holders of convertible securities, options, or

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1 warrants, if a commission or other remuneration, other than a
2 standby commission, is not paid or given, directly or indirectly,
3 for soliciting a security holder in this state.

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

7 (i) A registration or offering statement or similar record
8 as required under the securities act of 1933 has been filed, but
9 is not effective, or the offer is made in compliance with rule
10 165 adopted under the securities act of 1933, 17 C.F.R. 230.165.

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

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

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

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

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

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

7 (s) A rescission offer, sale, or purchase under section
8 510.

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

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

22 (i) Offers or sales of those securities to directors; gen-
23 eral partners; trustees, if the issuer is a business trust; offi-
24 cers; or consultants and advisors.

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

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

5 (iv) Insurance agents who are exclusive insurance agents of
6 the issuer, its subsidiaries or parents, or who derive more than
7 50% of their annual income from those organizations.

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

9 (i) A stock dividend or equivalent equity distribution,
10 whether the corporation or other business organization distribut-
11 ing the dividend or equivalent equity distribution is the issuer
12 or not, if nothing of value is given by stockholders or other
13 equity holders for the dividend or equivalent equity distribution
14 other than the surrender of a right to a cash or property divi-
15 dend if each stockholder or other equity holder may elect to take
16 the dividend or equivalent equity distribution in cash, property,
17 or stock.

18 (ii) An act incident to a judicially approved reorganization
19 in which a security is issued in exchange for 1 or more outstand-
20 ing securities, claims, or property interests, or partly in
21 exchange and partly for cash.

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

25 (w) Subject to subsection (2), a nonissuer transaction in an
26 outstanding security by or through a broker-dealer registered or

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1 exempt from registration under this act, if both of the following
2 are met:

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

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

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

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

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

25 Sec. 203. A rule or order under this act may exempt a
26 security, transaction, or offer, or a rule or order under this
27 act may exempt a class of securities, transactions, or offers,

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1 from any or all of the requirements of sections 301 to 306 and
2 504, and a rule or order under this act may waive any or all of
3 the conditions for an exemption or offers under sections 201 and
4 202.

5 Sec. 204. (1) Except with respect to a federal covered
6 security or a transaction involving a federal covered security,
7 an order of the administrator under this act may deny or suspend
8 application of, condition, limit, or revoke an exemption created
9 under section 201(c)(iii), (g), or (h) or 202 or an exemption or
10 waiver created under section 203 with respect to a specific
11 security, transaction, or offer. An order under this section may
12 only be issued pursuant to the procedures in section 306(4) or
13 604.

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

19 ARTICLE 3

20 REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED
21 SECURITIES

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

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

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

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

2 Sec. 302. (1) A rule or order under this act may require
3 the filing of 1 or more of the following records with respect to
4 a security issued by an investment company that is a federal cov-
5 ered security as defined in section 18(b)(2) of the securities
6 act of 1933, 15 U.S.C. 77r, that is not otherwise exempt under
7 sections 201 to 203:

8 (a) Before the initial offer of a federal covered security
9 in this state, all records that are part of a federal registra-
10 tion statement filed with the securities and exchange commission
11 under the securities act of 1933, a consent to service of process
12 signed by the issuer, and a fee of \$500.00.

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

17 (2) 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 adminis-
24 trator and a 1-time notice filing fee of \$500.00.

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

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

10 (c) 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 (4) With respect to any security that is a federal covered
15 security under section 18(b)(4)(D) of the securities act of 1933,
16 15 U.S.C. 77r, the issuer shall file all of the following:

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

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

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

23 (5) The administrator, by rule or order, may require the
24 filing of any document filed with the securities and exchange
25 commission under the securities act of 1933 and a nonrefundable
26 filing fee of \$100.00 with respect to any federal covered
27 security.

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1 (6) The administrator may issue a stop order suspending the
2 offer and sale of a federal covered security, except a federal
3 covered security under section 18(b)(1) of the securities act of
4 1933, 15 U.S.C. 77r, if it finds that the order is in the public
5 interest and there is a failure to comply with this section.

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

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

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

12 (i) If the issuer projects nonexempt sales of the security
13 in this state during the 1-year renewal period of \$250,000.00 or
14 less, \$100.00.

15 (ii) If the issuer projects nonexempt sales of the security
16 in this state during the 1-year renewal period of more than
17 \$250,000.00 but not more than \$700,000.00, \$400.00.

18 (iii) If the issuer projects nonexempt sales of the security
19 in this state during the 1-year renewal period of more than
20 \$700,000.00 but not more than \$1,000,000.00, \$800.00.

21 (iv) If the issuer projects nonexempt sales of the security
22 in this state during the 1-year renewal period of more than
23 \$1,000,000.00, \$1,400.00.

24 (b) For purposes of subdivision (a), an issuer's projection
25 of nonexempt sales of a security must be reasonable and based on
26 any facts known to the issuer at the time of renewal that may
27 affect sales of the security, including, but not limited to,

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1 nonexempt sales of the security in this state during the current
2 1-year notice filing period.

3 (c) If an issuer's nonexempt sales of a security in this
4 state during a 1-year notice filing period exceed the projections
5 for that period that the issuer had submitted to the administra-
6 tor for determination of the issuer's renewal fee for that 1-year
7 notice filing period, the issuer is not required to amend its
8 projections or pay an additional fee for that notice filing
9 period. However, the fee for renewal of the notice filing shall
10 be the greater of the following:

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

12 (ii) A renewal fee determined under subdivision (a), using
13 actual sales during the current notice filing period as the
14 projected sales for the renewal notice filing period.

15 (d) If an issuer's nonexempt sales of a security in this
16 state during a 1-year notice filing period are less than the pro-
17 jections for that period that the issuer had submitted to the
18 administrator for determination of the issuer's renewal fee for
19 the 1-year notice filing period, the issuer is not entitled to a
20 refund of any part of the renewal fee for that period or adjust-
21 ment of the renewal fee for any renewal period.

22 (e) Upon written request of the administrator, an issuer
23 shall provide sales reports showing the issuer's nonexempt sales
24 of a security in this state for the current and 2 previous 1-year
25 notice filing periods, but the issuer is not otherwise required
26 to provide a sales report to the administrator in connection with
27 a renewal of a notice filing.

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1 (f) If the administrator determines that for 2 consecutive
2 1-year notice filing periods an issuer's nonexempt sales of a
3 security in this state exceeded the issuer's sales projections
4 for that period, the administrator may assess the issuer a pen-
5 alty in the amount of the renewal fees the issuer would have paid
6 under subdivision (a) if its projections had been accurate. This
7 penalty is in addition to an increased fee for renewal under sub-
8 division (c), if any.

9 (9) If the administrator finds that there is a failure to
10 comply with a notice or fee requirement of this section, the
11 administrator may issue a stop order suspending the offer and
12 sale of a federal covered security in this state, except a fed-
13 eral covered security under section 18(b)(1) of the securities
14 act of 1933, 15 U.S.C. 77r. If the deficiency is corrected, the
15 stop order is void as of the time of its issuance and no other
16 penalty may be imposed by the administrator.

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

21 (2) A registration statement and accompanying records under
22 this section must contain or be accompanied by all of the follow-
23 ing records in addition to the information specified in section
24 305 and a consent to service of process complying with section
25 611:

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

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1 (b) A copy of the articles of incorporation and bylaws or
2 their substantial equivalents currently in effect, a copy of any
3 agreement with or among underwriters, a copy of any indenture or
4 other instrument governing the issuance of the security to be
5 registered, and a specimen, copy, or description of the security
6 that is required by rule or order under this act.

7 (c) Copies of any other information, or any other records,
8 filed by the issuer under the securities act of 1933 requested by
9 the administrator.

10 (d) An undertaking to forward each amendment to the federal
11 prospectus, other than an amendment that delays the effective
12 date of the registration statement, promptly after it is filed
13 with the securities and exchange commission.

14 (3) A registration statement under this section becomes
15 effective simultaneously with or subsequent to the federal regis-
16 tration statement when all the following conditions are
17 satisfied:

18 (a) A stop order under subsection (4) or section 306 or
19 issued by the securities and exchange commission is not in effect
20 and a proceeding is not pending against the issuer under section
21 412.

22 (b) The registration statement has been on file for at least
23 20 days or a shorter period provided by rule or order under this
24 act.

25 (4) The registrant shall promptly notify the administrator
26 in a record of the date when the federal registration statement
27 becomes effective and the content of a price amendment, if any,

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1 and shall promptly file a record containing the price amendment.
2 If the notice is not timely received, the administrator may issue
3 a stop order, without prior notice or hearing, retroactively
4 denying effectiveness to the registration statement or suspending
5 its effectiveness until compliance with this section. The admin-
6 istrator shall promptly notify the registrant of an order by
7 telegram, telephone, or electronic means and promptly confirm
8 this notice by a record. If the registrant subsequently complies
9 with the notice requirements of this section, the stop order is
10 void as of the date of its issuance.

11 (5) If the federal registration statement becomes effective
12 before each of the conditions in this section is satisfied or is
13 waived by the administrator, the registration statement is auto-
14 matically effective under this act when all the conditions are
15 satisfied or waived. If the registrant notifies the administra-
16 tor of the date when the federal registration statement is
17 expected to become effective, the administrator shall promptly
18 notify the registrant by telegram, telephone, or electronic means
19 and promptly confirm this notice by a record, indicating whether
20 all the conditions are satisfied or waived and whether the admin-
21 istrator intends the institution of a proceeding under section
22 306. The notice by the administrator does not preclude the
23 institution of a proceeding under section 306.

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

26 (2) A registration statement under this section must contain
27 the information or records specified in section 305, a consent to

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1 service of process complying with section 611, and, if provided
2 by rule under this act, all of the following information or
3 records:

4 (a) With respect to the issuer and any significant subsid-
5 iary, its name, address, and form of organization, the state or
6 foreign jurisdiction and date of its organization, the general
7 character and location of its business, a description of its
8 physical properties and equipment, and a statement of the general
9 competitive conditions in the industry or business in which it is
10 or will be engaged.

11 (b) With respect to each director and officer of the issuer,
12 and other person having a similar status or performing similar
13 functions, the person's name, address, and principal occupation
14 for the previous 5 years, the amount of securities of the issuer
15 held by the person as of the thirtieth day before the filing of
16 the registration statement, the amount of the securities covered
17 by the registration statement to which the person has indicated
18 an intention to subscribe, and a description of any material
19 interest of the person in any material transaction with the
20 issuer or a significant subsidiary effected within the previous 3
21 years or proposed to be effected.

22 (c) With respect to persons covered by subdivision (b), the
23 aggregate sum of the remuneration paid to those persons during
24 the previous 12 months and estimated to be paid during the next
25 12 months, directly or indirectly, by the issuer, and all prede-
26 cessors, parents, subsidiaries, and affiliates of the issuer.

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1 (d) With respect to a person owning of record or owning
2 beneficially, if known, 10% or more of the outstanding shares of
3 any class of equity security of the issuer, the information spec-
4 ified in subdivision (b) other than the person's occupation.

5 (e) With respect to a promoter if the issuer was organized
6 within the previous 3 years, the information or records specified
7 in subdivision (b), any amount paid to the promoter within that
8 period or intended to be paid to the promoter, and the considera-
9 tion for the payment.

10 (f) With respect to a person on whose behalf any part of the
11 offering is to be made in a nonissuer distribution, the person's
12 name and address, the amount of securities of the issuer held by
13 the person as of the date of the filing of the registration
14 statement, a description of any material interest of the person
15 in any material transaction with the issuer or any significant
16 subsidiary effected within the previous 3 years or proposed to be
17 effected, and a statement of the reasons for making the
18 offering.

19 (g) The capitalization and long-term debt, on both a current
20 and pro forma basis, of the issuer and any significant subsid-
21 iary, including a description of each security outstanding or
22 being registered or otherwise offered, and a statement of the
23 amount and kind of consideration, whether in the form of cash,
24 physical assets, services, patents, goodwill, or anything else of
25 value, for which the issuer or any subsidiary has issued its
26 securities within the previous 2 years or is obligated to issue
27 its securities.

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1 (h) The kind and amount of securities to be offered, the
2 proposed offering price or the method by which it is to be com-
3 puted, any variation at which a proportion of the offering is to
4 be made to a person or class of persons other than the underwrit-
5 ers, with a specification of the person or class, the basis upon
6 which the offering is to be made if otherwise than for cash, the
7 estimated aggregate underwriting and selling discounts or commis-
8 sions and finders' fees, including separately cash, securities,
9 contracts, or anything else of value to accrue to the underwrit-
10 ers or finders in connection with the offering, or, if the sell-
11 ing discounts or commissions are variable, the basis of determin-
12 ing them and their maximum and minimum amounts, the estimated
13 amounts of other selling expenses, including legal, engineering,
14 and accounting charges, the name and address of each underwriter
15 and each recipient of a finder's fee, a copy of any underwriting
16 or selling group agreement under which the distribution is to be
17 made, or the proposed form of any such agreement whose terms have
18 not yet been determined, and a description of the plan of distri-
19 bution of any securities that are to be offered otherwise than
20 through an underwriter.

21 (i) The estimated monetary proceeds to be received by the
22 issuer from the offering, the purposes for which the proceeds are
23 to be used by the issuer, the estimated amount to be used for
24 each purpose, the order or priority in which the proceeds will be
25 used for the purposes stated, the amounts of any funds to be
26 raised from other sources to achieve the purposes stated, the
27 sources of the funds, and, if a part of the proceeds is to be

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1 used to acquire property, including goodwill, otherwise than in
2 the ordinary course of business, the names and addresses of the
3 vendors, the purchase price, the names of any persons that have
4 received commissions in connection with the acquisition, and the
5 amounts of the commissions and other expenses in connection with
6 the acquisition, including the cost of borrowing money to finance
7 the acquisition.

8 (j) A description of any stock options or other security
9 options outstanding, or to be created in connection with the
10 offering, and the amount of those options held or to be held by
11 each person required to be named in subdivision (b), (d), (e),
12 (f), or (h) and by any person that holds or will hold 10% or more
13 in the aggregate of those options.

14 (k) The dates of, parties to, and general effect concisely
15 stated of each managerial or other material contract made or to
16 be made otherwise than in the ordinary course of business to be
17 performed in whole or in part at or after the filing of the reg-
18 istration statement or that was made within the previous 2 years,
19 and a copy of the contract.

20 (l) A description of any pending litigation, action, or pro-
21 ceeding to which the issuer is a party and that materially
22 affects its business or assets, including any litigation, action,
23 or proceeding known to be contemplated by governmental
24 authorities.

25 (m) A copy of any prospectus, pamphlet, circular, form
26 letter, advertisement, or other sales literature intended as of
27 the effective date to be used in connection with the offering and

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1 any solicitation of interest used in compliance with section
2 202(q)(ii).

3 (n) A specimen or copy of the security being registered,
4 unless the security is uncertificated, a copy of the issuer's
5 articles of incorporation and bylaws, or their substantial equiv-
6 alents, in effect, and a copy of any indenture or other instru-
7 ment covering the security to be registered.

8 (o) A signed or conformed copy of an opinion of counsel con-
9 cerning the legality of the security being registered, with an
10 English translation if it is in a language other than English,
11 which states whether the security when sold will be validly
12 issued, fully paid, and nonassessable and, if a debt security, a
13 binding obligation of the issuer.

14 (p) A signed or conformed copy of a consent of any accoun-
15 tant, engineer, appraiser, or other person whose profession gives
16 authority for a statement made by the person, if the person is
17 named as having prepared or certified a report or valuation,
18 other than an official record, that is public, which is used in
19 connection with the registration statement.

20 (q) A balance sheet of the issuer as of a date within 4
21 months before the filing of the registration statement, a state-
22 ment of income and changes in financial position for each of the
23 3 fiscal years preceding the date of the balance sheet and for
24 any period between the close of the immediately previous fiscal
25 year and the date of the balance sheet, or for the period of the
26 issuer's and any predecessor's existence if less than 3 years,
27 and, if any part of the proceeds of the offering is to be applied

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1 to the purchase of a business, the financial statements that
2 would be required if that business were the registrant.

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

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

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

12 (b) The administrator has not issued an order under section
13 306 delaying effectiveness.

14 (c) The applicant or registrant has not requested that
15 effectiveness be delayed.

16 (4) The administrator may delay effectiveness once for not
17 more than 90 days if the administrator determines the registra-
18 tion statement is not complete in all material respects and
19 promptly notifies the applicant or registrant of that
20 determination. The administrator may also delay effectiveness
21 for a further period of not more than 30 days if the administra-
22 tor determines that the delay is necessary or appropriate.

23 (5) A rule or order under this act may require as a condi-
24 tion of registration under this section that a prospectus con-
25 taining a specified part of the information or record specified
26 in subsection (2) be sent or given to each person to which an

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1 offer is made, before or concurrently with the earliest of any of
2 the following:

3 (a) The first offer made in a record to the person otherwise
4 than by means of a public advertisement, by or for the account of
5 the issuer or another person on whose behalf the offering is
6 being made, or by an underwriter or broker-dealer that is offer-
7 ing part of an unsold allotment or subscription taken by the
8 person as a participant in the distribution.

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

11 (c) Payment pursuant to the sale.

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

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

16 (2) A person filing a registration statement shall pay a
17 filing fee of 1/10 of 1% of the maximum aggregate offering price
18 at which the registered securities are to be offered in this
19 state, but the fee shall in no case be less than \$100.00 or more
20 than \$1,250.00. If an application for registration is withdrawn
21 before the effective date or a preeffective stop order is issued
22 under section 306, the administrator shall retain a fee of
23 \$100.00 if the initial review has not been commenced, and the
24 full filing fee after review has been commenced.

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

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

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

5 (c) Any adverse order, judgment, or decree issued in connec-
6 tion with the offering by a state securities regulator, the
7 securities and exchange commission, or a court.

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

12 (5) In the case of a nonissuer distribution, information or
13 a record shall not be required under subsection (9) or section
14 304, unless it is known to the person filing the registration
15 statement or to the person on whose behalf the distribution is to
16 be made, or unless it can be furnished by those persons without
17 unreasonable effort or expense.

18 (6) A rule or order under this act may require as a condi-
19 tion of registration that a security issued within the previous 5
20 years, or to be issued to a promoter for a consideration substan-
21 tially less than the public offering price or to a person for a
22 consideration other than cash, be deposited in escrow and that
23 the proceeds from the sale of the registered security in this
24 state be impounded until the issuer receives a specified amount
25 from the sale of the security either in this state or elsewhere.
26 The conditions of any escrow or impoundment required under this
27 subsection may be established by rule or order under this act,

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1 but the administrator shall not reject a depository institution
2 solely because of its location in another state.

3 (7) A rule or order under this act may require as a condi-
4 tion of registration that a security registered under this act be
5 sold only on a specified form of subscription or sale contract
6 and that a signed or conformed copy of each contract be filed
7 under this act or preserved for a period specified by the rule or
8 order, which may not be longer than 5 years.

9 (8) Except while a stop order is in effect under section
10 306, a registration statement is effective for 1 year after its
11 effective date, or for a longer period designated in an order
12 under this act during which the security is being offered or dis-
13 tributed in a nonexempted transaction by or for the account of
14 the issuer or other person on whose behalf the offering is being
15 made or by an underwriter or broker-dealer that is still offering
16 part of an unsold allotment or subscription taken as a partici-
17 pant in the distribution. For the purposes of a nonissuer trans-
18 action, all outstanding securities of the same class identified
19 in the registration statement as a security registered under this
20 act are considered to be registered while the registration state-
21 ment is effective. If any securities of the same class are out-
22 standing, a registration statement may not be withdrawn until 1
23 year after its effective date. A registration statement may be
24 withdrawn only with the approval of the administrator.

25 (9) While a registration statement is effective, a rule or
26 order under this act may require the person that filed the
27 registration statement to file reports, not more often than

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1 quarterly, to keep the information or other record in the
2 registration statement reasonably current and to disclose the
3 progress of the offering.

4 (10) A registration statement may be amended after its
5 effective date. The posteffective amendment becomes effective
6 when the administrator so orders. If a posteffective amendment
7 is made to increase the number of securities specified to be
8 offered or sold, the person filing the amendment shall pay a reg-
9 istration fee calculated in the manner specified in subsection
10 (2). A posteffective amendment relates back to the date of the
11 offering of the additional securities being registered if the
12 amendment is filed and the additional registration fee is paid
13 within 1 year after the date of the sale.

14 Sec. 306. (1) The administrator may issue a stop order
15 denying effectiveness to, or suspending or revoking the effec-
16 tiveness of, a registration statement if the administrator finds
17 that the order is in the public interest and that 1 or more of
18 the following apply:

19 (a) The registration statement as of its effective date or
20 before the effective date in the case of an order denying effec-
21 tiveness, an amendment under section 305(10) as of its effective
22 date, or a report under section 305(9) is incomplete in a mate-
23 rial respect or contains a statement that, in the light of the
24 circumstances under which it was made, was false or misleading
25 with respect to a material fact.

26 (b) This act or a rule adopted or order issued under this
27 act or a condition imposed under this act has been willfully

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1 violated, in connection with the offering, by the person filing
2 the registration statement; by the issuer, a partner, officer, or
3 director of the issuer or a person having a similar status or
4 performing a similar function; a promoter of the issuer or a
5 person directly or indirectly controlling or controlled by the
6 issuer; but only if the person filing the registration statement
7 is directly or indirectly controlled by or acting for the issuer;
8 or by an underwriter.

9 (c) The security registered or sought to be registered is
10 the subject of a permanent or temporary injunction of a court of
11 competent jurisdiction or an administrative stop order or similar
12 order issued under any federal, foreign, or state law other than
13 this act applicable to the offering, but the administrator shall
14 not institute a proceeding against an effective registration
15 statement under this paragraph more than 1 year after the date of
16 the order or injunction on which it is based, and the administra-
17 tor shall not issue an order under this subdivision on the basis
18 of an order or injunction issued under the securities act of
19 another state unless the order or injunction was based on conduct
20 that would constitute, as of the date of the order, a ground for
21 a stop order under this section.

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

24 (e) With respect to a security sought to be registered under
25 section 303, there has been a failure to comply with the under-
26 taking required by section 303(2)(d).

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

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

5 (i) The offering will work or tend to work a fraud upon pur-
6 chasers or would so operate.

7 (ii) The offering has been or would be made with unreason-
8 able amounts of underwriters' and sellers' discounts, commis-
9 sions, or other compensation, promoters' profits or participa-
10 tions, or unreasonable amounts or kinds of options.

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

13 (2) To the extent practicable, the administrator by rule or
14 order under this act shall publish guidelines, rules, or orders
15 that provide notice of conduct that violates subsection (1)(g).

16 (3) The administrator shall not institute a stop order pro-
17 ceeding against an effective registration statement on the basis
18 of conduct or a transaction known to the administrator when the
19 registration statement became effective unless the proceeding is
20 instituted within 30 days after the registration statement became
21 effective.

22 (4) The administrator may summarily revoke, deny, postpone,
23 or suspend the effectiveness of a registration statement pending
24 final determination of an administrative proceeding. Upon the
25 issuance of the order, the administrator shall promptly notify
26 each person specified in subsection (5) that the order has been
27 issued, the reasons for the revocation, denial, postponement, or

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

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

11 (a) Appropriate notice has been given to the applicant or
12 registrant, the issuer, and the person on whose behalf the secur-
13 ities are to be or have been offered.

14 (b) An opportunity for hearing has been given to the appli-
15 cant or registrant, the issuer, and the person on whose behalf
16 the securities are to be or have been offered.

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

20 (6) The administrator may modify or vacate a stop order
21 issued under this section if the administrator finds that the
22 conditions that caused its issuance have changed or that it is
23 necessary or appropriate in the public interest or for the pro-
24 tection of investors.

25 Sec. 307. The administrator may waive or modify, in whole
26 or in part, any or all of the requirements of sections 302, 303,
27 and 304(2) or the requirement of any information or record in a

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1 registration statement or in a periodic report filed pursuant to
2 section 305(9).

3 ARTICLE 4

4 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER
5 REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

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

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

12 (a) A broker-dealer if the broker-dealer does not have a
13 place of business in this state and if the broker-dealer's only
14 transactions effected in this state are with any of the
15 following:

16 (i) The issuer of the securities involved in the
17 transactions.

18 (ii) A person registered as a broker-dealer under this act
19 or not required to be registered as a broker-dealer under this
20 act.

21 (iii) An institutional investor.

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

26 (v) A bona fide preexisting customer whose principal place
27 of residence is not in this state and the broker-dealer is

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1 registered as a broker-dealer under the securities exchange act
2 of 1934 or not required to be registered under the securities
3 exchange act of 1934 and is registered under the securities act
4 of the state in which the customer maintains a principal place of
5 residence.

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

10 (A) The broker-dealer is registered under the securities
11 exchange act of 1934 or not required to be registered under the
12 securities exchange act of 1934 and is registered under the
13 securities laws of the state in which the customer relationship
14 was established and where the customer had maintained a principal
15 place of residence.

16 (B) Within 45 days after the customer's first transaction in
17 this state, the person files an application for registration as a
18 broker-dealer in this state and a further transaction is not
19 effected more than 75 days after the date on which the applica-
20 tion is filed, or, if earlier, the date on which the administra-
21 tor notifies the person that the administrator has denied the
22 application for registration or has stayed the pendency of the
23 application for good cause.

24 (vii) Not more than 3 customers in this state during the
25 previous 12 months, in addition to those specified in subpara-
26 graphs (i) to (vi) and under subparagraph (viii), if the
27 broker-dealer is registered under the securities exchange act of

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1 1934 or not required to be registered under the securities
2 exchange act of 1934 and is registered under the securities act
3 of the state in which the broker-dealer has its principal place
4 of business.

5 (viii) Any other person exempted by rule or order under this
6 act.

7 (b) A person that deals solely in United States government
8 securities and is supervised as a dealer in government securities
9 by the board of governors of the federal reserve system, the
10 comptroller of the currency, the federal deposit insurance corpo-
11 ration, or the office of thrift supervision.

12 (3) A broker-dealer, or an issuer engaged in offering,
13 offering to purchase, purchasing, or selling securities in this
14 state, shall not directly or indirectly employ or associate with
15 an individual to engage in an activity related to securities
16 transactions in this state if the registration of the individual
17 is suspended or revoked or the individual is barred from employ-
18 ment or association with a broker-dealer, an issuer, an invest-
19 ment adviser, or a federal covered investment adviser by an order
20 of the administrator under this act, the securities and exchange
21 commission, or a self-regulatory organization. A broker-dealer
22 or issuer does not violate this subsection if the broker-dealer
23 or issuer did not know and in the exercise of reasonable care
24 could not have known of the suspension, revocation, or bar. If
25 requested by a broker-dealer or issuer and if good cause is
26 shown, an order under this act may modify or waive, in whole or
27 in part, the application of the prohibitions of this subsection.

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

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

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

12 (ii) An individual from Canada or other foreign jurisdiction
13 who is present in this state and whose transactions are in a
14 self-directed tax advantaged retirement plan of which the indi-
15 vidual is the holder or contributor in that foreign
16 jurisdiction.

17 (iii) An individual who is present in this state, with whom
18 the broker-dealer customer relationship arose while the individ-
19 ual was temporarily or permanently resident in Canada or the
20 other foreign jurisdiction.

21 (b) An agent who represents a broker-dealer that is exempt
22 under this subsection to effect transactions in securities or
23 attempt to effect the purchase or sale of any securities in this
24 state as permitted for a broker-dealer described in subsection
25 (4)(a).

26 Sec. 402. (1) An individual shall not transact business in
27 this state as an agent unless the individual is registered under

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1 this act as an agent or is exempt from registration as an agent
2 under subsection (2).

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

5 (a) An individual who represents a broker-dealer in effect-
6 ing transactions in this state limited to those described in sec-
7 tion 15(h)(2) of the securities exchange act of 1934, 15
8 U.S.C. 78o.

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

11 (c) An individual who represents an issuer with respect to
12 an offer or sale of the issuer's own securities or those of the
13 issuer's parent or any of the issuer's subsidiaries, and who is
14 not compensated in connection with the individual's participation
15 by the payment of commissions or other remuneration based,
16 directly or indirectly, on transactions in those securities.

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

20 (e) An individual who represents an issuer who effects
21 transactions solely in federal covered securities of the issuer,
22 but an individual who effects transactions in a federal covered
23 security under section 18(b)(3) or 18(b)(4)(D) of the securities
24 act of 1933, 15 U.S.C. 77r, is not exempt if the individual is
25 compensated in connection with the agent's participation by the
26 payment of commissions or other remuneration based, directly or
27 indirectly, on transactions in those securities.

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

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

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

12 (i) Any other individual exempted by rule or order under
13 this act.

14 (3) The registration of an agent is effective only while the
15 agent is employed by or associated with a broker-dealer regis-
16 tered under this act or an issuer that is offering, selling, or
17 purchasing its securities in this state.

18 (4) A broker-dealer, or an issuer engaged in offering, sell-
19 ing, or purchasing securities in this state, shall not employ or
20 associate with an agent who transacts business in this state on
21 behalf of broker-dealers or issuers unless the agent is regis-
22 tered under subsection (1) or exempt from registration under sub-
23 section (2).

24 (5) An individual shall not act as an agent for more than 1
25 broker-dealer or more than 1 issuer at a time, unless the
26 broker-dealers or the issuers for which the agent acts are

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1 affiliated by direct or indirect common control or are authorized
2 by rule or order under this act.

3 Sec. 403. (1) A person shall not transact business in this
4 state as an investment adviser unless the person is registered
5 under this act as an investment adviser or is exempt from regis-
6 tration as an investment adviser under subsection (2).

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

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

13 (i) Federal covered investment advisers, investment advisers
14 registered under this act, or broker-dealers registered under
15 this act.

16 (ii) Institutional investors.

17 (iii) Bona fide preexisting clients whose principal places
18 of residence are not in this state, if the investment adviser is
19 registered under the securities act of the state in which the
20 clients maintain principal places of residence.

21 (iv) Any other client exempted by rule or order under this
22 act.

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

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1 (c) The person is an investment adviser who is not required
2 to be registered as an investment adviser under the investment
3 advisers act of 1940 if the investment adviser's only clients in
4 this state are other investment advisers, federal covered advis-
5 ers, broker-dealers, or institutional investors.

6 (d) Any other person exempted by rule or order under this
7 act.

8 (3) An investment adviser shall not, directly or indirectly,
9 employ or associate with an individual to engage in an activity
10 related to investment advice in this state if the registration of
11 the individual is suspended or revoked, or the individual is
12 barred from employment or association with an investment adviser,
13 federal covered investment adviser, or broker-dealer by an order
14 under this act, the securities and exchange commission, or a
15 self-regulatory organization, unless the investment adviser did
16 not know, and in the exercise of reasonable care could not have
17 known, of the suspension, revocation, or bar. If the investment
18 adviser request and good cause is shown, the administrator, by
19 order, may waive, in whole or in part, the application of the
20 prohibitions of this subsection.

21 (4) An investment adviser shall not employ or associate with
22 an individual required to be registered under this act as an
23 investment adviser representative who transacts business in this
24 state on behalf of the investment adviser unless the individual
25 is registered under section 404(1) or is exempt from registration
26 under section 404(2).

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

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

8 (a) An individual who is employed by or associated with an
9 investment adviser that is exempt from registration under section
10 403(2) or a federal covered investment adviser that is excluded
11 from the notice filing requirements of section 405.

12 (b) Any other individual exempted by rule or order under
13 this act.

14 (3) The registration of an investment adviser representative
15 is not effective while the investment adviser representative is
16 not employed by or associated with an investment adviser regis-
17 tered under this act or a federal covered investment adviser that
18 has made or is required to make a notice filing under section
19 405.

20 (4) An individual may transact business as an investment
21 adviser representative for more than 1 investment adviser or fed-
22 eral covered investment adviser unless a rule or order under this
23 act prohibits or limits an individual from acting as an invest-
24 ment adviser representative for more than 1 investment adviser or
25 federal covered investment adviser.

26 (5) An individual acting as an investment adviser
27 representative shall not, directly or indirectly, conduct

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1 business in this state on behalf of an investment adviser or a
2 federal covered investment adviser if the registration of the
3 individual as an investment adviser representative is suspended
4 or revoked or the individual is barred from employment or associ-
5 ation with an investment adviser or a federal covered investment
6 adviser by an order under this act, the securities and exchange
7 commission, or a self-regulatory organization. If a federal cov-
8 ered investment adviser requests and good cause is shown, the
9 administrator, by order, may waive, in whole or in part, the
10 application of the requirements of this subsection.

11 (6) An investment adviser registered under this act, a fed-
12 eral covered investment adviser that has filed a notice under
13 section 405, or a broker-dealer registered under this act is not
14 required to employ or associate with an individual as an invest-
15 ment adviser representative if the only compensation paid to the
16 individual for a referral of investment advisory clients is paid
17 to an investment adviser registered under this act, a federal
18 covered investment adviser who has filed a notice under section
19 405, or a broker-dealer registered under this act with which the
20 individual is employed or associated as an investment adviser
21 representative.

22 Sec. 405. (1) Except with respect to a federal covered
23 investment adviser described in subsection (2), a federal covered
24 investment adviser shall not transact business in this state as a
25 federal covered investment adviser unless the federal covered
26 investment adviser complies with subsection (3).

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

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

6 (i) Federal covered investment advisers, investment advisers
7 registered under this act, and broker-dealers registered under
8 this act.

9 (ii) Institutional investors.

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

12 (iv) Other clients specified by rule or order under this
13 act.

14 (b) A federal covered investment adviser that does not have
15 a place of business in this state if the federal covered invest-
16 ment adviser has had, during the preceding 12 months, not more
17 than 5 clients that are residents of this state in addition to
18 those specified under subdivision (a).

19 (c) Any other person excluded by rule or order under this
20 act.

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

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

2 Sec. 406. (1) A person shall register as a broker-dealer,
3 agent, investment adviser, or investment adviser representative
4 by filing an application and a consent to service of process com-
5 plying with section 611 and paying the fee specified in section
6 410 and any reasonable fees charged by the designee of the admin-
7 istrator for processing the filing. Each application must con-
8 tain both of the following:

9 (a) The information or record required for the filing of a
10 uniform application.

11 (b) If requested by the administrator, any other financial
12 or other information or record that the administrator determines
13 is appropriate.

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

18 (3) If an order is not in effect and no proceeding is pend-
19 ing under section 412, registration becomes effective at 12 noon
20 on the forty-fifth day after a completed application is filed
21 unless the registration is denied. A rule or order under this
22 act may set an earlier effective date or may defer the effective
23 date until 12 noon on the forty-fifth day after the filing of any
24 amendment completing the application.

25 (4) A registration is effective until 12 midnight on
26 December 31 of the year for which the application for
27 registration is filed. Unless an order is in effect under

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1 section 412, a registration may be automatically renewed each
2 year by filing the records required by rule or order under this
3 act and paying the fee specified in section 410 and the costs
4 charged by the designee of the administrator for processing the
5 filings.

6 (5) A rule or order under this act may impose other condi-
7 tions not inconsistent with the national securities markets
8 improvement act of 1996, Public Law 104-290, 110 Stat. 3416, or
9 an order under this act may waive, in whole or in part, specific
10 requirements in connection with registration if the imposition or
11 waiver is appropriate in the public interest and for the protec-
12 tion of investors.

13 Sec. 407. (1) A broker-dealer or investment adviser may
14 succeed to the current registration of another broker-dealer or
15 investment adviser or a notice filing of a federal covered
16 investment adviser, and a federal covered investment adviser may
17 succeed to the current registration of an investment adviser or
18 notice filing of another federal covered investment adviser, by
19 filing as a successor an application for registration under sec-
20 tion 401 or 403, or a notice under section 405, for the unexpired
21 portion of the current registration or notice filing.

22 (2) A broker-dealer or investment adviser that changes its
23 form of organization or state of incorporation or organization
24 may continue its registration by filing an amendment to its reg-
25 istration if the change does not involve a material change in its
26 financial condition or management. The amendment is effective
27 when filed or on a date designated by the registrant in the

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1 filing. The new organization is a successor to the original
2 registrant for the purposes of this act. If there is a material
3 change in financial condition or management, the broker-dealer or
4 investment adviser shall file a new application for
5 registration. Any predecessor registered under this act shall
6 stop conducting its securities business other than winding down
7 transactions and shall file for withdrawal of broker-dealer or
8 investment adviser registration within 45 days after filing its
9 amendment to effect succession.

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

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

17 Sec. 408. (1) If an agent registered under this act termi-
18 nates employment by or association with a broker-dealer or
19 issuer, or if an investment adviser representative registered
20 under this act terminates employment by or association with an
21 investment adviser or federal covered investment adviser, or if
22 either registrant terminates activities that require registration
23 as an agent or investment adviser representative, the
24 broker-dealer, investment adviser, or federal covered investment
25 adviser shall promptly file a notice of termination. If the reg-
26 istrant learns that the broker-dealer, issuer, investment

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1 adviser, or federal covered investment adviser has not filed the
2 notice, the registrant may file the notice.

3 (2) If an agent registered under this act terminates employ-
4 ment by or association with a broker-dealer registered under this
5 act and begins employment by or association with another
6 broker-dealer registered under this act; or if an investment
7 adviser representative registered under this act terminates
8 employment by or association with an investment adviser regis-
9 tered under this act; or if a federal covered investment adviser
10 that has filed a notice under section 405 begins employment by or
11 association with another investment adviser registered under this
12 act; or if a federal covered investment adviser, who has filed a
13 notice under section 405, files an application for registration
14 that complies with the requirement of section 406(1) and the
15 filing fee required under section 410 is paid by or on behalf of
16 the registrant within 30 days after the termination, 1 of the
17 following applies to the registration of the agent or investment
18 adviser representative:

19 (a) If the agent's central registration depository record or
20 successor record or the investment adviser representative's
21 investment adviser registration depository record or successor
22 record does not contain a new or amended disciplinary disclosure
23 within the previous 12 months, the registration is immediately
24 effective as of the date of the completed filing.

25 (b) If the agent's central registration depository record or
26 the investment adviser representative's investment adviser
27 registration depository record contains a new or amended

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1 disciplinary disclosure within the preceding 12 months, the
2 registration is temporarily effective as of the date of the com-
3 pleted filing.

4 (3) If there are or were grounds for discipline under sec-
5 tion 412, the administrator may withdraw a temporary registration
6 within 30 days after the application is filed. If the adminis-
7 trator does not withdraw the temporary registration within the
8 30-day period, registration becomes automatically effective on
9 the thirty-first day after filing.

10 (4) The administrator may prevent the effectiveness of a
11 transfer of an agent or investment adviser representative under
12 subsection (2)(a) or (b) based on the public interest and the
13 protection of investors.

14 (5) If the administrator determines that a registrant or
15 applicant for registration is no longer in existence, has ceased
16 to act as a broker-dealer, agent, investment adviser, or invest-
17 ment adviser representative, is the subject of an adjudication of
18 incapacity, is subject to the control of a committee, conserva-
19 tor, or guardian, or cannot reasonably be located, a rule or
20 order under this act may require the registration be canceled or
21 terminated or the application denied. The administrator may
22 reinstate a canceled or terminated registration, with or without
23 hearing, and may make the registration retroactive.

24 Sec. 409. Withdrawal of registration by a broker-dealer,
25 agent, investment adviser, or investment adviser representative
26 is effective 60 days after an application to withdraw is filed or
27 within a shorter period as provided by rule or order under this

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1 act, unless a revocation or suspension proceeding is pending when
2 the application is filed. If a proceeding is pending, withdrawal
3 is effective when and on conditions required by rule or order
4 under this act. The administrator may institute a revocation or
5 suspension proceeding under section 412 within 1 year after the
6 withdrawal became effective automatically and issue a revocation
7 or suspension order as of the last date on which registration was
8 effective if a proceeding is not pending.

9 Sec. 410. (1) A person shall pay a fee of \$250.00 when ini-
10 tially filing an application for registration as a broker-dealer
11 and a fee of \$250.00 when filing a renewal of registration as a
12 broker-dealer. If the filing results in a denial or withdrawal,
13 the administrator shall retain all of the filing fee.

14 (2) An individual shall pay a fee of \$30.00 when filing an
15 application for registration as an agent, a fee of \$30.00 when
16 filing a renewal of registration as an agent, and a fee of \$30.00
17 when filing for a change of registration as an agent. If the
18 filing results in a denial or withdrawal, the administrator shall
19 retain all of the filing fee.

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

25 (4) An individual shall pay a fee of \$30.00 when filing an
26 application for registration as an investment adviser
27 representative, a fee of \$30.00 when filing a renewal of

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1 registration as an investment adviser representative, and a fee
2 of \$30.00 when filing a change of registration as an investment
3 adviser representative. If the filing results in a denial or
4 withdrawal, the administrator shall retain all of the filing
5 fee.

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

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

12 (7) An investment adviser representative who is registered
13 as an agent under section 402 and who represents a person that is
14 both registered as a broker-dealer under section 401 and regis-
15 tered as an investment adviser under section 403 or required as a
16 federal covered investment adviser to make a notice filing under
17 section 405 is not required to pay an initial or annual registra-
18 tion fee for registration as an investment adviser
19 representative.

20 Sec. 411. (1) Subject to section 15(h) of the securities
21 act of 1934, 15 U.S.C. 78o, or section 222 of the investment
22 advisers act of 1940, 15 U.S.C. 80b-18a, a rule or order under
23 this act may establish minimum financial requirements for
24 broker-dealers registered or required to be registered under this
25 act and investment advisers registered or required to be regis-
26 tered under this act.

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1 (2) Subject to section 15(h) of the securities exchange act
2 of 1934, 15 U.S.C. 78o, or section 222(b) of the investment
3 advisers act of 1940, 15 U.S.C. 80b-18a, a broker-dealer regis-
4 tered or required to be registered under this act and an invest-
5 ment adviser registered or required to be registered under this
6 act shall file financial reports required by rule or order under
7 this act. If the information contained in a record filed under
8 this subsection is or becomes inaccurate or incomplete in any
9 material respect, the registrant shall promptly file a correcting
10 amendment.

11 (3) Subject to section 15(h) of the securities exchange act
12 of 1934, 15 U.S.C. 78o, or section 222 of the investment advisers
13 act of 1940, 15 U.S.C. 80b-18a, a broker-dealer registered or
14 required to be registered under this act and an investment
15 adviser registered or required to be registered under this act
16 shall make and maintain the accounts, correspondence, memoranda,
17 papers, books, and other records required by rule or order of the
18 administrator. The records required to be maintained under this
19 subsection shall be maintained as follows:

20 (a) Broker-dealer records may be maintained in any form of
21 data storage acceptable under section 17(a) of the securities
22 exchange act of 1934, 15 U.S.C. 78q, if they are readily accessi-
23 ble to the administrator.

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

26 (4) The records of a broker-dealer registered or required to
27 be registered under this act and of an investment adviser

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1 registered or required to be registered under this act are
2 subject to reasonable periodic, special, or other audits or
3 inspections by a representative of the administrator, in or out-
4 side of this state, as the administrator considers necessary or
5 appropriate in the public interest and for the protection of
6 investors. An audit or inspection may be made at any time and
7 without prior notice. The administrator may copy and remove for
8 audit or inspection copies of all records the administrator rea-
9 sonably considers necessary or appropriate to conduct the audit
10 or inspection. The administrator may assess a reasonable charge
11 for conducting an audit or inspection under this subsection.

12 (5) Subject to section 15(h) of the securities exchange act
13 of 1934, 15 U.S.C. 78o, or section 222 of the investment advisers
14 act of 1940, 15 U.S.C. 80b-18a, a rule or order under this act
15 may require a broker-dealer and investment adviser that has cus-
16 tody of or discretionary authority over funds or securities of a
17 client to obtain insurance or post a bond or other satisfactory
18 form of security in an amount established by the administrator by
19 rule or order. The administrator may determine the requirements
20 of the insurance, bond, or other satisfactory form of security.
21 Insurance or a bond or other satisfactory form of security shall
22 not be required of a broker-dealer registered under this act
23 whose net capital exceeds, or of an investment adviser registered
24 under this act whose minimum financial requirements exceed, the
25 amounts required by rule or order under this act. The insurance,
26 bond, or other satisfactory form of security must permit an
27 action by a person to enforce any liability on the insurance,

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1 bond, or other satisfactory form of security if commenced within
2 the time limitations in section 509(10)(b).

3 (6) Subject to section 15(h) of the securities exchange act
4 of 1934, 15 U.S.C. 78o, or section 222 of the investment advisers
5 act of 1940, 15 U.S.C. 80b-18a, an agent shall not have custody
6 of funds or securities of a customer except under the supervision
7 of a broker-dealer and an investment adviser representative shall
8 not have custody of funds or securities of a client except under
9 the supervision of an investment adviser or federal covered
10 investment adviser. A rule or order under this act may prohibit,
11 limit, or impose conditions on the custody of funds or securities
12 of a customer by a broker-dealer and on the custody of securities
13 or funds of a client by an investment adviser.

14 (7) With respect to an investment adviser registered or
15 required to be registered under this act, a rule or order under
16 this act may require that information or other record be fur-
17 nished or disseminated to clients or prospective clients in this
18 state as necessary or appropriate in the public interest and for
19 the protection of investors and advisory clients.

20 (8) A rule or order under this act may require an individual
21 registered under section 402 or 404 to participate in a continu-
22 ing education program approved by the securities and exchange
23 commission and administered by a self-regulatory organization or,
24 in the absence of such a program, a rule or order under this act
25 may require continuing education for an individual registered
26 under section 404.

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1 Sec. 412. (1) If the administrator finds that the order is
2 in the public interest and subsection (4) authorizes the action,
3 an order under this act may deny an application or condition or
4 limit registration of an applicant to be a broker-dealer, agent,
5 investment adviser, or investment adviser representative and, if
6 the applicant is a broker-dealer or investment adviser, of any
7 partner, officer, or director, any person having a similar status
8 or performing similar functions, or any person directly or indi-
9 rectly controlling the broker-dealer or investment adviser.

10 (2) If the administrator finds that the order is in the
11 public interest and subsection (4) authorizes the action, an
12 order under this act may revoke, suspend, condition, or limit the
13 registration of a registrant and if the registrant is a
14 broker-dealer or investment adviser, of any partner, officer, or
15 director, any person having a similar status or performing simi-
16 lar functions, or any person directly or indirectly controlling
17 the broker-dealer or investment adviser. Both of the following
18 conditions apply, however, to actions by the administrator under
19 this subsection:

20 (a) The administrator shall not institute a revocation or
21 suspension proceeding under this subsection based on an order
22 issued by another state that is reported to the administrator or
23 designee later than 1 year after the date of the order on which
24 it is based.

25 (b) Under subsection (4)(e)(i) and (ii), the administrator
26 shall not issue an order on the basis of an order under the state
27 securities act of another state unless the other order was based

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1 on conduct for which subsection (4) would authorize the action
2 had the conduct occurred in this state.

3 (3) If the administrator finds that the order is in the
4 public interest and subsection (4)(a) to (f), (i) to (j), or (l)
5 to (n) authorizes the action, an order under this act may cen-
6 sure, impose a bar, or impose a civil penalty in an amount not to
7 exceed a maximum of \$10,000.00 for a single violation or
8 \$500,000.00 for multiple violations on a registrant and, if the
9 registrant is a broker-dealer or investment adviser, on any part-
10 ner, officer, or director, any person having a similar function,
11 or any person directly or indirectly controlling the
12 broker-dealer or investment adviser.

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

15 (a) The person filed an application for registration in this
16 state under this act or the predecessor act within the previous
17 10 years, which, as of the effective date of registration or as
18 of any date after filing in the case of an order denying effec-
19 tiveness, was incomplete in any material respect or contained a
20 statement that, in light of the circumstances under which it was
21 made, was false or misleading with respect to a material fact.

22 (b) The person willfully violated or willfully failed to
23 comply with this act or the predecessor act or a rule adopted or
24 order issued under this act or the predecessor act within the
25 previous 10 years.

26 (c) The person was convicted of any felony or within the
27 previous 10 years was convicted of a misdemeanor involving a

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1 security, a commodity futures or option contract, or an aspect of
2 a business involving securities, commodities, investments, fran-
3 chises, insurance, banking, or finance.

4 (d) The person is enjoined or restrained by a court of com-
5 petent jurisdiction in an action instituted by the administrator
6 under this act or the predecessor act, a state, the securities
7 and exchange commission, or the United States from engaging in or
8 continuing an act, practice, or course of business involving an
9 aspect of a business involving securities, commodities, invest-
10 ments, franchises, insurance, banking, or finance.

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

13 (i) The securities, depository institution, insurance, or
14 other financial services regulator of a state, or by the securi-
15 ties and exchange commission or other federal agency denying,
16 revoking, barring, or suspending registration as a broker-dealer,
17 agent, investment adviser, federal covered investment adviser, or
18 investment adviser representative.

19 (ii) The securities regulator of a state or by the securi-
20 ties and exchange commission against a broker-dealer, agent,
21 investment adviser, investment adviser representative, or federal
22 covered investment adviser.

23 (iii) The securities and exchange commission or by a
24 self-regulatory organization suspending or expelling the regis-
25 trant from membership in a self-regulatory organization.

26 (iv) A court adjudicating a United States postal service
27 fraud.

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

3 (vi) A depository institution regulator suspending or bar-
4 ring a person from the banking or depository institution
5 business.

6 (f) The person is the subject of an adjudication or determi-
7 nation, after notice and opportunity for hearing, by the securi-
8 ties and exchange commission, the commodity futures trading com-
9 mission, the federal trade commission, a federal depository
10 institution regulator, or a depository institution, insurance, or
11 other financial services regulator of a state that the person
12 willfully violated the securities act of 1933, the securities
13 exchange act of 1934, the investment advisers act of 1940, the
14 investment company act of 1940, or the commodity exchange act,
15 the securities or commodities law of a state, or a federal or
16 state law under which a business involving investments, fran-
17 chises, insurance, banking, or finance is regulated.

18 (g) The person is insolvent, either because the person's
19 liabilities exceed the person's assets or because the person
20 cannot meet the person's obligations as they mature. The admin-
21 istrator shall not enter an order against an applicant or regis-
22 trant under this subdivision without a finding of insolvency as
23 to the applicant or registrant.

24 (h) The person refuses to allow or otherwise impedes the
25 administrator from conducting an audit or inspection under sec-
26 tion 411(4) or refuses access to a registrant's office to conduct
27 an audit or inspection under section 411(4).

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1 (i) The person has failed to reasonably supervise an agent,
2 investment adviser representative, or other individual, if the
3 agent, investment adviser representative, or other individual was
4 subject to the person's supervision and committed a violation of
5 this act or the predecessor act or a rule adopted or order issued
6 under this act or the predecessor act within the previous 10
7 years.

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

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

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

18 (ii) The person was found to have been the subject of an
19 order of a securities regulator of a foreign jurisdiction deny-
20 ing, revoking, or suspending the right to engage in the business
21 of securities as a broker-dealer, agent, investment adviser,
22 investment adviser representative, or similar person.

23 (iii) The person was found to have been suspended or
24 expelled from membership by or participation in a securities
25 exchange or securities association operating under the securities
26 laws of a foreign jurisdiction.

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1 (l) The person is the subject of a cease and desist order
2 issued by the securities and exchange commission or issued under
3 the securities, commodities, investment, franchise, banking,
4 finance, or insurance laws of a state.

5 (m) The person has engaged in dishonest or unethical prac-
6 tices in the securities, commodities, investment, franchise,
7 banking, finance, or insurance business within the previous 10
8 years.

9 (n) The person is not qualified on the basis of factors such
10 as training, experience, and knowledge of the securities
11 business. If an application is made by an agent for a
12 broker-dealer that is a member of a self-regulatory organization
13 or by an individual for registration as an investment adviser
14 representative, a denial order shall not be based on this subdi-
15 vision if the individual has successfully completed all examina-
16 tions required by subsection (5). The administrator may require
17 an applicant for registration under section 402 or 404 who has
18 not been registered in a state within the 2 years preceding the
19 filing of an application in this state to successfully complete
20 an examination.

21 (5) A rule or order under this act may require that an exam-
22 ination, including an examination developed or approved by an
23 organization of securities regulators, be successfully completed
24 by a class of individuals or all individuals. An order under
25 this act may waive an examination as to an individual and a rule
26 under this act may waive an examination as to a class of
27 individuals if the administrator determines that the examination

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1 is not necessary or appropriate in the public interest and for
2 the protection of investors.

3 (6) The administrator may suspend or deny an application
4 summarily, restrict, condition, limit, or suspend a registration,
5 or censure, bar, or impose a civil penalty on a registrant pend-
6 ing final determination of an administrative proceeding. On the
7 issuance of the order, the administrator shall promptly notify
8 each person subject to the order that the order has been issued,
9 the reasons for the action, and that, within 15 days after the
10 receipt of a request in a record from the person, the matter will
11 be scheduled for a hearing. If a hearing is not requested by a
12 person subject to the order or is not ordered by the administra-
13 tor within 30 days after the date of service of the order, the
14 order is final. If a hearing is requested or ordered, the admin-
15 istrator, after notice of and opportunity for hearing to each
16 person subject to the order, may modify or vacate the order or
17 extend the order until final determination.

18 (7) Except under subsection (6), an order shall not be
19 issued under this section unless all of the following have
20 occurred:

21 (a) Appropriate notice has been given to the applicant or
22 registrant.

23 (b) Opportunity for hearing has been given to the applicant
24 or registrant.

25 (c) Findings of fact and conclusions of law have been made
26 on the record pursuant to the administrative procedures act of
27 1969, 1969 PA 306, MCL 24.201 to 24.328.

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1 (8) A person who controls, directly or indirectly, a person
2 not in compliance with this section may be disciplined by order
3 of the administrator under subsections (1) to (3) to the same
4 extent as the noncomplying person, unless the controlling person
5 did not know, and in the exercise of reasonable care could not
6 have known, of the existence of conduct that is a basis for dis-
7 cipline under this section.

8 (9) The administrator shall not institute a proceeding under
9 subsection (1), (2), or (3) solely based on material facts actu-
10 ally known by the administrator unless an investigation or the
11 proceeding is instituted within 1 year after the administrator
12 actually knew the material facts.

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

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

18 (b) Fail to disclose clearly and conspicuously in writing to
19 all persons involved in the transaction as a result of the
20 broker-dealer's finding activities before the sale or purchase
21 that the person is acting as a finder, any payment for services
22 as a finder, the method and amount of payment, and any beneficial
23 interest, direct or indirect, of the broker-dealer, or a member
24 of the broker-dealer's immediate family if the broker-dealer is
25 an individual, in the issue of the securities that are the
26 subject of services as a finder.

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1 (c) Participate in the offer, purchase, or sale of a
2 security in violation of section 301. However, if the
3 broker-dealer makes a reasonable effort to ascertain if a regis-
4 tration has been effected or an exemption order granted in this
5 state or to ascertain the basis for an exemption claim and does
6 not have knowledge that the proposed transaction would violate
7 section 301, the broker-dealer's activities as a finder do not
8 violate section 301.

9 (d) Participate in the offer, purchase, or sale of a secur-
10 ity without obtaining information relative to the risks of the
11 transaction, the direct or indirect compensation to be received
12 by promoters, partners, officers, directors, or their affiliates,
13 the financial condition of the issuer, and the use of proceeds to
14 be received from investors, or fail to read any offering materi-
15 als obtained. This section does not require independent investi-
16 gation or alteration of offering materials furnished to the
17 broker-dealer.

18 (e) Fail to inform or otherwise ensure disclosure to all
19 persons involved in the transaction as a result of the
20 broker-dealer's finding activities of any material information
21 which the broker-dealer knows, or in the exercise of reasonable
22 care should know based on the information furnished to the
23 broker-dealer, is material in making an investment decision,
24 until conclusion of the transaction.

25 (f) Locate, introduce, or refer persons that the
26 broker-dealer knows, or after a reasonable inquiry should know,

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1 are not suitable investors by reason of their financial
2 condition, age, experience, or need to diversify investments.

3 ARTICLE 5

4 FRAUD AND LIABILITIES

5 Sec. 501. It is unlawful for a person, in connection with
6 the offer, sale, or purchase of a security, to directly or indi-
7 rectly do any of the following:

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

9 (b) Make an untrue statement of a material fact or omit to
10 state a material fact necessary in order to make the statement
11 made, in the light of the circumstances under which it is made,
12 not misleading.

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

16 Sec. 502. (1) It is unlawful for a person that advises
17 others for compensation, either directly or indirectly or through
18 publications or writings, as to the value of securities or the
19 advisability of investing in, purchasing, or selling securities,
20 or that, for compensation and as part of a regular business,
21 issues or promulgates analyses or reports relating to securities,
22 to do any of the following:

23 (a) Employ a device, scheme, or artifice to defraud another
24 person.

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

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

3 (a) Take possession of funds or securities in connection
4 with the transaction for which payment is made for services as a
5 finder.

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

14 (c) Participate in the offer, purchase, or sale of a secur-
15 ity in violation of section 301. However, if the investment
16 adviser makes a reasonable effort to ascertain if a registration
17 has been effected or an exemption order granted in this state or
18 to ascertain the basis for an exemption claim and does not have
19 knowledge that the proposed transaction would violate section
20 301, his or her activities as a finder do not violate section
21 301.

22 (d) Participate in the offer, purchase, or sale of a secur-
23 ity without obtaining information relative to the risks of the
24 transaction, the direct or indirect compensation to be received
25 by promoters, partners, officers, directors, or their affiliates,
26 the financial condition of the issuer, and the use of proceeds to
27 be received from investors, or fail to read any offering

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1 materials obtained. This subdivision does not require
2 independent investigation or alteration of offering materials
3 furnished to the finder.

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

12 (f) Locate, introduce, or refer persons that the finder
13 knows, or after a reasonable inquiry should know, are not suit-
14 able investors by reason of their financial condition, age,
15 experience, or need to diversify investments.

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

17 (a) Define an act, practice, or course of business of an
18 investment adviser or an investment adviser representative, other
19 than a supervised person of a federal covered investment adviser,
20 as fraudulent, deceptive, or manipulative, and prescribe means
21 reasonably designed to prevent investment advisers and investment
22 adviser representatives, other than supervised persons of a fed-
23 eral covered investment adviser, from engaging in acts, prac-
24 tices, and courses of business defined as fraudulent, deceptive,
25 or manipulative.

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

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1 Sec. 503. (1) In a civil action or administrative
2 proceeding under this act, a person claiming an exemption, excep-
3 tion, preemption, or exclusion has the burden to prove the appli-
4 cability of the exemption, exception, preemption, or exclusion.

5 (2) In a criminal proceeding under this act, a person claim-
6 ing an exemption, exception, preemption, or exclusion has the
7 burden of going forward with evidence of the claim.

8 Sec. 504. (1) Subject to subsection (2), a rule or order
9 under this act may require the filing of a prospectus, pamphlet,
10 circular, form letter, advertisement, sales literature, or other
11 advertising record relating to a security or investment advice
12 addressed or intended for distribution to prospective investors,
13 including clients or prospective clients of a person registered
14 or required to be registered as an investment adviser under this
15 act.

16 (2) This section does not apply to sales and advertising
17 literature specified in subsection (1) relating to a federal cov-
18 ered security, a federal covered investment adviser, or a secur-
19 ity or transaction exempted by section 201, 202, or 203 except as
20 required under section 201(g).

21 Sec. 505. A person shall not make or cause to be made, in a
22 record that is used in an action or proceeding or filed under
23 this act, a statement that, at the time and in the light of the
24 circumstances under which it is made, is false or misleading in a
25 material respect, or, in connection with the statement, omit to
26 state a material fact necessary to make the statement made, in

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1 the light of the circumstances under which it was made, not false
2 or misleading.

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

16 Sec. 507. A broker-dealer, agent, investment adviser, fed-
17 eral covered investment adviser, or investment adviser represen-
18 tative is not liable to another broker-dealer, agent, investment
19 adviser, federal covered investment adviser, or investment
20 adviser representative for defamation relating to a statement
21 that is contained in a record required by the administrator, or
22 designee of the administrator, the securities and exchange com-
23 mission, or a self-regulatory organization, unless the person
24 knew, or should have known at the time that the statement was
25 made, that it was false in a material respect or the person acted
26 in reckless disregard of the statement's truth or falsity.

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

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

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

17 Sec. 509. (1) Enforcement of civil liability under this
18 section is subject to the securities litigation uniform standards
19 act of 1998.

20 (2) A person is liable to the purchaser if the person sells
21 a security in violation of section 301, or by means of an untrue
22 statement of a material fact or an omission to state a material
23 fact necessary in order to make the statement made, in light of
24 the circumstances under which it is made, not misleading, the
25 purchaser not knowing the untruth or omission, and the seller not
26 sustaining the burden of proof that the seller did not know and,
27 in the exercise of reasonable care, could not have known of the

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1 untruth or omission. All of the following apply to an action
2 under this subsection:

3 (a) The purchaser may maintain an action to recover the con-
4 sideration paid for the security, less the amount of any income
5 received on the security, and interest at 6% per year from the
6 date of the purchase, costs, and reasonable attorney fees deter-
7 mined by the court, upon the tender of the security, or for
8 actual damages as provided in subdivision (c).

9 (b) The tender referred to in subdivision (a) may be made
10 any time before entry of judgment. Tender requires only notice
11 in a record of ownership of the security and willingness to
12 exchange the security for the amount specified. A purchaser that
13 no longer owns the security may recover actual damages as pro-
14 vided in subdivision (c).

15 (c) Actual damages in an action arising under this subsec-
16 tion are the amount that would be recoverable upon a tender less
17 the value of the security when the purchaser disposed of it and
18 interest at 6% from the date of purchase, costs, and reasonable
19 attorney fees determined by the court.

20 (3) A person is liable to the seller if the person buys a
21 security by means of an untrue statement of a material fact or
22 omission to state a material fact necessary in order to make the
23 statement made, in light of the circumstances under which it is
24 made, not misleading, if the seller did not know of the untruth
25 or omission and the purchaser does not sustain the burden of
26 proving that the purchaser did not know, and in the exercise of
27 reasonable care could not have known, of the untruth or

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1 omission. All of the following apply to an action under this
2 subsection:

3 (a) The seller may maintain an action to recover the securi-
4 ty, any income received on the security, costs, and reasonable
5 attorney fees determined by the court, on the tender of the pur-
6 chase price, or for actual damages as provided in subdivision
7 (c).

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

15 (c) Actual damages in an action arising under this subsec-
16 tion are the difference between the price at which the security
17 was sold and the value the security would have had at the time of
18 the sale in the absence of the purchaser's conduct causing
19 liability, interest at 6% from the date of sale of the security,
20 costs, and reasonable attorney fees determined by the court.

21 (4) A person acting as a broker-dealer or agent that sells
22 or buys a security in violation of section 401(1), 402(1), or 506
23 is liable to the customer. The customer, if a purchaser, may
24 maintain an action for recovery of actual damages as specified in
25 subsection (2) or, if a seller, a remedy as specified in subsec-
26 tion (3).

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

8 (6) A person that receives, directly or indirectly, any con-
9 sideration for providing investment advice to another person and
10 that employs a device, scheme, or artifice to defraud the other
11 person or engages in an act, practice, or course of business that
12 operates or would operate as a fraud or deceit on the other
13 person is liable to the other person. The person defrauded may
14 maintain an action to recover the consideration paid for the
15 advice and the amount of any actual damages caused by the fraudu-
16 lent conduct that gives rise to liability under this subsection,
17 interest at 6% from the date of the fraudulent conduct, costs,
18 and reasonable attorney fees determined by the court, less the
19 amount of any income received as a result of the fraudulent
20 conduct. This subsection does not apply to a broker-dealer or
21 its agents if the investment advice provided is solely incidental
22 to transacting business as a broker-dealer and no special compen-
23 sation is received for the investment advice.

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

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

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

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

21 (d) A person that is a broker-dealer, agent, investment
22 adviser, or investment adviser representative that materially
23 aids the conduct giving rise to the liability under subsections
24 (2) to (6), unless the person sustains the burden of proving that
25 the person did not know and, in the exercise of reasonable care
26 could not have known, of the existence of the conduct by reason
27 of which liability is alleged to exist.

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

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

6 (10) A person may not obtain relief if an action is not com-
7 menced within 1 of the following time limits, as applicable:

8 (a) Under subsection (2) for violation of section 301, or
9 under subsection (4) or (5), unless the action is commenced
10 within [2 years] after the violation occurred.

11 (b) Under subsection (2), other than for violation of sec-
12 tion 301, or under subsection (3) or (6), unless the action is
13 commenced within the earlier of 2 years after discovery of the
14 facts constituting the violation or 5 years after the violation
15 occurred.

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

22 (12) A condition, stipulation, or provision binding a person
23 purchasing or selling a security or receiving investment advice
24 to waive compliance with this act or a rule adopted or order
25 issued under this act is void.

26 (13) The rights and remedies provided by this act are in
27 addition to any other rights or remedies that may exist, but this

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1 act does not create a cause of action not specified in this
2 section or section 411(5).

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

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

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

17 (ii) If the basis for relief under this section may have
18 been a violation of section 509(2), offers to repurchase the
19 security for cash, payable on delivery of the security, equal to
20 the consideration paid, and interest at 6% per year from the date
21 of purchase, less the amount of any income received on the secur-
22 ity, or, if the purchaser no longer owns the security, offers to
23 pay the purchaser upon acceptance of the offer damages in an
24 amount that would be recoverable upon a tender, less the value of
25 the security when the purchaser disposed of it, and interest at
26 6% from the date of purchase in cash equal to the damages
27 computed in the manner provided in this subsection.

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

12 (iv) If the basis for relief under this section may have
13 been a violation of section 509(4), and if the customer is a pur-
14 chaser, offers to pay as specified in subdivision (a)(ii) or, if
15 the customer is a seller, offers to tender or to pay as specified
16 in subdivision (a)(iii).

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

21 (vi) If the basis for relief under this section may have
22 been a violation of section 509(6), offers to reimburse in cash
23 the consideration paid for the advice and the amount of any
24 actual damages that may have been caused by the conduct, and
25 interest at 6% from the date of the violation causing the loss.

26 (vii) States that the offer must be accepted by the
27 purchaser, seller, or recipient of investment advice within 30

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1 days after the date of its receipt by the purchaser, seller, or
2 recipient of investment advice or within a shorter period of not
3 less than 3 days that the administrator, by order, specifies.

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

6 (c) The offer under subdivision (a) is delivered to the pur-
7 chaser, seller, or recipient of investment advice or sent in a
8 manner that ensures receipt by the purchaser, seller, or recipi-
9 ent of investment advice.

10 (d) The purchaser, seller, or recipient of investment advice
11 that accepts the offer under subdivision (a) in a record within
12 the period specified under subdivision (a)(vii) is paid in
13 accordance with the terms of the offer.

14 ARTICLE 6

15 ADMINISTRATION AND JUDICIAL REVIEW

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

17 (2) The administrator or officer, employee, or designee of
18 the administrator shall not use for personal benefit or the bene-
19 fit of others records or other information obtained by or filed
20 with the administrator that are not public under section 607(2).
21 This act does not authorize the administrator or an officer,
22 employee, or designee of the administrator to disclose the record
23 or information, except in accordance with section 602, 607(3), or
24 608.

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

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1 (4) The administrator may develop and implement investor
2 education initiatives to inform the public about investing in
3 securities, with particular emphasis on the prevention and detec-
4 tion of securities fraud. In developing and implementing these
5 initiatives, the administrator may collaborate with public and
6 nonprofit organizations with an interest in investor education.
7 The administrator may accept grants or donations from a person
8 that is not affiliated with the securities industry or from a
9 nonprofit organization, regardless of whether or not the organi-
10 zation is affiliated with the securities industry, to develop and
11 implement investor education initiatives. This subsection does
12 not authorize the administrator to require participation or mone-
13 tary contributions of a registrant in an investor education
14 program.

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

18 (a) The state treasurer shall deposit all fees and civil
19 fines received by the administrator under this act in the revolv-
20 ing fund.

21 (b) Money appropriated to the revolving fund shall not
22 revert to the general fund at the close of the fiscal year but
23 shall remain in the revolving fund.

24 (c) Upon appropriation, the administrator shall spend money
25 in the revolving fund only for the purposes and in the manner
26 provided in subdivision (d).

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

4 (i) Investigations of the office of financial and insurance
5 services involving securities.

6 (ii) Actions to enforce this act.

7 (iii) Providing educational programs for the public that are
8 related to the operations of the office of financial and insur-
9 ance services as provided in subsection (4).

10 Sec. 602. (1) The administrator may do any of the
11 following:

12 (a) Conduct public or private investigations in or out of
13 this state that the administrator considers necessary or appro-
14 priate to determine whether any person has violated, is violat-
15 ing, or is about to violate this act or a rule adopted or order
16 issued under this act, or to aid in the enforcement of this act
17 or the adoption of rules and forms under this act.

18 (b) Require or permit a person to testify, file a statement,
19 or produce a record, under oath or otherwise as the administrator
20 determines, as to all the facts and circumstances concerning a
21 matter to be investigated or about which an action or proceeding
22 is to be commenced.

23 (c) Publish a record concerning an action, proceeding, or
24 investigation under, or a violation of, this act or a rule
25 adopted or order issued under this act if the administrator
26 determines it is necessary or appropriate in the public interest
27 and for the protection of investors.

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1 (2) For the purpose of an investigation under this act, the
2 administrator or a designated officer may administer oaths and
3 affirmations, subpoena witnesses, seek compulsion of attendance,
4 take evidence, require the filing of statements, and require the
5 production of any records that the administrator considers rele-
6 vant or material to the investigation.

7 (3) If a person fails to appear or refuses to testify, file
8 a statement, produce records, or otherwise fails to obey a sub-
9 poena as required by the administrator under this act, the admin-
10 istrator may refer the matter to the attorney general or the
11 proper prosecuting attorney, who may apply to the circuit court
12 of Ingham county or a court of another state to enforce
13 compliance. The court may do any of the following:

14 (a) Hold the person in contempt.

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

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

18 (d) Order the production of records.

19 (e) Grant injunctive relief, including restricting or pro-
20 hibiting the offer or sale of securities or the providing of
21 investment advice.

22 (f) Order a civil fine of not less than \$10,000.00 and not
23 more than \$500,000.00 for each violation.

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

25 (4) This section does not preclude a person from applying to
26 the circuit court of Ingham county or a court of another state

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1 for appropriate relief from a request to appear, testify, file a
2 statement, produce records, or obey a subpoena.

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

21 (6) At the request of the securities regulator of another
22 state or a foreign jurisdiction, the administrator may provide
23 assistance if the requesting regulator states that it is conduct-
24 ing an investigation to determine whether a person has violated,
25 is violating, or is about to violate a law or rule of the other
26 state or foreign jurisdiction relating to securities matters
27 which the requesting regulator administers or enforces. The

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

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

25 (2) In an action under this section and upon a proper show-
26 ing, the court may do any of the following:

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1 (a) Issue a permanent or temporary injunction, restraining
2 order, or a declaratory judgment.

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

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

9 (ii) An order to the administrator to take charge and con-
10 trol of a defendant's property, including investment accounts and
11 accounts in a depository institution, rents, and profits, to col-
12 lect debts, and to acquire and dispose of property.

13 (iii) The imposition of a civil fine of not more than
14 \$10,000.00 for a single violation or \$500,000.00 for multiple
15 violations.

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

21 (v) An order for the payment of prejudgment and postjudgment
22 interest.

23 (c) Granting other relief that the court considers
24 appropriate.

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

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

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

14 (b) Issue an order denying, suspending, revoking, or condi-
15 tioning the exemptions for a broker-dealer under section
16 401(2)(a)(iv) or (vi) or an investment adviser under section
17 403(2)(a)(iii).

18 (c) Issue an order under section 204.

19 (2) An order under subsection (1) is effective on the date
20 of issuance. Upon issuance of the order, the administrator shall
21 promptly serve each person subject to the order with a copy of
22 the order and a notice that the order has been entered. The
23 order shall include a statement whether the administrator will
24 seek a civil penalty or costs of the investigation, a statement
25 of the reasons for the order, and notice that the matter will be
26 scheduled for a hearing within 15 days after receipt of a request
27 in a record from the person. If a person subject to the order

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1 does not request a hearing and none is ordered by the
2 administrator within 30 days after the date of service of the
3 order, the order becomes final as to that person. If a hearing
4 is requested or ordered, the administrator, after notice of and
5 opportunity for hearing to each person subject to the order, may
6 modify or vacate the order or extend it until final
7 determination.

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

16 (4) In a final order, the administrator may impose a civil
17 fine of not more than \$10,000.00 for a single violation or
18 \$500,000.00 for multiple violations.

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

22 (6) If a petition for judicial review of a final order is
23 not filed in accordance with section 609, the administrator may
24 file a certified copy of the final order with the clerk of a
25 court of competent jurisdiction. The filed order shall have the
26 same effect as a judgment of the court and may be recorded,

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1 enforced, or satisfied in the same manner as a judgment of the
2 court.

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

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

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

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

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

25 (2) A rule or form shall not be adopted or amended or an
26 order issued or amended under this act unless the administrator
27 finds that the rule, form, order, or amendment is necessary or

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

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

17 (a) Subject to section 15(h) of the securities exchange act
18 of 1934, 15 U.S.C. 78o, and section 222 of the investment advis-
19 ers act of 1940, 15 U.S.C. 80b-18a, the form and content of
20 financial statements required under this act.

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

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

25 (4) The administrator may provide interpretative opinions or
26 issue determinations that the administrator will not institute a
27 proceeding or an action under this act against a specified person

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

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

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

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

25 (2) The administrator shall make all rules, forms, interpre-
26 tative opinions, and orders available to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) Maximizing effectiveness of regulation for the protec-
13 tion of investors.

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

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

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

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

24 (b) Developing and maintaining uniform forms.

25 (c) Conducting a joint examination or investigation.

26 (d) Holding a joint administrative hearing.

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

3 (f) Sharing and exchanging personnel.

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

6 (h) Sharing and exchanging records.

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

9 (j) Formulating common systems and procedures.

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

12 (l) Attending conferences and other meetings among securi-
13 ties regulators, which may include representatives of governmen-
14 tal and private organizations involved in capital formation, con-
15 sidered to be necessary or appropriate to promote or achieve
16 uniformity.

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

20 Sec. 609. (1) Final orders issued by the administrator
21 under this act are subject to judicial review pursuant to the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
23 24.328.

24 (2) Rules adopted under this act are subject to judicial
25 review pursuant to the administrative procedures act of 1969,
26 1969 PA 306, MCL 24.201 to 24.328.

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1 Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1),
2 404(1), 501, 506, 509, and 510 apply to a person that sells or
3 offers to sell a security if the offer to sell or the sale is
4 made in this state or the offer to purchase or the purchase is
5 made and accepted in this state.

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

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

15 (a) It originates from this state.

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

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

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

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

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

14 (a) The program or communication is syndicated and distrib-
15 uted from outside this state for redistribution to the general
16 public in this state.

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

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

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

4 (6) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply
5 to a person if the person engages in an act, practice, or course
6 of business instrumental in effecting prohibited or actionable
7 conduct in this state, whether or not either party is then
8 present in this state.

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

21 (2) If a person, including a nonresident of this state,
22 engages in an act, practice, or course of business prohibited or
23 made actionable by this act or a rule adopted or order issued by
24 the administrator under this act and the person has not filed a
25 consent to service of process under subsection (1), that act,
26 practice, or course of business constitutes the appointment of
27 the administrator as the person's agent for service of process in

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1 a noncriminal action or proceeding against the person, the
2 person's successor, or personal representative.

3 (3) Service under subsection (1) or (2) may be made by pro-
4 viding a copy of the process to the office of the administrator,
5 but it is not effective unless both of the following are met:

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

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

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

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

25 Sec. 612. If any provision of this act or its application
26 to any person or circumstances is held invalid, the invalidity
27 does not affect other provisions or applications of this act that

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1 can be given effect without the invalid provision or application,
2 and to this end, the provisions of this act are severable.

3 ARTICLE 7

4 TRANSITION

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

7 Sec. 702. The uniform securities act, 1964 PA 265, MCL
8 451.501 to 451.818, is repealed.

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

17 (2) All effective registrations under the predecessor act,
18 all administrative orders relating to the registrations, state-
19 ments of policy, interpretative opinions, declaratory rulings, no
20 action determinations, and all conditions imposed upon the regis-
21 trations under the predecessor act remain in effect for the same
22 time period they would have remained in effect if this act had
23 not been enacted. They are considered to have been filed,
24 issued, or imposed under this act, but are exclusively governed
25 by the predecessor act.

26 (3) The predecessor act exclusively governs any offer or
27 sale made within 1 year after the effective date of this act

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1 pursuant to an offering made in good faith before the effective
2 date of this act on the basis of an exemption available under the
3 predecessor act.