

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

***** 451.2102a.new THIS NEW SECTION IS EFFECTIVE OCTOBER 1, 2009 *****

451.2102a.new Definitions; I.

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

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

(i) A depository institution or international banking institution.

(ii) An insurance company.

(iii) A separate account of an insurance company.

(iv) An investment company as defined in the investment company act of 1940.

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

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

(vii) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000.00 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company.

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

(ix) An organization described in section 501(c)(3) of the internal revenue code, 26 USC 501, a corporation, Massachusetts or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000.00.

(x) A small business investment company licensed by the small business administration under section 301(c) of the small business investment act of 1958, 15 USC 681, with total assets in excess of \$10,000,000.00.

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

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

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

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

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

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

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

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

(d) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(e) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for

compensation. The term does not include any of the following:

- (i) An investment adviser representative.
- (ii) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession.
- (iii) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice.
- (iv) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.
- (v) A federal covered investment adviser.
- (vi) A depository institution.
- (vii) Any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser.
- (viii) Any other person excluded by rule or order under this act.
- (ix) A finder registered as a broker-dealer under this act.

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

- (i) Performs only clerical or ministerial acts.
- (ii) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and does not receive special compensation for investment advisory services.
- (iii) Is employed by or associated with a federal covered investment adviser, unless the individual meets any of the following:

(A) Has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a, and is an "investment adviser representative" as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a.

(B) Has a "place of business" in this state as that term is defined by rule adopted under section 203A of the investment advisers act of 1940, 15 USC 80b-3a, and is not a "supervised person" as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 15 USC 80b-2.

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

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

(i) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions, is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

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

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

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