

HOUSE BILL No. 6338

September 18, 2002, Introduced by Rep. Richner and referred to the Committee on Insurance and Financial Services.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

GENERAL PROVISIONS

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

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

3 (a) "Administrator" means the office of financial and 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.

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

17 (i) A banking institution organized under the laws of the
18 United States.

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

20 (iii) Any other banking institution that meets all of the
21 following:

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

24 (B) A substantial portion of its business consists of
25 receiving deposits or exercising fiduciary powers similar to
26 those permitted to be exercised by national banks under the

1 authority of the comptroller of the currency pursuant to section
2 1 of Public Law 87-722, 12 U.S.C. 92a.

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

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

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

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

13 (i) An agent.

14 (ii) An issuer.

15 (iii) A bank or savings institution if its activities as a
16 broker-dealer are limited to those specified in subsections
17 3(a)(4)(B)(i) to (vi), (viii) to (x), or if limited to unsolici-
18 ted transactions, (xi); 3(a)(5)(B); and 3(a)(5)(C) of the securi-
19 ties exchange act of 1934, 15 U.S.C. 78c, or the bank satisfies
20 the conditions described in subsection 3(a)(4)(E) of the securi-
21 ties exchange act of 1934, 15 U.S.C. 78c.

22 (iv) An international banking institution.

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

24 (e) "Depository institution" means a bank; or a savings
25 institution, trust company, credit union, or similar institution
26 that is organized or chartered under the laws of a state or of
27 the United States, authorized to receive deposits, and supervised

1 and examined by an official or agency of a state or the United
2 States if its deposits or share accounts are insured by the fed-
3 eral deposit insurance corporation, the national credit union
4 share insurance fund, or a successor authorized by federal law.
5 The term does not include any of the following:

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

8 (ii) A Morris Plan bank.

9 (iii) An industrial loan company.

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

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

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

19 (i) "Finder" means a person who, for consideration, partici-
20 pates in the offer to sell, sale, or purchase of securities by
21 locating, introducing, or referring potential purchasers or
22 sellers. Finder does not include a person whose actions are
23 solely incidental to a transaction exempt pursuant to section
24 202(1)(r). The administrator may by rule or order exclude other
25 persons from this definition.

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

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

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

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

7 (i) A depository institution or international banking
8 institution.

9 (ii) An insurance company.

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

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

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

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

24 (vii) A plan established and maintained by a state, a polit-
25 ical subdivision of a state, or an agency or instrumentality of a
26 state or a political subdivision of a state for the benefit of
27 its employees, if the plan has total assets in excess of

1 \$10,000,000.00 or its investment decisions are made by the duly
2 designated public official or by a named fiduciary, as defined in
3 the employee retirement income security act of 1974, that is a
4 broker-dealer registered under the securities exchange act of
5 1934, an investment adviser registered or exempt from registra-
6 tion under the investment advisers act of 1940, an investment
7 adviser registered under this act, a depository institution, or
8 an insurance company.

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

15 (ix) An organization described in section 501(c)(3) of the
16 internal revenue code, 26 U.S.C. 501, a corporation,
17 Massachusetts or similar business trust, limited liability com-
18 pany, or partnership, not formed for the specific purpose of
19 acquiring the securities offered, with total assets in excess of
20 \$10,000,000.00.

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

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

1 (xii) A federal covered investment adviser acting for its
2 own account.

3 (xiii) A "qualified institutional buyer" as defined in rule
4 144A(a)(1), other than rule 144A(a)(1)(H), adopted under the
5 securities act of 1933, 17 C.F.R. 230.144A(a)(1).

6 (xiv) A "major U.S. institutional investor" as defined in
7 rule 15a-6(b)(4)(i) adopted under the securities exchange act of
8 1934, 17 C.F.R. 240.15a-6(b)(4)(i).

9 (xv) Any other institutional investor with total assets in
10 excess of \$10,000,000.00 not organized for the specific purpose
11 of evading this act.

12 (xvi) Any other person specified by rule or order under this
13 act.

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

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

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

25 (e) "Investment adviser" means a person that, for compensa-
26 tion, engages in the business of advising others, either directly
27 or through publications or writings, as to the value of

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

10 (i) An investment adviser representative.

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

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

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

21 (v) A federal covered investment adviser.

22 (vi) A bank or savings institution.

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

25 (viii) Any other person excluded by rule or order under this
26 act.

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

12 (i) Performs only clerical or ministerial acts.

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

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

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

26 (B) Has a "place of business" in this state as that term is
27 defined by rule adopted under section 203A of the investment

1 advisers act of 1940, 15 U.S.C. 80b-3a, and is not a "supervised
2 person" as that term is defined in section 202(a)(25) of the
3 investment advisers act of 1940, 15 U.S.C. 80b-2.

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

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

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

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

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

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

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 1 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.

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 an attempt or offer to dis-
24 pose of, or solicitation of an offer to purchase, a security or
25 interest in a security for value. Both terms include any of the
26 following:

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 every sale or offer of a security that gives the holder a present
10 or 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 security, certificate of depos-
25 it, or group or index of securities; put, call, straddle, option,
26 or privilege entered into on a national securities exchange
27 relating to foreign currency; an investment in a viatical or life

1 settlement agreement; or, in general, an interest or instrument
2 commonly known as a "security"; or a certificate of interest or
3 participation in, temporary or interim certificate for, receipt
4 for, guarantee of, or warrant or right to subscribe to or pur-
5 chase, any of the foregoing. All of the following apply to the
6 term:

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.

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 sum of money either in a lump sum or periodi-
4 cally 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 an investment in a common enterprise
9 with the expectation of profits to be derived primarily from the
10 efforts of a person other than the investor. As used in this
11 subparagraph, a "common enterprise" means an enterprise in which
12 the fortunes of the investor are interwoven with those of either
13 the person offering the investment, a third party, or other
14 investors.

15 (vi) The term "investment contract" or "contractual or
16 quasi-contractual arrangement" may include, among other con-
17 tracts, an interest in a limited partnership, a limited liability
18 company, or a limited liability partnership.

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

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

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.

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
23 order, adopt and apply an amendment or successor to a federal
24 statute defined in subsection (1) or rules and regulations
25 adopted under a federal statute defined in subsection (1), a fed-
26 eral statute that is similar to a federal statute defined in
27 subsection (1), or a rule or regulation that is similar to a rule

1 or regulation adopted under a federal statute defined in
2 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.

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 by the federal deposit insurance
15 corporation, the national credit union share insurance fund, or a
16 successor authorized by federal law or exercising fiduciary
17 powers that are similar to those permitted for national banks
18 under the authority of the comptroller of currency pursuant to
19 section 1 of Public Law 87-722, 12 U.S.C. 92a.

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

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

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

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

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

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

9 (f) A federal covered security specified in section 18(b)(1)
10 of the securities act of 1933, 15 U.S.C. 77r, or a security
11 listed or approved for listing on another appropriate securities
12 market specified by rule under this act; a put or a call option
13 contract; warrant; a subscription right on or with respect to
14 those securities; or an option or similar derivative security on
15 a security or an index of securities or foreign currencies issued
16 by a clearing agency registered under the securities exchange act
17 of 1934 and listed or designated for trading on a national secur-
18 ities exchange, a facility of a national securities exchange, or
19 a facility of a national securities association registered under
20 the securities exchange act of 1934 or an offer or sale, of the
21 underlying security in connection with the offer, sale, or exer-
22 cise of an option or other security that was exempt under this
23 section when the option or other security was written or issued.
24 For purposes of this subdivision, a derivative security is simi-
25 lar to an option if it has been designated by the securities and
26 exchange commission under section 9(b) of the securities exchange
27 act of 1934, 15 U.S.C. 78i.

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

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

21 (ii) To file a request for exemption authorization for which
22 a rule under this act may specify the scope of the exemption; the
23 requirement of an offering statement; the filing of sales and
24 advertising literature; the filing of consent to service of pro-
25 cess; and grounds for denial or suspension of the exemption.

26 (iii) To register under section 304.

1 (h) A member's or owner's interest in, or a retention
2 certificate or like security given in lieu of a cash patronage
3 dividend issued by, a cooperative organized and operated as a
4 nonprofit membership cooperative under the cooperative laws of a
5 state, but not a member's or owner's interest, retention certifi-
6 cate, or like security sold to persons other than bona fide mem-
7 bers of the cooperative.

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

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

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

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

24 (i) The issuer of the security is engaged in business, the
25 issuer is not in the organizational stage or in bankruptcy or
26 receivership, and the issuer is not a blank check, blind pool, or
27 shell company whose primary plan of business is to engage in a

1 merger or combination of the business with, or an acquisition of,
2 an unidentified person.

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

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

9 (iv) One of the following:

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

14 (I) A description of the business and operations of the
15 issuer.

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

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

23 (IV) An audited income statement for each of the issuer's 2
24 immediately previous fiscal years or for the period of existence
25 of the issuer, whichever is shorter, or, in the case of a reorga-
26 nization or merger when each party to the reorganization or

1 merger had audited income statements, a pro forma income
2 statement.

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

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

22 (d) A nonissuer transaction by or through a broker-dealer
23 registered or exempt from registration under this act in an out-
24 standing security if the guarantor of the security files reports
25 with the securities and exchange commission under the reporting
26 requirements of section 13 or 15(d) of the securities exchange
27 act of 1934, 15 U.S.C. 78m or 78o.

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

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

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

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

14 (B) The issuer is engaged in business, is not in the organi-
15 zational stage or in bankruptcy or receivership, and is not and
16 has not been within the previous 12 months a blank check, blind
17 pool, or shell company whose primary plan of business is to
18 engage in a merger or combination of the business with, or an
19 acquisition of, an unidentified person.

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

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

25 (h) A nonissuer transaction with a federal covered invest-
26 ment adviser with investments under management in excess of

1 \$100,000,000.00 acting in the exercise of discretionary authority
2 in a signed record for the account of others.

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

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

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

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

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

24 (i) The note, bond, debenture, or other evidence of indebt-
25 edness is offered and sold with a mortgage or other security
26 agreement as a unit.

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

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

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

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

10 (i) An institutional investor.

11 (ii) A federal covered investment adviser.

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

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

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

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

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

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

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

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

13 (i) A registration or offering statement or similar record
14 as required under the securities act of 1933 has been filed, but
15 is not effective, or the offer is made in compliance with rule
16 165 adopted under the securities act of 1933, 17 C.F.R. 230.165.

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

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

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

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

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

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

14 (s) A rescission offer, sale, or purchase under section
15 510.

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

21 (u) An offer or sale of a security pursuant to an employee's
22 stock purchase, savings, option, profit-sharing, pension, or sim-
23 ilar employees' benefit plan, including any securities, plan
24 interests, and guarantees issued under a compensatory benefit
25 plan or compensation contract, contained in a record, established
26 by the issuer, its parents, its majority-owned subsidiaries, or

1 the majority-owned subsidiaries of the issuer's parent for the
2 participation of their employees including any of the following:

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

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

8 (iii) Former employees, directors, general partners, trust-
9 ees, officers, consultants, and advisors if those individuals
10 were employed by or providing services to the issuer when the
11 securities were offered.

12 (iv) Insurance agents who are exclusive insurance agents of
13 the issuer, its subsidiaries or parents, or who derive more than
14 50% of their annual income from those organizations.

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

16 (i) A stock dividend or equivalent equity distribution,
17 whether the corporation or other business organization distribut-
18 ing the dividend or equivalent equity distribution is the issuer
19 or not, if nothing of value is given by stockholders or other
20 equity holders for the dividend or equivalent equity distribution
21 other than the surrender of a right to a cash or property divi-
22 dend if each stockholder or other equity holder may elect to take
23 the dividend or equivalent equity distribution in cash, property,
24 or stock.

25 (ii) An act incident to a judicially approved reorganization
26 in which a security is issued in exchange for 1 or more

1 outstanding securities, claims, or property interests, or partly
2 in exchange and partly for cash.

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

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

13 (2) For purposes of subsection (1)(i), both of the following
14 apply:

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

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

24 Sec. 203. A rule or order under this act may exempt a
25 security, transaction, or offer, or a rule under this act may
26 exempt a class of securities, transactions, or offers, from any
27 or all of the requirements of sections 301 to 306 and 504, and an

1 order under this act may waive any or all of the conditions for
2 an exemption or offers under sections 201 and 202. The adminis-
3 trator may suspend an application or a rule or order under this
4 act and the administrator may revoke an exemption or waiver cre-
5 ated under this section, but may only do so prospectively.

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

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

20 ARTICLE 3

21 REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED 22 SECURITIES

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

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

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

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):

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, the issuer shall file all of the following:

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

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

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

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

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,

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.

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

(9) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933, 15 U.S.C. 77r, a rule under this act may require a notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, a consent to service of process signed by the issuer not later than 15 days after the first sale of the federal covered security in this state, a fee of \$100.00.

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

Sec. 303. (1) A security for which a registration statement has been filed under the securities act of 1933 in connection

1 with the same offering may be registered by coordination under
2 this section.

3 (2) A registration statement and accompanying records under
4 this section must contain or be accompanied by all of the follow-
5 ing records in addition to the information specified in section
6 305 and a consent to service of process complying with section
7 611:

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

10 (b) A copy of the articles of incorporation and bylaws or
11 their substantial equivalents currently in effect, a copy of any
12 agreement with or among underwriters, a copy of any indenture or
13 other instrument governing the issuance of the security to be
14 registered, and a specimen, copy, or description of the security
15 that is required by rule or order under this act.

16 (c) Copies of any other information, or any other records,
17 filed by the issuer under the securities act of 1933 requested by
18 the administrator.

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

23 (3) A registration statement under this section becomes
24 effective simultaneously with or subsequent to the federal regis-
25 tration statement when all the following conditions are
26 satisfied:

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

5 (b) The registration statement has been on file for at least
6 20 days or a shorter period provided by rule or order under this
7 act.

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

21 (5) If the federal registration statement becomes effective
22 before each of the conditions in this section is satisfied or is
23 waived by the administrator, the registration statement is auto-
24 matically effective under this act when all the conditions are
25 satisfied or waived. If the registrant notifies the administra-
26 tor of the date when the federal registration statement is
27 expected to become effective, the administrator shall promptly

1 notify the registrant by telegram, telephone, or electronic means
2 and promptly confirm this notice by a record, indicating whether
3 all the conditions are satisfied or waived and whether the admin-
4 istrator intends the institution of a proceeding under section
5 306. The notice by the administrator does not preclude the
6 institution of a proceeding under section 306.

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

9 (2) A registration statement under this section must contain
10 the information specified in section 305, a consent to service of
11 process complying with section 611, and, if provided by rule
12 under this act, all of the following information and the follow-
13 ing records:

14 (a) With respect to the issuer and any significant subsid-
15 iary, its name, address, and form of organization, the state or
16 foreign jurisdiction and date of its organization, the general
17 character and location of its business, a description of its
18 physical properties and equipment, and a statement of the general
19 competitive conditions in the industry or business in which it is
20 or will be engaged.

21 (b) With respect to each director and officer of the issuer,
22 and other person having a similar status or performing similar
23 functions, the person's name, address, and principal occupation
24 for the previous 5 years, the amount of securities of the issuer
25 held by the person as of the thirtieth day before the filing of
26 the registration statement, the amount of the securities covered
27 by the registration statement to which the person has indicated

1 an intention to subscribe, and a description of any material
2 interest of the person in any material transaction with the
3 issuer or a significant subsidiary effected within the previous 3
4 years or proposed to be effected.

5 (c) With respect to persons covered by subdivision (b), the
6 aggregate sum of the remuneration paid to those persons during
7 the previous 12 months and estimated to be paid during the next
8 12 months, directly or indirectly, by the issuer, and all prede-
9 cessors, parents, subsidiaries, and affiliates of the issuer.

10 (d) With respect to a person owning of record or owning ben-
11 eficially, if known, 10% or more of the outstanding shares of any
12 class of equity security of the issuer, the information specified
13 in subdivision (b) other than the person's occupation.

14 (e) With respect to a promoter if the issuer was organized
15 within the previous 3 years, the information specified in subdi-
16 vision (b), any amount paid to the promoter within that period or
17 intended to be paid to the promoter, and the consideration for
18 the payment.

19 (f) With respect to a person on whose behalf any part of the
20 offering is to be made in a nonissuer distribution, the person's
21 name and address, the amount of securities of the issuer held by
22 the person as of the date of the filing of the registration
23 statement, a description of any material interest of the person
24 in any material transaction with the issuer or any significant
25 subsidiary effected within the previous 3 years or proposed to be
26 effected, and a statement of the reasons for making the
27 offering.

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

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

1 distribution of any securities that are to be offered otherwise
2 than through an underwriter.

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

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

23 (k) The dates of, parties to, and general effect concisely
24 stated of each managerial or other material contract made or to
25 be made otherwise than in the ordinary course of business to be
26 performed in whole or in part at or after the filing of the

1 registration statement or that was made within the previous 2
2 years, and a copy of the contract.

3 (l) A description of any pending litigation, action, or pro-
4 ceeding to which the issuer is a party and that materially
5 affects its business or assets, including any litigation, action,
6 or proceeding known to be contemplated by governmental
7 authorities.

8 (m) A copy of any prospectus, pamphlet, circular, form
9 letter, advertisement, or other sales literature intended as of
10 the effective date to be used in connection with the offering and
11 any solicitation of interest used in compliance with section
12 202(q)(ii).

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

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

24 (p) A signed or conformed copy of a consent of any accoun-
25 tant, engineer, appraiser, or other person whose profession gives
26 authority for a statement made by the person, if the person is
27 named as having prepared or certified a report or valuation,

1 other than an official record, that is public, which is used in
2 connection with the registration statement.

3 (q) A balance sheet of the issuer as of a date within 4
4 months before the filing of the registration statement, a state-
5 ment of income and changes in financial position for each of the
6 3 fiscal years preceding the date of the balance sheet and for
7 any period between the close of the immediately previous fiscal
8 year and the date of the balance sheet, or for the period of the
9 issuer's and any predecessor's existence if less than 3 years,
10 and, if any part of the proceeds of the offering is to be applied
11 to the purchase of a business, the financial statements that
12 would be required if that business were the registrant.

13 (r) Any additional or alternative information required by
14 rule or order under this act.

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

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

22 (b) The administrator has not issued an order under section
23 306(3) delaying effectiveness.

24 (c) The applicant or registrant has not requested that
25 effectiveness be delayed.

26 (4) The administrator may delay effectiveness once for not
27 more than 90 days if the administrator determines the

1 registration statement is not complete in all material respects
2 and promptly notifies the applicant or registrant of that
3 determination. The administrator may also delay effectiveness
4 for a further period of not more than 30 days if the administra-
5 tor determines that the delay is necessary or appropriate.

6 (5) A rule or order under this act may require as a condi-
7 tion of registration under this section that a prospectus con-
8 taining a specified part of the information specified in subsec-
9 tion (2) be sent or given to each person to which an offer is
10 made, before or concurrently with the earliest of any of the
11 following:

12 (a) The first offer made in a record to the person otherwise
13 than by means of a public advertisement, by or for the account of
14 the issuer or another person on whose behalf the offering is
15 being made, or by an underwriter or broker-dealer that is offer-
16 ing part of an unsold allotment or subscription taken by the
17 person as a participant in the distribution.

18 (b) The confirmation of any sale made by or for the account
19 of the person.

20 (c) Payment pursuant to a sale made by or for the account of
21 the person.

22 (d) Delivery of the security pursuant to a sale made by or
23 for the account of the person.

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

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

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

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

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

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

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

23 (5) In the case of a nonissuer distribution, information
24 shall not be required under subsection (9) or section 304, unless
25 it is known to the person filing the registration statement or to
26 the person on whose behalf the distribution is to be made, or

1 unless it can be furnished by those persons without unreasonable
2 effort or expense.

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

15 (7) A rule or order under this act may require as a condi-
16 tion of registration that a security registered under this act be
17 sold only on a specified form of subscription or sale contract
18 and that a signed or conformed copy of each contract be filed
19 under this act or preserved for a period of not more than 5
20 years.

21 (8) Except while a stop order is in effect under section
22 306, a registration statement is effective for 1 year after its
23 effective date, or for a longer period designated in an order
24 under this act during which the security is being offered or dis-
25 tributed in a nonexempted transaction by or for the account of
26 the issuer or other person on whose behalf the offering is being
27 made or by an underwriter or broker-dealer that is still offering

1 part of an unsold allotment or subscription taken as a
2 participant in the distribution. For the purposes of a nonissuer
3 transaction, all outstanding securities of the same class identi-
4 fied in the registration statement as a security registered under
5 this act are considered to be registered while the registration
6 statement is effective. If any securities of the same class are
7 outstanding, a registration statement may not be withdrawn until
8 1 year after its effective date. A registration statement may be
9 withdrawn only with the approval of the administrator.

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

15 (10) A registration statement may be amended after its
16 effective date. The posteffective amendment becomes effective
17 when the administrator so orders. If a posteffective amendment
18 is made to increase the number of securities specified to be
19 offered or sold, the person filing the amendment shall pay a reg-
20 istration fee calculated in the manner specified in subsection
21 (2). A posteffective amendment relates back to the date of the
22 offering of the additional securities being registered if the
23 amendment is filed and the additional registration fee is paid
24 within 1 year after the date of the sale.

25 Sec. 306. (1) The administrator may issue a stop order
26 denying effectiveness to, or suspending or revoking the
27 effectiveness of, a registration statement if the administrator

1 finds that the order is in the public interest and that 1 or more
2 of the following apply:

3 (a) The registration statement as of its effective date or
4 before the effective date in the case of an order denying effec-
5 tiveness, an amendment under section 305(10) as of its effective
6 date, or a report under section 305(9) is incomplete in a mate-
7 rial respect or contains a statement that, in the light of the
8 circumstances under which it was made, was false or misleading
9 with respect to a material fact.

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

20 (c) The security registered or sought to be registered is
21 the subject of a permanent or temporary injunction of a court of
22 competent jurisdiction or an administrative stop order or similar
23 order issued under any federal, foreign, or state law other than
24 this act applicable to the offering, but the administrator shall
25 not institute a proceeding against an effective registration
26 statement under this paragraph more than 1 year after the date of
27 the order or injunction on which it is based, and the

1 administrator shall not issue an order under this subdivision on
2 the basis of an order or injunction issued under the securities
3 act of another state unless the order or injunction was based on
4 facts that would constitute, as of the date of the order, a
5 ground for a stop order under this section.

6 (d) The issuer's enterprise or method of business includes
7 or would include activities that are illegal where performed.

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

11 (f) The applicant or registrant has not paid the proper
12 filing fee, but the administrator may issue only a stop order
13 under this subdivision and shall void the order if the deficiency
14 is corrected.

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

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

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

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

24 (2) To the extent practicable, the administrator by rule or
25 order under this act shall publish guidelines that provide notice
26 of conduct that violates subsection (1)(g).

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

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

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

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

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

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

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

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

16 ARTICLE 4

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

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

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

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

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

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

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

8 (iii) An institutional investor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (ii) An individual from Canada or other foreign jurisdiction
27 who is resident in this state and whose transactions are in a

1 self-directed tax advantaged retirement plan in that foreign
2 jurisdiction of which the individual is the holder or
3 contributor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Federal covered investment advisers, investment advisers
2 registered under this act, or broker-dealers registered under
3 this act.

4 (ii) Institutional investors.

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

9 (iv) Any other client exempted by rule or order under this
10 act.

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

15 (c) Any other person exempted by rule or order under this
16 act.

17 (3) An investment adviser shall not, directly or indirectly,
18 employ or associate with an individual to engage in an activity
19 related to investment advice in this state if the registration of
20 the individual is suspended or revoked, or the individual is
21 barred from employment or association with an investment adviser,
22 federal covered investment adviser, or broker-dealer by an order
23 under this act, the securities and exchange commission, or a
24 self-regulatory organization, unless the investment adviser did
25 not know, and in the exercise of reasonable care could not have
26 known, of the suspension, revocation, or bar. If the investment

1 adviser request and good cause is shown, the administrator, by
2 order, may waive the prohibitions of this subsection.

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

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

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

16 (a) An individual who is employed by or associated with an
17 investment adviser that is exempt from registration under section
18 403(2) or a federal covered investment adviser that is excluded
19 from the notice filing requirements of section 405.

20 (b) Any other individual exempted by rule or order under
21 this act.

22 (3) The registration of an investment adviser representative
23 is not effective while the investment adviser representative is
24 not employed by or associated with an investment adviser regis-
25 tered under this act or a federal covered investment adviser that
26 has made or is required to make a notice filing under section
27 405.

1 (4) An individual may transact business as an investment
2 adviser representative for more than 1 investment adviser or fed-
3 eral covered investment adviser unless a rule or order under this
4 act prohibits or limits an individual from acting as an invest-
5 ment adviser representative for more than 1 investment adviser or
6 federal covered investment adviser.

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

18 (6) An investment adviser registered under this act, a fed-
19 eral covered investment adviser that has filed a notice under
20 section 405, or a broker-dealer registered under this act is not
21 required to employ or associate with an individual as an invest-
22 ment adviser representative when the sole compensation paid to
23 the individual for a referral of investment advisory clients is
24 paid to an investment adviser registered under this act, a fed-
25 eral covered investment adviser who has filed a notice under sec-
26 tion 405, or a broker-dealer registered under this act with which

1 the individual is employed or associated as an investment adviser
2 representative.

3 Sec. 405. (1) Except with respect to a federal covered
4 investment adviser described in subsection (2), a federal covered
5 investment adviser shall not transact business in this state
6 unless the federal covered investment adviser complies with sub-
7 section (3).

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

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

13 (i) Federal covered investment advisers, investment advisers
14 registered under this act, and 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.

19 (iv) Other clients specified by rule or order under this
20 act.

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

26 (c) Any other person excluded by rule or order under this
27 act.

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

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

9 Sec. 406. (1) A person shall register as a broker-dealer,
10 agent, investment adviser, or investment adviser representative
11 by filing an application and a consent to service of process com-
12 plying with section 611 and paying the fee specified in section
13 410 and any reasonable fees charged by the designee of the admin-
14 istrator for processing the filing. Each application must con-
15 tain both of the following:

16 (a) The information required for the filing of a uniform
17 application.

18 (b) If requested by the administrator, any other financial
19 or other information that the administrator determines is
20 appropriate.

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

25 (3) If an order is not in effect and no proceeding is pend-
26 ing under section 412, registration becomes effective at 12 noon
27 on the forty-fifth day after a completed application is filed

1 unless the registration is denied. A rule or order under this
2 act may set an earlier effective date or may defer the effective
3 date until 12 noon on the forty-fifth day after the filing of any
4 amendment completing the application.

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

12 (5) A rule or order under this act may impose other condi-
13 tions not inconsistent with the national securities markets
14 improvement act of 1996, Public Law 104-290, 110 Stat. 3416, or
15 an order under this act may waive specific requirements in con-
16 nection with registration if the imposition or waiver is appro-
17 priate in the public interest and for the protection of
18 investors.

19 Sec. 407. (1) A broker-dealer or investment adviser may
20 succeed to the current registration of another broker-dealer or
21 investment adviser or a notice filing of a federal covered
22 investment adviser, and a federal covered investment adviser may
23 succeed to the current registration of an investment adviser or
24 notice filing of another federal covered investment adviser, by
25 filing as a successor an application for registration under sec-
26 tion 401 or 403, or a notice under section 405, for the unexpired
27 portion of the current registration or notice filing.

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

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

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

23 Sec. 408. (1) If an agent registered under this act termi-
24 nates employment by or association with a broker-dealer or
25 issuer, if an investment adviser representative terminates
26 employment by or association with an investment adviser or
27 federal covered investment adviser, or if either registrant

1 terminates activities that require registration as an agent or
2 investment adviser representative, the broker-dealer, investment
3 adviser, or federal covered investment adviser shall promptly
4 file a notice of termination. If the registrant learns that the
5 broker-dealer, issuer, investment adviser, or federal covered
6 investment adviser has not filed the notice, the registrant may
7 file the notice.

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

24 (a) If the agent's central registration depository record or
25 successor record or the investment adviser representative's
26 investment adviser registration depository record or successor
27 record does not contain a new or amended disciplinary disclosure

1 within the previous 12 months, the registration is immediately
2 effective as of the date of the completed filing.

3 (b) If the agent's central registration depository record or
4 the investment adviser representative's investment adviser regis-
5 tration depository record contains a new or amended disciplinary
6 disclosure within the preceding 12 months, the registration is
7 temporarily effective as of the date of the completed filing.

8 (3) If there are grounds for discipline under section 412,
9 the administrator may withdraw a temporary registration within 30
10 days after the application is filed. If the administrator does
11 not withdraw the temporary registration, registration becomes
12 automatically effective on the thirty-first day after filing.

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

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

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

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

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

24 (3) A person shall pay a fee of \$150.00 when filing an
25 application for registration as an investment adviser and a fee
26 of \$150.00 when filing a renewal of registration as an investment

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

3 (4) An individual shall pay a fee of \$30.00 when filing an
4 application for registration as an investment adviser representa-
5 tive, a fee of \$30.00 when filing a renewal of registration as an
6 investment adviser representative, and a fee of \$30.00 when
7 filing a change of registration as an investment adviser
8 representative. If the filing results in a denial or withdrawal,
9 the administrator shall retain all of the filing fee.

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

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

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

24 Sec. 411. (1) Subject to section 15(h) of the securities
25 act of 1934, 15 U.S.C. 78o, or section 222 of the investment
26 advisers act of 1940, 15 U.S.C. 80b-18a, a rule or order under
27 this act may establish minimum financial requirements for

1 broker-dealers registered or required to be registered under this
2 act and investment advisers registered or required to be regis-
3 tered under this act.

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

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

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

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

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

16 (5) Subject to section 15(h) of the securities exchange act
17 of 1934, 15 U.S.C. 78o, or section 222 of the investment advisers
18 act of 1940, 15 U.S.C. 80b-18a, a rule or order under this act
19 may require each broker-dealer and investment adviser that has
20 custody of or discretionary authority over funds or securities of
21 a client to obtain insurance or post a bond or other satisfactory
22 form of security in an amount not to exceed \$35,000.00. The
23 administrator may determine the requirements of the insurance,
24 bond, or other satisfactory form of security. Insurance or a
25 bond or other satisfactory form of security shall not be required
26 of a broker-dealer registered under this act whose net capital
27 exceeds, or of an investment adviser registered under this act

1 whose minimum financial requirements exceed, the amounts required
2 by rule or order under this act. The insurance, bond, or other
3 satisfactory form of security must permit an action by a person
4 to enforce any liability on the insurance, bond, or other satis-
5 factory form of security if commenced within the time limitations
6 in section 509(10)(b).

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

18 (7) With respect to an investment adviser registered or
19 required to be registered under this act, a rule or order under
20 this act may require that information be furnished or dissemi-
21 nated to clients or prospective clients in this state as neces-
22 sary or appropriate in the public interest and for the protection
23 of investors and advisory clients.

24 (8) A rule or order under this act may require an individual
25 registered under section 402 or 404 to participate in a continu-
26 ing education program approved by the securities and exchange
27 commission and administered by a self-regulatory organization or,

1 in the absence of such a program, a rule or order under this act
2 may require continuing education for an individual registered
3 under section 404.

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

14 (2) If the administrator finds that the order is in the
15 public interest and subsection (4) authorizes the action, an
16 order under this act may revoke, suspend, condition, or limit the
17 registration of a current registrant and if the registrant is a
18 broker-dealer or investment adviser, of any partner, officer, or
19 director of, any person having a similar status or performing
20 similar functions for, or any person directly or indirectly con-
21 trolling the broker-dealer or investment adviser. Both of the
22 following conditions apply, however, to actions by the adminis-
23 trator under this subsection:

24 (a) The administrator shall not institute a revocation or
25 suspension proceeding under this subsection based on an order
26 issued by another state that is reported to the administrator or

1 designee later than 1 year after the date of the order on which
2 it is based.

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

8 (3) If the administrator finds that the order is in the
9 public interest and subsection (4)(a) to (f), (i) to (j), or (l)
10 to (n) authorizes the action, an order under this act may cen-
11 sure, impose a bar, or impose a civil penalty in an amount not to
12 exceed a maximum of \$1,000.00 for a single violation or
13 \$10,000.00 for multiple violations on a registrant and, if the
14 registrant is a broker-dealer or investment adviser, on any part-
15 ner, officer, or director, any person having a similar function,
16 or any person directly or indirectly controlling the
17 broker-dealer or investment adviser.

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

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

1 (b) The person willfully violated or willfully failed to
2 comply with this act or the predecessor act or a rule adopted or
3 order issued under this act or the predecessor act within the
4 previous 10 years.

5 (c) The person was convicted of any felony or within the
6 previous 10 years was convicted of a misdemeanor involving a
7 security, a commodity futures or option contract, or an aspect of
8 a business involving securities, commodities, investments, fran-
9 chises, insurance, banking, or finance.

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

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

19 (i) The securities, depository institution, insurance, or
20 other financial services regulator of a state, or by the securi-
21 ties and exchange commission or other federal agency denying,
22 revoking, barring, or suspending registration as a broker-dealer,
23 agent, investment adviser, federal covered investment adviser, or
24 investment adviser representative.

25 (ii) The securities regulator of a state or by the securi-
26 ties and exchange commission against a broker-dealer, agent,

1 investment adviser, investment adviser representative, or federal
2 covered investment adviser.

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

6 (iv) A court adjudicating a United States postal service
7 fraud.

8 (v) The insurance regulator of a state denying, suspending,
9 or revoking the registration of an insurance agent.

10 (vi) A depository institution regulator suspending or bar-
11 ring a person from the banking or depository institution
12 business.

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

25 (g) The person is insolvent, either in the sense that the
26 person's liabilities exceed the person's assets or in the sense
27 that the person cannot meet the person's obligations as they

1 mature. The administrator shall not enter an order against an
2 applicant or registrant under this subdivision without a finding
3 of insolvency as to the applicant or registrant.

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

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

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

1 (k) One or more of the following have occurred within the
2 previous 10 years after notice and opportunity for a hearing:

3 (i) A court of competent jurisdiction found the person to
4 have willfully violated the laws of a foreign jurisdiction under
5 which the business of securities, commodities, investment, fran-
6 chises, insurance, banking, or finance is regulated.

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

12 (iii) The person was found to have been suspended or
13 expelled from membership by or participation in a securities
14 exchange or securities association operating under the securities
15 laws of a foreign jurisdiction.

16 (l) The person is the subject of a cease and desist order
17 issued by the securities and exchange commission or issued under
18 the securities, franchise, or commodities laws of a state.

19 (m) The person has engaged in dishonest or unethical prac-
20 tices in the securities, commodities, investment, franchise,
21 banking, finance, or insurance business within the previous 10
22 years.

23 (n) The person refuses to allow or otherwise impedes the
24 administrator from conducting an audit or inspection under sec-
25 tion 411(4) or refuses access to any registrant's office to con-
26 duct an audit or inspection.

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

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

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

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

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

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

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

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

20 ARTICLE 5

21 FRAUD AND LIABILITIES

22 Sec. 501. A person shall not do any of the following,
23 directly or indirectly, in connection with the offer, sale, or
24 purchase of a security:

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

26 (b) Make an untrue statement of a material fact or omit to
27 state a material fact necessary in order to make the statement

1 made, in the light of the circumstances under which it is made,
2 not misleading.

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

6 Sec. 502. (1) A person that advises others, for compensa-
7 tion, either directly or indirectly, or through publications or
8 writings, as to the value of securities or the advisability of
9 investing in, purchasing, or selling securities, or that, for
10 compensation and as part of a regular business, issues or promul-
11 gates analyses or reports concerning securities shall not do any
12 of the following:

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

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

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

20 (a) Take possession of funds or securities in connection
21 with the transaction for which payment is made for services as a
22 finder.

23 (b) Fail to disclose clearly and conspicuously in writing to
24 all persons involved in the transaction as a result of his or her
25 finding activities before the sale or purchase that the person is
26 acting as a finder, any payment for services as a finder, the
27 method and amount of payment, as well as any beneficial interest,

1 direct or indirect, of the finder or a member of the finder's
2 immediate family in the issue of the securities that are the
3 subject of services as a finder.

4 (c) Participate in the offer, purchase, or sale of a secur-
5 ity in violation of section 301. However, if the investment
6 adviser makes a reasonable effort to ascertain if a registration
7 has been effected or an exemption order granted in this state or
8 to ascertain the basis for an exemption claim and does not have
9 knowledge that the proposed transaction would violate section
10 301, his or her activities as a finder do not violate section
11 301.

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

21 (e) Fail to inform or otherwise ensure disclosure to all
22 persons involved in the transaction as a result of his or her
23 finding activities of any material information which the finder
24 knows, or in the exercise of reasonable care should know based on
25 the information furnished to him or her, is material in making an
26 investment decision, until conclusion of the transaction. This

1 subdivision does not require the finder to independently generate
2 information.

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

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

8 (a) Define an act, practice, or course of business of an
9 investment adviser or an investment adviser representative, other
10 than a supervised person of a federal covered investment adviser,
11 as fraudulent, deceptive, or manipulative, and prescribe means
12 reasonably designed to prevent investment advisers and investment
13 adviser representatives, other than supervised persons of a fed-
14 eral covered investment adviser, from engaging in acts, prac-
15 tices, and courses of business defined as fraudulent, deceptive,
16 or manipulative.

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

19 Sec. 503. (1) In a civil action or administrative proceed-
20 ing under this act, a person claiming an exemption, exception,
21 preemption, or exclusion has the burden to prove the applicabil-
22 ity of the exemption, exception, preemption, or exclusion.

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

26 Sec. 504. (1) Subject to subsection (2), a rule or order
27 under this act may require the filing of a prospectus, pamphlet,

1 circular, form letter, advertisement, sales literature, or other
2 advertising communication relating to a security or investment
3 advice addressed or intended for distribution to prospective
4 investors, including clients or prospective clients of a person
5 registered or required to be registered as an investment adviser
6 under this act.

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

12 Sec. 505. A person shall not make or cause to be made, in a
13 record that is used in an action or proceeding or filed under
14 this act, a statement that, at the time and in the light of the
15 circumstances under which it is made, is false or misleading in a
16 material respect, or, in connection with the statement, omit to
17 state a material fact necessary in order to make the statement
18 made, in the light of the circumstances under which it was made,
19 not false or misleading.

20 Sec. 506. The filing of an application for registration, a
21 registration statement, a notice filing under this act, or the
22 registration of a person, the notice filing by a person, or the
23 registration of a security under this act does not constitute a
24 finding by the administrator that a record filed under this act
25 is true, complete, and not misleading. The filing or registra-
26 tion or the availability of an exemption, exception, preemption,
27 or exclusion for a security or a transaction does not mean that

1 the administrator has passed upon the merits or qualifications
2 of, or recommended or given approval to, a person, security, or
3 transaction. A person shall not make or cause to be made to a
4 purchaser, customer, client, or prospective customer or client a
5 representation inconsistent with this section.

6 Sec. 507. A broker-dealer, agent, investment adviser, fed-
7 eral covered investment adviser, or investment adviser represen-
8 tative is not liable to another broker-dealer, agent, investment
9 adviser, federal covered investment adviser, or investment
10 adviser representative for defamation relating to an alleged
11 untrue statement that is contained in a record required by the
12 administrator, or designee of the administrator, the securities
13 and exchange commission, or a self-regulatory organization,
14 unless it is proven that the person knew, or should have known at
15 the time that the statement was made, that it was false in a
16 material respect or the person acted in reckless disregard of the
17 statement's truth or falsity.

18 Sec. 508. (1) A person that willfully violates this act or
19 a rule adopted or order issued under this act, except section 504
20 or the notice filing requirements of section 302 or 405, or that
21 willfully violates section 505 knowing the statement made to be
22 false or misleading in a material respect, is guilty of a felony
23 punishable by imprisonment for not more than 10 years or a fine
24 of not more than \$25,000.00 for each violation, or both. An
25 individual convicted of violating a rule or order under this act
26 may be fined, but shall not be imprisoned, if the individual did
27 not have knowledge of the rule or order.

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

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

7 Sec. 509. (1) Enforcement of civil liability under this
8 section is subject to the securities litigation uniform standards
9 act of 1998.

10 (2) A person is liable to the purchaser if the person sells
11 a security in violation of section 301, or by means of an untrue
12 statement of a material fact or an omission to state a material
13 fact necessary in order to make the statement made, in light of
14 the circumstances under which it is made, not misleading, the
15 purchaser not knowing the untruth or omission, and the seller not
16 sustaining the burden of proof that the seller did not know and,
17 in the exercise of reasonable care, could not have known of the
18 untruth or omission. All of the following apply to an action
19 under this subsection:

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

26 (b) The tender referred to in subdivision (a) may be made
27 any time before entry of judgment. Tender requires only notice

1 in a record of ownership of the security and willingness to
2 exchange the security for the amount specified. A purchaser that
3 no longer owns the security may recover actual damages.

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

9 (3) A person is liable to the seller if the person buys a
10 security by means of an untrue statement of a material fact or
11 omission to state a material fact necessary in order to make the
12 statement made, in light of the circumstances under which it is
13 made, not misleading, if the seller did not know of the untruth
14 or omission and the purchaser does not sustain the burden of
15 proving that the purchaser did not know, and in the exercise of
16 reasonable care could not have known, of the untruth or
17 omission. All of the following apply to an action under this
18 subsection:

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

24 (b) The tender referred to in subdivision (a) may be made
25 any time before entry of judgment. Tender requires only notice
26 in a record of the present ability to pay the amount tendered and
27 willingness to take delivery of the security for the amount

1 specified. If the purchaser no longer owns the security, the
2 seller may recover actual damages.

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

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

15 (5) A person acting as an investment adviser or investment
16 adviser representative that provides investment advice for a fee
17 in violation of section 403(1), 404(1), or 506 is liable to the
18 client. The client may maintain an action at law or in equity to
19 recover the consideration paid for the advice, interest at 6%
20 from the date of payment, costs, and reasonable attorney fees
21 determined by the court.

22 (6) A person that receives, directly or indirectly, any con-
23 sideration for providing investment advice to another person and
24 that employs a device, scheme, or artifice to defraud the other
25 person or engages in an act, practice, or course of business that
26 operates or would operate as a fraud or deceit on the other
27 person is liable to the other person. The other person may

1 maintain an action to recover the consideration paid for the
2 advice and the amount of any actual damages caused by the conduct
3 that gives rise to liability under this subsection, interest at
4 6% from the date of the conduct causing liability, costs, and
5 reasonable attorney fees determined by the court, less the amount
6 of any income received as a result of the conduct causing
7 liability. This subsection does not apply to a broker-dealer or
8 its agents that provides investment advice solely incidentally to
9 the conduct of business as a broker-dealer and that does not
10 receive special compensation for the investment advice.

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

14 (a) A person that directly or indirectly controls a person
15 liable under subsections (2) to (6), unless the controlling
16 person sustains the burden of proving that the controlling person
17 did not know, and in the exercise of reasonable care could not
18 have known, of the existence of the facts by reason of which the
19 liability is alleged to exist.

20 (b) An individual who is a managing partner, executive offi-
21 cer, or director of a person liable under subsections (2) to (6),
22 including each individual having a similar status or performing
23 similar functions, unless the individual sustains the burden of
24 proving that the individual did not know and, in the exercise of
25 reasonable care could not have known, of the existence of the
26 facts by reason of which the liability is alleged to exist.

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

8 (d) A person that is a broker-dealer, agent, investment
9 adviser, or investment adviser representative that materially
10 aids the conduct giving rise to the liability under subsections
11 (2) to (6), unless the person sustains the burden of proving that
12 the person did not know and, in the exercise of reasonable care
13 could not have known, of the existence of the facts by reason of
14 which liability is alleged to exist.

15 (8) A person liable under this section has a right of con-
16 tribution as in cases of contract against any other person liable
17 under this section for the same conduct.

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

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

22 (a) Under subsection (2) for violation of section 301, or
23 under subsection (4) or (5), unless the action is commenced
24 within 1 year after the violation occurred.

25 (b) Under subsection (2), other than for violation of sec-
26 tion 301, or under subsection (3) or (6), unless the action is
27 commenced within the earlier of 2 years after discovery of the

1 facts constituting the violation or 5 years after the violation
2 occurred.

3 (11) A person that has made or engaged in the performance of
4 a contract in violation of this act or a rule adopted or order
5 issued under this act, or that has acquired a purported right
6 under the contract with knowledge of the facts by reason of which
7 its making or performance was in violation of this act, may not
8 base an action on the contract.

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

13 (13) The rights and remedies provided by this act are in
14 addition to any other rights or remedies that may exist, but this
15 act does not create a cause of action not specified in this sec-
16 tion or section 411(5).

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

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

23 (i) States the respect in which liability under section 509
24 may have arisen and fairly advises the purchaser, seller, or
25 recipient of investment advice of that person's rights in connec-
26 tion with the offer, including financial or other information
27 necessary to correct all material misstatements or omissions in

1 the information that was required by this act to be furnished to
2 that person at the time of the purchase, sale, or investment
3 advice.

4 (ii) If the basis for relief under this section may have
5 been a violation of section 509(2), offers to repurchase the
6 security for cash, payable on delivery of the security, equal to
7 the consideration paid, and interest at 6% per year from the date
8 of purchase, less the amount of any income received on the secur-
9 ity, or, if the purchaser no longer owns the security, offers to
10 pay the purchaser upon acceptance of the offer damages in an
11 amount that would be recoverable upon a tender, less the value of
12 the security when the purchaser disposed of it, and interest at
13 6% from the date of purchase in cash equal to the damages com-
14 puted in the manner provided in this subsection.

15 (iii) If the basis for relief under this section may have
16 been a violation of section 509(c), offers to tender the securi-
17 ty, on payment by the seller of an amount equal to the purchase
18 price paid, less income received on the security by the purchaser
19 and interest at 6% from the date of the sale, or if the purchaser
20 no longer owns the security, offers to pay the seller upon accep-
21 tance of the offer, in cash, damages in the amount of the differ-
22 ence between the price at which the security was purchased and
23 the value the security would have had at the time of the purchase
24 in the absence of the purchaser's conduct that may have caused
25 liability and interest at 6% from the date of the sale.

26 (iv) If the basis for relief under this section may have
27 been a violation of section 509(4), and if the customer is a

1 purchaser, offers to pay as specified in subdivision (a)(ii) or,
2 if the customer is a seller, offers to tender or to pay as speci-
3 fied in subdivision (a)(iii).

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

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

13 (vii) States that the offer must be accepted by the purchas-
14 er, seller, or recipient of investment advice within 30 days
15 after the date of its receipt by the purchaser, seller, or recipi-
16 ent of investment advice or within a shorter period of not less
17 than 3 days that the administrator, by order, specifies.

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

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

24 (d) The purchaser, seller, or recipient of investment advice
25 that accepts the offer under subdivision (a) in a record within
26 the period specified under subdivision (a)(vii) is paid in
27 accordance with the terms of the offer.

ARTICLE 6

ADMINISTRATION AND JUDICIAL REVIEW

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

(2) The administrator or officer, employee, or designee of the administrator shall not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 607(2).

This act does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 602, 607(3), or 608.

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

(4) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept grants or donations from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether or not the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or

1 monetary contributions of a registrant in an investor education
2 program.

3 (5) The securities investor education and training fund is
4 created to provide funds for the purposes specified in subsection
5 (4).

6 Sec. 602. (1) The administrator may do any of the
7 following:

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

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

19 (c) Publish information concerning an action, proceeding, or
20 investigation under, or a violation of, this act or a rule
21 adopted or order issued under this act if the administrator
22 determines it is necessary or appropriate in the public interest
23 and for the protection of investors.

24 (2) For the purpose of an investigation under this act, the
25 administrator or a designated officer may administer oaths and
26 affirmations, subpoena witnesses, seek compulsion of attendance,
27 take evidence, require the filing of a statement, and require the

1 production of any records that the administrator considers
2 relevant or material to the investigation.

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

10 (a) Hold the person in contempt.

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

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

14 (d) Order the production of records.

15 (e) Grant injunctive relief, including restricting or pro-
16 hibiting the offer or sale of securities or the providing of
17 investment advice.

18 (f) Order a civil fine of not less than \$1,000.00 and not
19 more than \$10,000.00 for each violation.

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

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

25 (5) An individual is not excused from attending, testifying,
26 filing a statement, producing a record or other evidence, or
27 obeying a subpoena of the administrator under this act or in an

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

16 (6) At the request of the securities regulator of another
17 state or a foreign jurisdiction, the administrator may provide
18 assistance if the requesting regulator states that it is conduct-
19 ing an investigation to determine whether a person has violated,
20 is violating, or is about to violate a law or rule of the other
21 state or foreign jurisdiction relating to securities matters
22 which the requesting regulator administers or enforces. The
23 administrator may provide the assistance by using the authority
24 to investigate and the powers conferred by this section as the
25 administrator determines is necessary or appropriate. The
26 assistance may be provided without regard to whether the facts
27 stated in the request would also constitute a violation of this

1 act or other law of this state if occurring in this state. In
2 deciding whether to provide the assistance, the administrator may
3 consider whether the requesting regulator is permitted and has
4 agreed to provide assistance reciprocally within its state or
5 foreign jurisdiction to the administrator on securities matters
6 when requested, whether compliance with the request would violate
7 or prejudice the public policy of this state, and the availabil-
8 ity of resources and employees of the administrator to carry out
9 the request for assistance.

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

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

22 (a) Grant or require a permanent or temporary injunction,
23 restraining order, or a declaratory judgment.

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

26 (i) An asset freeze, accounting, writ of attachment, writ of
27 general or specific execution, and an appointment of a receiver

1 or conservator, which may be the administrator, for the defendant
2 or the defendant's assets.

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

7 (iii) The imposition of a civil fine of not more than
8 \$1,000.00 for a single violation or \$10,000.00 for multiple
9 violations.

10 (iv) An order of rescission, restitution, or disgorgement
11 directed to a person that has engaged in an act, practice, or
12 course of business constituting a violation of this act or the
13 predecessor act or a rule adopted or order issued under this act
14 or the predecessor act.

15 (v) An order for the payment of prejudgment and postjudgment
16 interest.

17 (c) Granting other relief that the court considers
18 appropriate.

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

21 Sec. 604. (1) If the administrator determines that a person
22 has engaged, is engaging, or is about to engage in an act, prac-
23 tice, or course of business constituting a violation of this act
24 or a rule adopted or order issued under this act, or that a
25 person has, is, or is about to materially aid an act, practice,
26 or course of business constituting a violation of this act or a

1 rule adopted or order issued under this act, the administrator
2 may do 1 or more of the following:

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

7 (b) Issue an order denying, suspending, revoking, or condi-
8 tioning the exemptions for a broker-dealer under section
9 401(2)(a)(iv) or (vi) or an investment adviser under section
10 403(2)(a)(iii).

11 (c) Issue an order under section 204.

12 (2) An order under subsection (1) is effective on the date
13 of issuance. Upon issuance of the order, the administrator shall
14 promptly serve each person subject to the order with a copy of
15 the order and a notice that the order has been entered. The
16 order shall include a statement whether the administrator will
17 seek a civil penalty or costs of the investigation, a statement
18 of the reasons for the order, and notice that the matter will be
19 scheduled for a hearing within 15 days after receipt of a request
20 in a record from the person. If a person subject to the order
21 does not request a hearing and none is ordered by the administra-
22 tor within 30 days after the date of service of the order, the
23 order becomes final as to that person. If a hearing is requested
24 or ordered, the administrator, after notice of and opportunity
25 for hearing to each person subject to the order, may modify or
26 vacate the order or extend it until final determination.

1 (3) If a hearing is requested or ordered pursuant to
2 subsection (2), the hearing shall be held pursuant to the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328. A final order shall not be issued unless the administra-
5 tor makes findings of fact and conclusions of law on the record
6 pursuant to the administrative procedures act of 1969, 1969 PA
7 306, MCL 24.201 to 24.328. The final order may make final,
8 vacate, or modify the order issued under subsection (1).

9 (4) In a final order, the administrator may impose a civil
10 fine of not more than \$1,000.00 for a single violation or
11 \$10,000.00 for multiple violations.

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

15 (6) If a petition for judicial review of a final order is
16 not filed in accordance with section 609, the administrator may
17 file a certified copy of the final order with the clerk of a
18 court of competent jurisdiction. The filed order shall have the
19 same effect as a judgment of the court and may be recorded,
20 enforced, or satisfied in the same manner as a judgment of the
21 court.

22 (7) If a person fails to comply with an order under this
23 section, the administrator may petition a court of competent
24 jurisdiction to enforce the order. The court shall not require
25 the administrator to post a bond. If the court finds, after
26 service and opportunity for hearing, that the person is not in
27 compliance with the order, the court may adjudge the person in

1 civil contempt of the order. The court may impose an additional
2 civil penalty against the person for contempt in an amount not
3 less than \$1,000.00 or more than \$10,000.00 for each violation
4 and may grant any other relief the court determines is just and
5 proper in the circumstances.

6 Sec. 605. (1) The administrator may do any of the
7 following:

8 (a) Issue forms and orders; after notice and comment, adopt
9 and amend rules necessary or appropriate to carry out this act;
10 and repeal rules, including rules and forms governing registra-
11 tion statements, applications, notice filings, reports, and other
12 records.

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

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

17 (2) A rule or form shall not be adopted or amended or an
18 order issued or amended under this act unless the administrator
19 finds that the rule, form, or order is necessary or appropriate
20 in the public interest or for the protection of investors and is
21 consistent with the purposes intended by this act. In adopting,
22 amending, and repealing rules and forms, the administrator may
23 cooperate under section 608 in order to achieve uniformity among
24 the states and coordination with federal laws in the form and
25 content of registration statements, applications, reports, and
26 other records, including in the adoption of uniform rules, forms,
27 and procedures.

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

9 (a) 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 form and content of
12 financial statements required under this act.

13 (b) Whether unconsolidated financial statements must be
14 filed.

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

17 (4) The administrator may provide interpretative opinions or
18 may issue determinations that the administrator will not insti-
19 tute an enforcement proceeding or commence an action under this
20 act against a specified person for engaging in a specified act,
21 practice, or course of business if the determination is consis-
22 tent with the purposes intended by this act. A rule or order
23 under this act may assess a reasonable charge for interpretative
24 opinions or determinations that the administrator will not com-
25 mence an action or institute an enforcement proceeding under this
26 act.

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

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

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

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

22 (3) Upon request, the administrator shall furnish to a
23 person a copy of a record that is a public record or a certifica-
24 tion that the public record does not exist. A rule under this
25 act may establish a reasonable charge for furnishing the record.
26 A copy of the record certified or a certificate of its

1 nonexistence by the administrator is prima facie evidence of a
2 record or its nonexistence.

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

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

10 (a) A record obtained by the administrator in connection
11 with an examination under section 411(3) or an investigation
12 under section 602.

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

19 (c) A record that is not required to be provided to the
20 administrator or filed under this act and is provided to the
21 administrator only on the condition that the information will not
22 be subject to public examination or disclosure.

23 (d) A nonpublic record received from a person specified in
24 section 608.

25 (e) Any social security number, residential address, and
26 residential telephone number contained in a record that is
27 filed.

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

4 (i) Appropriately expunged from the administrator's records
5 by that designee.

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

9 (3) The administrator may disclose a record obtained in con-
10 nection with an audit or inspection under section 411(4) or a
11 record obtained in connection with an investigation under section
12 602 if disclosure is for the purpose of a civil, administrative,
13 or criminal investigation, action, or proceeding or to a person
14 specified in section 608(1).

15 Sec. 608. (1) The administrator shall, in its discretion,
16 cooperate, coordinate, consult, and, subject to section 607,
17 share records and information with the securities regulators of 1
18 or more states, Canada or 1 or more of its provinces or territo-
19 ries, 1 or more foreign countries, the securities and exchange
20 commission, the United States department of justice, the commod-
21 ity futures trading commission, the federal trade commission, the
22 securities investor protection corporation, a self-regulatory
23 organization, a national or international organization of securi-
24 ties regulators, federal or state banking and insurance regula-
25 tors, and any governmental law enforcement agency, in order to
26 effectuate greater uniformity in securities matters among the

1 federal government, self-regulatory organizations, and state and
2 foreign governments.

3 (2) In cooperating under this section and in acting by rule,
4 order, or waiver under this act, the administrator shall, in the
5 discretion of the administrator, take into consideration in car-
6 rying out the public interest the following general policies:

7 (a) Maximizing effectiveness of regulation for the protec-
8 tion of investors.

9 (b) Maximizing uniformity in federal and state regulatory
10 standards.

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

13 (3) The cooperation authorized by this section includes:

14 (a) Establishing or employing 1 or more designees as a cen-
15 tral depository for registration and notice filings under this
16 act and for records required or allowed to be maintained under
17 this act.

18 (b) Developing and maintaining uniform forms.

19 (c) Conducting a joint examination or investigation.

20 (d) Holding a joint administrative hearing.

21 (e) Instituting and prosecuting a joint civil or administra-
22 tive proceeding.

23 (f) Sharing and exchanging personnel.

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

26 (h) Sharing and exchanging records.

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

3 (j) Formulating common systems and procedures.

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

6 (l) Attending conferences and other meetings among securi-
7 ties regulators, which may include representatives of governmen-
8 tal and private organizations involved in capital formation, con-
9 sidered to be necessary or appropriate to promote or achieve
10 uniformity.

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

14 Sec. 609. (1) Final orders issued by the administrator
15 under this act are subject to judicial review pursuant to the
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
17 24.328.

18 (2) Rules adopted under this act are subject to judicial
19 review pursuant to the administrative procedures act of 1969,
20 1969 PA 306, MCL 24.201 to 24.328.

21 Sec. 610. (1) Sections 301, 302, 401(1), 402(1), 403(1),
22 404(1), 501, 506, 509, and 510 apply to a person that sells or
23 offers to sell a security if the offer to sell or the sale is
24 made in this state or the offer to purchase or the purchase is
25 made and accepted in this state.

26 (2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509,
27 and 510 apply to a person that purchases or offers to purchase a

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

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

8 (a) It originates from this state.

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

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

15 (a) It is communicated to the offeror in this state, the
16 offeree reasonably believes the offeror to be present in this
17 state, and the acceptance is received at the place in this state
18 to which it is directed.

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

21 (5) An offer to sell or to purchase is not made in this
22 state when a publisher circulates or there is circulated on the
23 publisher's behalf in this state a bona fide newspaper or other
24 publication of general, regular, and paid circulation that is not
25 published in this state, or that is published in this state but
26 has had more than 2/3 of its circulation outside this state
27 during the previous 12 months, or when a radio or television

1 program or other electronic communication originating outside
2 this state is received in this state. A radio, television pro-
3 gram, or other electronic communication is considered as having
4 originated in this state if either the broadcast studio or the
5 originating source of transmission is located in this state,
6 unless any of the following are met:

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

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

14 (c) The program or communication is an electronic communica-
15 tion that originates outside this state and is captured for
16 redistribution to the general public in this state by a community
17 antenna or cable, radio, cable television, or other electronic
18 system.

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

22 (5) Sections 403(1), 404(1), 405(1), 502, 505, and 506 apply
23 to a person if an act, practice, or course of business instrumen-
24 tal in effecting prohibited or actionable conduct is engaged in
25 this state, whether or not either party is then present in this
26 state.

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

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

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

25 (a) The plaintiff, which may be the administrator, promptly
26 sends notice of the service and a copy of the process, return
27 receipt requested, to the defendant or respondent at the address

1 given in the consent to service of process or, if a consent to
2 service of process has not been filed, at the last known address,
3 or takes other reasonable steps to give notice.

4 (b) The plaintiff files an affidavit of compliance with this
5 subsection in the action or proceeding on or before the return
6 day of the process, if any, or within the time that the court or
7 the administrator in a proceeding before the administrator
8 allows.

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

12 (5) If the process is served under subsection (3), the court
13 or the administrator in a proceeding before the administrator
14 shall order continuances as are necessary or appropriate to
15 afford the defendant or respondent reasonable opportunity to
16 defend.

17 ARTICLE 7

18 TRANSITION

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

21 Sec. 702. The uniform securities act, 1964 PA 265, MCL
22 451.501 to 451.818, is repealed.

23 Sec. 703. (1) The predecessor act exclusively governs all
24 actions, prosecutions, or proceedings that are pending or may be
25 maintained or instituted on the basis of facts or circumstances
26 occurring before the effective date of this act, but a civil
27 action shall not be maintained to enforce any liability under the

1 predecessor act unless commenced within any period of limitation
2 that applied when the cause of action accrued or within 3 years
3 after the effective date of this act, whichever is earlier.

4 (2) All effective registrations under the predecessor act,
5 all administrative orders relating to the registrations, state-
6 ments of policy, interpretative opinions, declaratory rulings, no
7 action determinations, and all conditions imposed upon the regis-
8 trations under the predecessor act remain in effect for the same
9 time period they would have remained in effect if this act had
10 not been enacted. They are considered to have been filed,
11 issued, or imposed under this act, but are exclusively governed
12 by the predecessor act.

13 (3) The predecessor act exclusively governs any offer or
14 sale made within 1 year after the effective date of this act pur-
15 suant to an offering made in good faith before the effective date
16 of this act on the basis of an exemption available under the
17 predecessor act.